

WORLD TRADE ORGANIZATION

RESTRICTED

WT/REG/W/5

27 June 1996

(96-2467)

Committee on Regional Trade Agreements

Original: English

COMMUNICATION FROM THE DELEGATIONS OF AUSTRALIA, HONG KONG AND KOREA

The following communication, dated 25 June 1996, has been received from the Permanent Missions of Australia, Hong Kong and Korea with the request that this document be distributed to all Members.

Facilitation and Improvement of the Examination Process

1. The Committee on Regional Trade Agreements (the Committee) is mandated under item 1(c) of its terms of reference to develop, as appropriate, procedures to facilitate and improve the examination process for notified regional trading agreements (RTAs). While the Committee's current deliberation focuses on drafting a standard format for the submission of information on notified RTAs, the Committee is also expected to work, in due course, towards the improvement of the examination process as a whole. If clear expectations of the overall examination process are presented at the early stage of the Committee's work, the fulfilment of its duty under this particular item of its terms of reference will be facilitated.

2. As a standing body of the WTO, the Committee's main task of examining regional trade agreements needs to be formalized. Although flexibility and pragmatism are among the traditions of the GATT/WTO system, the formalization of procedures has the following merits:

- Ensuring predictability: Both parties and non-parties to RTAs will benefit if they can visualize how the examination process will proceed;
- Facilitating the process by establishing a time-frame for each step of the examination process; and
- Avoiding discrimination among RTAs based on their relative responsiveness to the examination process.

Therefore, it is advisable to develop a roadmap by which to guide the entire examination procedures, while avoiding overly detailed and rigid procedural arrangements which may limit the Committee's flexibility to best organize its work.

3. Given that the Committee's examination process is to be triggered by notification, procedural rules for notification should be established and included as an integral part of the entire examination procedures. Although Members entering into an RTA are required under the WTO Agreements to promptly notify it, past experience demonstrates that this requirement should be further elaborated

and strengthened. To be effective, this requirement should be more formal and binding in nature relative to the other steps of the examination procedures.

4. Past practices, as described in Attachment 1 of the Secretariat's informal note dated on 6 May 1996, may serve as a basis for developing new guidelines. The following points may be considered in devising such guidelines:

- Red-tape procedures should be streamlined;
- Time-frames should be introduced for each step of the examination process as far as they are practicable;
- The extensive coverage of the standard format for information of an notified RAT may limit the need for additional time for preparing and responding to supplementary questions, compared to past practices; and
- The first session for examining of an RTA should be held as early as possible, preferably prior to the date of its entry into force, and preparations therefor should be made at the earliest possible stage.

5. The draft guidelines attached in the annex hereto have been drawn up based on the above considerations.

6. In light of the fact that the Committee is yet in its infancy and has a heavy schedule of examining backlogged RTAs, a certain period of time may be required before we firmly establish the practicability of new guidelines for the normal examination process. The agreed guidelines, to be adopted by the General Council upon recommendation by the Committee, may be reviewed in two years of their adoption, by which time a full cycle of the examination process for one or more agreements will have been completed. The Committee will then be in a position to further improve the guidelines based on their usage.

7. As a related note, we may further consider, at an appropriate time in the future, the possibility of delegating the referral procedure, currently undertaken by relevant Councils and the Committee on Trade and Development, to the Committee. In such a manner, the Committee could make a decision to initiate the examination process on its own upon notification, and submit its final report directly to the General Council. Simplified and consolidated procedures would help avoid any unnecessary red-tapes and delay in the examination process.

ANNEX

Proposed Guidelines to Facilitate and Improve the Examination ProcessI. Notification

1. Notifications shall be made under paragraph 7(a) of Article XXIV of the GATT 1994, paragraph 7(a) of Article V of the GATS or the relevant provision of the Enabling Clause. Members deciding to enter into a regional trade agreement (RTA) shall notify it not later than 60 days of signature, or not later than 150 days prior to the date of entry into force of the RTA, whichever comes earlier.

2. The original text (if the original text is in a language other than a WTO language, a translation into one of the WTO languages) of the agreement and relevant information prepared pursuant to the standard format for the submission of information should be submitted at the same time as the notification. If, under exceptional circumstances, notifying parties cannot submit this information at the time of notification, they should submit a summary of main features of the notified RTA. In such an exceptional case, the information prepared pursuant to the standard format for the submission of information should be provided within a maximum of two months thereafter. When notification is made under Article V of the GATS or the relevant provision of the Enabling Clause, the information required by the standard format should be provided within a maximum of two months of the decision to examine the notified RTA.

II. Examination

3. Upon receipt of the notification, the text of the agreement and the relevant information supplied by notifying parties in accordance with the standard format will be circulated to Members and will be used as basic materials for the examination process.

4. However, Members will be given an opportunity to pose additional questions and receive responses thereto in advance of the examination meeting.

- (a) At the time of circulation of the materials referred to in paragraph 1, Members will be invited to submit additional, if any, written questions. A period of four weeks upon circulation of the notified materials will normally be provided for the submission of questions.
- (b) Members so wishing will submit their questions to the Secretariat, with a copy to the parties to the RTAs. Upon the elapse of the deadline date for the submission of questions, Members' questions, rearranged and grouped by the Secretariat according to subject, preferably along the lines of the standard format for submission of information, will be forwarded to the parties.
- (c) The parties will be required to provide written replies as early as possible and in any event not later than four weeks prior to the first formal examination meeting. In so doing, the parties will supply their replies in the same order that the questions are arranged by the Secretariat.

- (d) Upon receipt of the replies from the parties, the Secretariat will circulate to all Members a consolidated list of questions and replies as a supplement to the document containing information prepared pursuant to the standard format.

5. The date for the first formal meeting for the examination of the agreement will be notified to Members as soon as the formal decision to initiate the examination is made at a sectoral Council or the Committee on Trade and Development. In fixing the date for the examination meeting, the Chairman will consult with the parties concerned, taking into account the agreed yearly work programme of the Committee and a suitable period of time for Members' studying the related information. Nonetheless, the Chairman will endeavour to hold the first examination meeting prior to the date of entry into force of the notified RTA, or within five months of the initial notification, whichever comes earlier. A meeting of the Committee may have more than one agreement on its examination agenda. A sufficient time will be allocated for examining each RTA on the agenda of a formal examination meeting so that the whole feature of one RTA will be fairly covered by one meeting.

6. A draft report will be prepared by the Secretariat under the guidance of the Chairman, normally following two formal examination meetings. If any further meetings are deemed necessary by any Member before the preparation of a draft report, the meetings thus convened will focus on any specific points emerging from the first two meetings which delegations consider have not been adequately addressed.

7. In case further meetings are convened before a draft report is prepared, replies by the parties to additional written questions posed during the previous meeting and during the interval between meetings may be supplied orally at the subsequent meetings. Replies to all written questions will be submitted in writing at a later date to the Secretariat and the Member which posed the questions, before the preparation of the draft report.

8. The draft report will be formally submitted and finalized at the following formal meeting, which will be preceded by informal meetings as necessary.

9. The Committee should complete the examination of an RTA within 12 months, and preferably within 18 months at the latest, of the notification, by submitting its report for adoption to the Council for Trade in Goods, the Council for Trade in Services or the Committee on Trade and Development, as appropriate.