

WORLD TRADE ORGANIZATION

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Committee on Regional Trade Agreements Twenty-Ninth Session

NOTE ON THE MEETING OF 2-3 JULY 2001

Chairperson: Mrs. L. Dubois Destrizais (France)

A. ADOPTION OF THE AGENDA

1. The Twenty-Ninth Session of the Committee on Regional Trade Agreements (CRTA) was convened in Airgram WTO/AIR/1568, dated 15 June 2001.

2. The Chairperson indicated that she would introduce two issues under "Other Business", concerning the Secretariat's studies on coverage and rules of origin, and the schedule of the Committee's next meeting.

3. The representative of Hong Kong, China, said that his delegation also wished to propose under "Other Business" the organization of an educational seminar on the relationship between regional trade agreements (RTAs) and the multilateral trading system. He emphasized the importance which his delegation attached to enhancing understanding on the matter.

4. The following Agenda was adopted:

- A. Adoption of the Agenda
- B. Election of Officers
- C. Examination of Regional Trade Agreements
 - I. Status of the Draft Examination Reports
 - II. Customs Union between the Kyrgyz Republic, the Russian Federation, Belarus, Kazakhstan and Tajikistan
 - III. Free Trade Agreement between the Kyrgyz Republic and the Russian Federation
 - IV. Free Trade Agreement between the Kyrgyz Republic and Ukraine
 - V. Free Trade Agreement between the Kyrgyz Republic and Uzbekistan
 - VI. Free Trade Agreement between the Kyrgyz Republic and Moldova
 - VII. Free Trade Agreement between the Kyrgyz Republic and Kazakhstan
 - VIII. Free Trade Agreement between Azerbaijan, Armenia, Belarus, Georgia, Moldova, Kazakhstan, the Russian Federation, Ukraine, Uzbekistan, Tajikistan, and the Kyrgyz Republic
 - IX. Free Trade Agreement between Estonia and Ukraine
 - X. Free Trade Agreement between Hungary and Lithuania
 - XI. Free Trade Agreement between Hungary and Latvia
 - XII. Free Trade Agreement between Poland and Latvia
 - XIII. Free Trade Agreement between Estonia and the Faroe Islands
 - XIV. Free Trade Agreement between Poland and the Faroe Islands
 - XV. Euro-Mediterranean Agreement between the European Communities and Tunisia

- XVI. Free Trade Agreement between EFTA and Morocco
- XVII. Free Trade Agreement between Turkey and Poland
- D. Other Business

5. The Chairman recalled that the Latin American Integration Association (LAIA) had been granted observer status to the CRTA on an *ad hoc* basis and sought confirmation to extend an invitation to LAIA to attend the Committee's next meeting. It was so agreed.

B. ELECTION OF OFFICERS

6. The Chairperson reported that she had held informal consultations with various groups and delegations so as to replace two of the three Vice-Chairpersons of the CRTA. She also noted that Dr. Vassili Notis of Greece had indicated that he would remain in his function as Vice-Chairman. She proposed that the Committee elect by acclamation Ms. Margaret Liang, Deputy Permanent Representative of Singapore, and Mr. Alberto J. Dumont, Alternate Permanent Representative of Argentina, as new Vice-Chairpersons of the CRTA. It was so agreed.

C. EXAMINATION OF REGIONAL TRADE AGREEMENTS

7. Reporting on the status of the CRTA's draft examination reports, the Chairperson recalled that at the time of submitting the Committee's report to the General Council in December 2000, the then Chairman (Amb. E. T. Custodio of the Philippines) had stated that, notwithstanding his multiple efforts, the Committee had reached a deadlock. Further to an in-depth debate in the General Council, the Committee had been invited to finalize the reports that had been pending for several years and to inform the Council of its progress. In May 2001, the question had been raised about a possible report to be presented to the General Council, but it was agreed to postpone such report until further consultations and exchanges of views could take place. Notwithstanding the hard work and goodwill shown by all members of the Committee, the impasse remained. Two rounds of informal consultation held had not succeeded in overcoming it: there were objections of principle from one delegation and customary objections from those delegations which were parties to RTAs. She added that not even the adoption of a new approach to the examination reports, based on merging parts III and IV, had brought about a clear breakthrough. Delegations had then been invited to engage in bilateral consultations, but little progress had been reported to date. The delegation that had raised issues of principle had not had the time to proceed with any consultations, while delegations more directly involved in the five test agreements had not been able to overcome their fundamental objections despite the new approach. It was her view that any agreement on the examination reports was unlikely before the General Council meeting on 18 July. It was her intention, therefore, to report to the General Council that the deadlock persisted. She also suggested that it might be more fruitful at that moment in time for the Committee to focus on a positive development of its role and contribution within the WTO, while guaranteeing the maximum transparency of RTAs. This, she said, was an opinion shared by the three Vice-Chairpersons and the Secretariat, and the one she intended to communicate to the General Council.

8. The representative of the United States indicated that her delegation looked favourably upon the merging of parts III and IV of the reports and considered it worth proceeding with this approach. She said that placing the conclusions beside the discussion would allow the Committee to better identify substantive differences and lead to a more precise and specific discussion. She added, however, that the appropriate philosophy of the text of part III needed consideration, especially with regards how to deal with differences among delegations. On this point she argued that the current philosophy whereby any RTA party could demand other Members to join in a consensus, and the

insistence not to have diverging views expressed in the Committee's conclusions, were inappropriate in a multilateral organization such as the WTO where differences were negotiated and, therefore, had to be expressed. Accordingly, she stressed the need to agree to a philosophy which would permit diverging views to be reflected, thus allowing the Committee and individual delegations to narrow down their problems and move on to the next stage at which point political input might be needed to resolve the remaining differences. This philosophy was no different from the one employed in accession reports and other WTO Committees' reports. She then reported that some progress had been made on one of the reports being considered. As regards the NAFTA, her delegation had yet to receive any comments. She then reiterated that a constructive approach on behalf of the Committee would allow her delegation to identify the remaining problems with regards to conclusions. She suggested that a new draft of the reports be prepared by the Secretariat, with brackets denoting the points not enjoying consensus, thus allowing her delegation to pinpoint specific problems and to try making progress on those points.

9. The representative of the European Communities (EC) expressed disappointment at the lack of progress with the examination reports, especially with regards to the leading group of reports which were the Committee's priority. He stressed that unless the Committee could find a way to finalize those reports, progress on systemic issues and individual examinations would be seriously hindered. He agreed with the US delegation's opinion that the new approach to the examination reports was worth pursuing further, for it facilitated the evaluation of the individual items. He concurred that some fundamental differences, whether of a systemic nature or on the agreements as a whole, had precluded the Committee from reaching a full conclusion on the issue, in spite of some findings in line with the mandate, and agreed that Members could not be expected to agree where they disagreed. Yet, he maintained that efforts should be made to bridge these differences as much as possible, if progress was to be made. Another important point he wished to see reflected in the Chairperson's report to the General Council was his delegation's disappointment with factual parts of the examination reports, which had been previously concluded, being reopened by suggestions brought forward while discussing the conclusions of these reports. Such a practice would lead the Committee backwards, since it would open the way to endless revisions in Members' positions. His delegation was of the impression that the Committee's intention was to have a snapshot in the reports of what had been said and what had been done, so as to concentrate on whether they could find common ground or find a way to move forward. He expressed sympathy for those delegations which during the last informal meetings had been willing to accept the texts of the draft reports without further changes, despite the fact that they might not be getting the best possible deal. His own delegation had very few comments on the reports, that being one of the reasons why they had been very reluctant to reopen other texts. Since they had two or maybe three substantive points on the EC-Hungary draft report, he had been hoping to discuss these points rather than reverting back to a number of other requests which made it more difficult to get the necessary support back home to finalize the exercise. He concluded by informing the Committee that although his delegation was willing to discuss further and would keep the Chairperson and all other delegations fully informed of its activities and progress, he agreed with the Chairperson that, under the current circumstances, her report to the General Council could not be overwhelmingly positive.

10. The representative of Hungary reminded the Committee that the pessimistic remarks he had expressed during the last meeting were unfortunately substantiated, as the breakthrough he had hoped for had not materialized. He observed that in spite of the efforts made, detailed consideration of the texts had led to increased difficulties, adding that his delegation's attempts at flexibility were not yielding results. In his view, the wish of some delegations to apply retroactively self-established targets, principles, and self-made interpretations as generally accepted rules, was the basic problem. He recalled that when his delegation had agreed to merge parts III and IV of the report he had made it clear that this process was not meant to be used as an opportunity to reopen the factual part and definitely not on a selective basis. Although his delegation had been polite enough not to comment on the NAFTA draft report hoping that it would help the process, his silence was by no means to be

interpreted as suggesting that his delegation was in a position to accept the present text. He stressed that examination reports on different RTAs were interrelated and observed that a step-by-step approach was unlikely to lead to a successful conclusion of the work. He admitted, however, that at the current stage he was unsure as to how to proceed. He called upon the Committee to economize time as much as possible, as smaller delegations such as his own could no longer afford to attend meetings that inherently contained negative outcomes, especially in the preparatory process to Doha. Nevertheless, he reassured the Chairperson that his delegation would attend any meeting she deemed necessary and would do its best to come to an agreement.

11. The representative of the Czech Republic shared a similar position to that outlined by the EC representative. He also expressed full support for the remarks made by the representative of Hungary and expressed his gratitude for his excellent work during the informal process when he had represented the views of the CEFTA Members.

12. The representative of Australia reminded the Committee that his delegation had been closely involved in both the systemic debate and the examination process and that it had worked closely with the Chairperson to find a way out of the backlog facing the Committee. He emphasized the importance his delegation gave to ensure that the legal and normative integrity of the examination process was maintained. The Committee was obviously facing major difficulties in overcoming such backlog. It was with this in mind that his delegation had expressed its views on the five latest draft examination reports at the informal CRTA meeting of 7 June; his was one of the delegations able to support the reports as currently drafted. Even though not ideal, the new drafts had struck a reasonable balance between Members' concerns about some of the RTAs and their parties' explanations. He also informed the Committee that since 7 June his delegation had been involved in bilateral consultations with those delegations which had had comments on the ANZCERTA Services Protocol; though those consultations had been constructive, they were not yet close to resolution. Given that those were the only bilateral consultations his delegation had had, it was with surprise that he learned the negative views expressed by the Chairperson and by some delegations who had spoken earlier at the meeting. Without criticizing the assessment, he pointed out that keeping the reports as currently drafted could be a way forward, emphasizing that no changes should be made to the texts. He concurred with the Chairperson, however, that if her assessment was correct and no progress could be made, the Committee should analyze why that was the case and take appropriate steps. These steps might involve raising the issue again in the General Council and reporting on the continued difficulties they were having in the Committee. Perhaps the time had come for the General Council to consider the role of the CRTA.

13. Commenting on the intervention of the various delegations, the Chairperson said that the negative tone of her comments had to be interpreted in light of the possible progress between the end of the present CRTA meeting and 18 July, the date of the General Council.

14. The representative of Hong Kong, China, indicated that instead of repeating his delegation's opinion on the draft examination reports, he preferred to comment on the procedures and explore ways in which progress could be made. He agreed with the representative of Australia that the Committee needed to elaborate on the causes of its difficulties and on the procedures and efforts that had been made in trying to overcome the latter. With regards to the General Council meeting, he said that in addition to mentioning the difficulties and raising the issue of a possible mandate revision, the Committee ought to give the General Council a more elaborate explanation of what had been done in the past few months in a general effort to break the deadlock and the difficulties which could not be overcome. He recalled that since the General Council meeting in February 2001, the Secretariat had redrafted some of the draft examination reports merging parts III and IV, and Members had been invited to submit written responses which would then be discussed at an informal meeting. At that informal meeting, however, discussions had gone no further than generic comments and had not got into the specific drafts. He recalled that the Chairperson had asked Members to engage in bilateral

discussions and that some Members had voiced concerns to the fact that they were part of a multilateral process and that the Committee had a role to play in case of difficulties arising between Members. On this background, and given the lack of multilateral discussion on specific drafts, he was doubtful about whether the Committee should decide to go no further and ask to have its mandate reviewed. He added that, notwithstanding the political difficulties and concerns of Members, especially those of parties to RTAs, to the formulation of the drafts, he was of the opinion that they should try to identify the particular problems and proceed further with the discussions. He stated that as far as his delegation was concerned, it had no difficulty with any particular agreement and no problem agreeing to the drafts. In this respect, he said that the Committee should consider each report on its own merits, without linking the five drafts on the table. His delegation did not feel that the Committee had exhausted all means to fulfill its mandate with regard to the draft examination reports. He hoped that the Chairperson would circulate her draft statement before the General Council meeting of 18 July in order to have some idea of what would be reported. He concluded that his delegation would welcome any informal meeting aimed at resolving outstanding problems before having to resign itself to the fact that the Committee could move no further.

15. The representative of Japan informed the Committee that, due to a very busy schedule during the previous few weeks, his delegation had been unable to consult with the parties concerned as it had been suggested by the Chairperson at the informal meeting; hence no progress had been made on that front. He indicated that his delegation was ready to assess the present texts in a favorable manner, after consultation with the parties concerned for confirmation, which he hoped to do in the course of that meeting. On the issue of how to proceed with the examination reports, he agreed with the representative of Hong Kong, China, that to date the Committee had only had one informal consultation on generic issues and that it would be perhaps appropriate to have another to see whether they could come up with some positive results.

16. The representative of Norway, speaking on behalf of the EFTA States, indicated that their position was quite similar to those outlined by the EC and CEFTA countries and wished to endorse many of their viewpoints, although with some variations concerning the grade of pessimism expressed. He was of the opinion that the Committee would have to proceed with its work irrespective of the mood expressed during the discussions. In particular, he wished to support two of the conclusions made by the representative of the EC, namely the need to focus on reaching an agreement on the split-conclusions approach, as it was clear that fully-supported conclusions were not possible; and not to reopen issues that had been previously closed.

17. The representative of India agreed with the realistic assessment made by the Chairperson and regretted that the new approach, which his delegation went along with, had not resolved the impasse. He understood the problems faced by the signatories to the agreements, but was of the opinion that a collective effort was needed to continue looking for a solution to these problems. He suggested that there might be a communication gap between some delegations. He cited as an example the reference made by the representative of Hungary to the practice of setting retroactive targets. Another problem preventing agreement on conclusions was the inadequacy of the relevant provisions in the GATT and GATS, and the systemic issues arising therefrom. He noted very little progress in the consideration of systemic issues; he had been looking forward to a detailed debate in the course of this meeting, but he believed it would have to be postponed. He welcomed the Chairperson's suggestion to report to the General Council the factual position of the examination reports and the status of the work of the Committee. His delegation, along with five others, had been highlighting this aspect for the last two or three General Council meetings. He added that this would also be useful in the context of the forthcoming Ministerial Meeting in Doha. He recalled that many delegations, in their comments on checklist item 1, as circulated by the Chairman of the General Council, had highlighted the lack of progress in the CRTA and the need for Ministers to give fresh guidance. In light of this, he also supported the suggestion made by the representative of Hong Kong, China, that the Chairperson

might consider circulating her statement at least two or three days in advance so that a meaningful response could be given at the General Council.

18. The representative of the United States wished to comment on the issue of reopening the examination reports, so that her delegation's views could be officially recorded. At issue was whether certain questions and concerns could be raised once the formal or factual examination of an agreement was over, that is during consideration of the draft examination report. She recalled that for the examination of NAFTA, numerous new concerns had been raised after the formal meetings were over and almost one-third of the NAFTA draft report, as currently drafted, was in response to those concerns. She stressed that the informal drafting process was intended to be an "informal" process; the focus on conclusions and the comments made by delegations in the last round were an attempt to come to closure on the draft reports. It was therefore quite clear that everyone knew that texts were supposed to be drafts in progress. Furthermore, as these drafts had never been considered in a formal way, she could not see how they could ever be looked at as anything more than informal drafts. Referring to the pessimism expressed during this meeting, she agreed with the representative of Hong Kong, China, that to be pessimistic when the Committee had not yet focused on why it could not agree might not be helpful to the General Council. She observed that the specific reasons on why it could not agree were slightly different from the reasons that existed six to eight months ago, and she hoped that the Committee could be constructive during the next few weeks and see whether it could narrow these down a bit further.

19. The Chairperson summed up by saying that the meeting had clarified two important points. First, she noted a positive attitude and general willingness to continue work in the Committee, within the constraints imposed by the preparation to the Ministerial meeting. Second, she observed that there had been no challenging of the new approach of merging of parts III and IV of the reports, one delegation further suggesting that square brackets be added as discussion proceeded; even though the new approach might not have solved the substantive issues, it had permitted an easier identification of the most difficult points to solve. She continued by observing that some delegations, in particular those not parties to the five agreements under discussion, had expressed frustration for not being implicated in the specific parts of the discussions. While understanding their frustration, she explained that, from the comments submitted, it seemed clear that discussions during a normal three-hour informal open-ended meeting could not have solved much and that the bilateral road was more promising. She added that from the statements made by the most concerned delegations (EFTA, the EC and the US for NAFTA), there appeared to still be room for bilateral discussions before getting back to another round of multilateral discussions. Moving to comments by delegations in relation to her report to the General Council, she pointed out that according to a principle agreed upon at an earlier Council meeting, it was her duty to report. This did not imply a value judgement in favour of pessimism. She recalled that several delegations had made the point that any change in the Committee's terms of reference could only be taken in the General Council framework. She could understand the concerns of some delegations about moving too swiftly to that stage, for, if the General Council would decide that the Committee was no longer able to pursue its work on its current mandate, that would imply that the work done throughout the last three years had come to nothing. She stressed that her report to the General Council would be highly factual and would be circulated to delegations a few days in advance. She concluded by encouraging delegations to continue their consultations on the basis of the five reports. Given the very busy schedule ahead, she did not think it feasible to convene an informal Committee meeting before the next regular session, and she indicated that a half-day informal meeting could be scheduled at the beginning of the next session. She added that if she felt the slightest progress in bilateral consultations, she would immediately convene an informal session.

20. (The minutes of the examination of the Agreements listed under agenda items C.II-CXVII are being distributed as separate documents.)

D. OTHER BUSINESS

21. Under this item, a representative of the Secretariat gave an update on progress on the two crosscutting studies requested by the Committee, on coverage and liberalization processes, and on rules of origin in RTAs. He apologised for not being in a position to present these studies to the Committee, but stated that both studies were well advanced and would be presented in good time for the next Session in September. He deemed it important to present these two studies together since they had been requested in parallel, and hoped the studies would give Members real food for thought. Work for the study on coverage and liberalization processes involved the collection of data relating to MFN and preferential partners for 26 countries or entities (involving a total of 115 RTA partners); processing and analysis of such data and preparation of charts and tables; and drafting a text to accompany and explain the analysis. The primary data sources used for the study were, in order of priority used, the Integrated Data Base, Trade Policy Reviews, the UNCTAD TRAINS database and the FTAA database. The main problems encountered thus far related to data availability on preferential tariffs, including terms of preferential access, and on trade flows. The data collection phase had been largely completed, although he indicated that there might be a need to go further into detail in some cases to improve comparability among RTAs, and the following remained to be done: charts and tables had to be prepared for those RTAs on which they had managed to find complete information; a horizontal analysis had to be prepared showing the coverage of countries' RTA partners; the draft needed to be refined and conclusions, if any, drawn. He gave mid-August as a realistic completion date for the study, with scheduled distribution to Members by the beginning of September. Once further data became available, the study could be supplemented. He stressed that the work should be considered as a preliminary step in the direction of a more complete study on internal trade liberalization within RTAs.

22. Moving to the survey on rules of origin, the representative of the Secretariat indicated that it was also advanced, perhaps more advanced than the coverage study. The rules of origin study would give Members detailed information on RTA rules of origin regimes, first setting out a general framework for comparison purposes. He explained that the survey had been conducted on 94 RTAs in force in March 2001. These fell into three groups: the "European Family" of RTAs, including agreements by EFTA and agreements with the Mediterranean countries, which basically used a European model of rules of origin, with different types of cumulation of origin (given the importance of the pan-European System of Cumulation of Origin, which was applied by 50 RTAs, the survey also contained an overview of its main features); agreements in or by the Americas, including NAFTA, Mexico-Chile, Canada and Mexico-Israel; and agreements among developing countries, including PATCRA, AFTA, CACM, COMESA and MERCOSUR. The issues investigated fell into two broad categories: requirements contained in product-specific origin rules (i.e. the "general origin rules"); and provisions supplementing or modifying these requirements, such as the cumulation rules. He indicated that, as with the study on coverage, the Secretariat was aiming for a realistic completion date of late August with distribution to Members by the beginning of September.

23. The representative of Australia expressed his disappointment that these two horizontal studies on coverage and rules of origin had not been finalized and therefore could not be discussed at the meeting. He recalled that it had been agreed at the previous formal CRTA meeting in February that the studies should be the focal point for the Committee's systemic debate that year. Having said that, he appreciated the explanations of the Secretariat and was encouraged to hear that the studies would be available as early as possible in advance of the September session. The representative of Hong Kong, China, echoed the Australian delegation's concerns and encouraged the Secretariat to double its efforts in completing the studies.

24. The Chairperson concurred that it would have been preferable to have the studies ready before the summer break. She had, however, no doubt that the Secretariat would make sure that the Committee received the studies by early September. Moving to the second question raised under

"Other Business", she informed the Committee of a minor modification concerning the dates of the next Session, which would be held on 26-27 September instead of 27-28 September as previously scheduled.

25. The representative of Hong Kong, China, introduced the third matter under this item by saying that his delegation was interested in deepening the knowledge of the relationship between RTAs and the multilateral trading system. In this regard, he observed that some academics and organisations had made some positive contributions, and cited a seminar on RTAs conducted by APEC and some studies released by the OECD. Given the interest of WTO Members in the subject and in light of the mandate of the Committee, he proposed the organization of an educational seminar on the topic for later that year or early in the coming year. He said that the feedback received from other Members had been, thus far, quite positive. He added that it would be particularly useful if the seminar could present the latest economic studies about the relationship between RTAs and the multilateral trading system, and that Members involved in RTAs share some of their experiences, so that more discussions in that regard could be encouraged. His delegation had discussed the topic with the Secretariat and had been informed that such a seminar would take three to four months to organize. He said that his delegation wished to help and support the organization of such a seminar.

26. The Chairperson remarked that from a practical point of view the seminar would be impossible to organize before the beginning of the year 2002.

27. The representative of the European Communities expressed support for the initiative as well as for any other initiative which aimed at getting this subject a little bit higher on the WTO agenda. He observed that they were faced with a situation, which many might have not realized, where the exceptions, namely GATT Article XXIV and GATS Article V, were becoming the rule, and a rule not very well defined. This situation could lead to more problems in the future. He stated that if such a seminar could achieve the basic objective of raising awareness about the fact that only a minority of world trade was conducted under normal MFN trade, his delegation would be willing to informally discuss the right sort of approach to such a seminar to make sure that that objective would be achieved. He added that his delegation did not want to give the impression that it had a problem with the exception, because it used it itself, but it was his view that disciplining its use and making clear how it could be used was absolutely necessary. He reiterated his support for any initiative, like seminars, which would help delegations better understand the limitations of GATT Article XXIV and GATS V.

28. The Committee took note of the comments made.
