

WORLD TRADE ORGANIZATION

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**Committee on Regional Trade Agreements
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NOTE ON PROCEDURES TO FACILITATE AND IMPROVE THE EXAMINATION PROCESS

Note by the Secretariat

This note has been prepared following a request by the Committee on Regional Trade Agreements (CRTA) at its meeting on 19 September 1996. It contains an expanded list of points that may be of relevance for the discussion in the CRTA under item 1(c) of its Terms of Reference - that is, "to develop, as appropriate, procedures to facilitate and improve the examination process". It elaborates on document WT/REG/W/7 by drawing on suggestions made by delegations at various meetings of the CRTA, as well as on written submissions by delegations.¹ The suggestions by delegations are grouped under the following general headings: Objectives, Guidelines, Notification, Information and Examination Process.

To the extent possible, the Secretariat has included comments made by delegations but stands ready to add to or otherwise modify this note as thought necessary.

OBJECTIVES

1. With respect to the *reconsideration of the objectives of the examination of regional trade agreements (RTAs)*, three options were suggested:

- (a) Reconsider the objectives of the examination as a first step to facilitate and improve the examination process. It was suggested that this refers exclusively to the process of examination of RTAs and not the provisions of Article XXIV.
- (b) Revert to it at a later stage, if deemed necessary.
- (c) Refrain from addressing this issue because it is out of the CRTA's terms of reference.

¹Proposals already contained in document WT/REG/W/7 appear in italics.

GUIDELINES

2. It was suggested that the *advantages of formalizing the procedures for examining RTAs be considered* when developing guidelines. A formalized process would increase predictability; for example, it would encourage Members to notify and provide information on RTAs on a timely basis. However, it was noted that a formalized procedure might not be suitable for every agreement and could in some instances introduce a degree of inflexibility into the process.

3. It was proposed that *Guidelines for the process of the examination of RTAs be developed*. Guidelines could:

- (a) be discussed and agreed to in the CRTA; or
- (b) be discussed and agreed in a Working Party established by the CRTA.

NOTIFICATION

Timing

4. Options to ensure the *timely notification* of agreements include:

- (a) The CRTA could follow a two-tiered approach, with information of a general nature being due for submission at an early stage, and that of a more specific nature being required at a later date - that is, at the time of the notification proper. Timing of these two submissions could be at different stages in the process of the establishment of the RTA - negotiation, signature, ratification, entry into force. The first submission could be provided between the final negotiation and signature of the agreement, and the notification between ratification and entry into force.
- (b) Envisage the *provision of preliminary information of a general nature to inform the Committee of early developments* as soon as possible.
- (c) Parties to an RTA could be required to notify only at one point in time; for instance, between ratification and the entry into force of an RTA.
- (d) Full flexibility could be given to the parties to an RTA in deciding when to notify their agreement.²

²Of the RTAs thus far notified under Article XXIV, one third were notified between the date of signature and the date of entry into force, and half were notified after the date of entry into force. On average, the interval between the date of entry into force and the date of notification entailed a delay of about five weeks.

Non-compliance

5. The following options relating to *non-compliance* were proposed:
- (a) The Committee could consider the possibility of counter-notification, after which, an examination process could follow. However, some Members suggested that the Committee should refrain from adopting this approach as the WTO legal framework did not provide for counter-notification of RTAs.
 - (b) Members, through the Committee, could urge parties to comply with their notification obligations.

INFORMATION

Submission of Standard Format

6. The use of *the Standard Format raises its own question of timing*. Thus,
- (a) the Committee could request parties to RTAs to submit responses to the Standard Format at the time of the notification; or
 - (b) the Committee could leave the process flexible, requiring only that submission of responses be made well in advance of the first examination.

Standard Format on Services

7. To promote transparency and further assist in the examination process, the Committee has requested the Secretariat to *develop a Standard Format to cover agreements liberalizing trade in services* which would parallel the Standard Format for goods and be of similar status. This drafting should be done on the basis of the relevant provisions of the General Agreement on Trade in Services; and delegations have been invited to provide an input to the process.

Trade Data

8. The CRTA could *determine the trade data to be submitted in the case of customs unions*.

Electronic Submission of Information

9. There is the possibility of *submitting information electronically*.

EXAMINATION PROCESS

Examination of RTAs covering both Goods and Services

10. To *ensure an effective examination of RTAs covering both goods and services*:
- (a) agreements covering goods and services could be dealt with back-to-back in the examination of an RTA; or

- (b) they could be dealt with in whatever fashion the Committee deems best for an individual RTA.

Simplified Procedures

11. If a *simplified procedure for the examination of RTAs having minimal effects on other Members and on the multilateral trading system* is to be adopted, Members would need to decide what constitutes "minimal effects on other Members and on the multilateral trading system"; for example, an agreement could have considerable effects on a small group of Members, but minimal effects on the multilateral trading system. It has been mentioned, however, that a "simplified procedure" should not prevent any Member from pursuing issues or from posing questions to the parties to the RTA.

Number of Meetings

12. The possibility of *establishing a maximum number of meetings* for treating a single RTA was raised.

Time-frames

13. The *status of the time-frames* could be:

- (a) binding; or
- (b) non-binding.

Reporting

14. With respect to *the nature and content of reports and the procedures for adopting them*, it was suggested that the report could separate the factual part from the conclusions. The factual part would faithfully reflect the discussion in the Committee; the conclusions would be presented in draft form to be considered by the Committee.³ The Committee would then "take note" of the factual part and "adopt" the conclusions.

Role of the Secretariat

15. Options with respect to *the role of the Secretariat* in facilitating the various steps of the examination process include:

- (a) Collection of information to facilitate the completion of the Standard Format in consultation with the parties to the RTA.
- (b) Providing assistance to parties to RTAs in meeting all WTO requirements relating to their examination.

³The customary practice under the GATT 1947 - whereby representatives may, upon request, verify those portions of the draft proceedings containing their statements prior to the issuance of such proceedings - would be continued.

Duration

16. Taking into account the use of the Standard Format, the examination process now comprises the following steps: submission of the Standard Format; written questions and replies, if any; rounds of examination by the CRTA; preparation of the report; submission of the report for adoption by the relevant body; adoption of the report by the relevant body.

17. With respect to *how long the examination of an RTA should extend*, the following options were proposed:

- (a) *Set time-limits for each step* and thus for the overall examination period.
- (b) Provide *a specific range of time for the entire examination* of an RTA, with all steps to be completed within that time limit.
- (c) Provide flexibility for the timing of each stage, as well as for the examination as a whole.

Transfer of Functions

18. To transfer to the CRTA the functions relating to the notification and examination of RTAs currently performed by the Council for Trade in Goods, the Council for Trade in Services and the Committee on Trade and Development, a decision by the General Council would be necessary.