

Negotiating Group on Rules

**NEGOTIATIONS ON REGIONAL TRADE AGREEMENTS:
SYSTEMIC ISSUES**

REPORT BY AMBASSADOR DENNIS FRANCIS
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1. The scope of the discussion on systemic issues on regional trade agreements is very broad. Two background documents from the Secretariat have been distributed listing "systemic issues", the most recent dating from January 2011; 24 submissions have been made by Members.
2. During 2004 and 2005, when negotiations focused on systemic issues, they were based on priority issues as identified in participants' written and oral submissions to the Group. Issues addressed therein included the definition of "substantially all the trade", the length of the transition period, criteria to measure the incidence of "other regulations of commerce" on third parties, flexibility for developing countries and the coherence of rules for RTAs involving developing countries.
3. Two broad issues have been the subject of intense scrutiny: "substantially all the trade", and special and differential treatment for developing countries.
4. On "substantially all the trade" (SAT), several proposals focused on the criteria for measuring SAT. Around a third of the proposals that have been made concerned the setting of a minimum benchmark for SAT, on the basis of bilateral trade, tariff lines, both, or a combined average of both. It was proposed that SAT should be measured both at entry into force and at the end of the transition period. Also, proposals were made with respect to a clarification of the qualitative assessment of SAT (such as the treatment of major sectors and tariff-rate quotas), as a necessary complement to any quantitative assessment.
5. Special and differential treatment has also been the subject of various proposals, all of which were dealt with in various formal and informal meetings. These proposals suggested incorporation of additional flexibilities for developing countries in either *Article XXIV of the GATT 1994*, the *Understanding on the Interpretation of Article XXIV of GATT 1994*, and/or the *Enabling Clause*. A proposal made early in 2011 for amendments to Article XXIV of GATT 1994 has reactivated discussions for additional special and differential treatment in respect of agreements involving developing and developed countries, but sharply divergent views exist on the modifications being proposed.
6. A late-comer to these discussions has been the proposal for a forward-looking, post-Doha work programme on all systemic issues. On the basis of what the Membership was telling me, I suggested, without prejudice, and on the clear understanding that nothing is agreed until everything is agreed, that it might be pragmatic to commence a discussion on a work programme in parallel with the discussion of systemic issues. Reactions have been varied: some Members stressed that considering the development mandate of the Round, a work programme could not be in lieu of, but only in addition to, an outcome on the development-related aspects of RTAs. They assert that

discussions on a work programme, at this stage, would divert attention from the Group's mandate on development-related issues. Other Members were of the view that given the prevailing situation, the most practical approach on systemic issues would be to begin, as soon as possible, to explore a forward-looking post-Doha work programme, and with that in mind, possible elements to be included therein have been suggested. Moreover, they hold the view that any discussion of selected aspects of the systemic issues would have to be balanced by a full discussion involving all elements.

7. I have taken note of this situation and informed the Group that at this point in time my proposal to approach these issues in tandem is no longer on the table, pending any renewed signals from the Membership suggesting at what point, if at all, it would be desirable to launch discussions on a post-Doha work programme. More recently, and in light of calls made by some Members to commence this process, I again tested the Group's readiness to so engage and must report, with regret, that the situation remains unchanged.

8. To conclude, it is clear that notwithstanding the mandate in Doha and the Ministerial Declaration in Hong Kong, China:

- (i) in essence, the objectives of various Members in these negotiations remain conceptually different; and
- (ii) gaps persist in Members' positions on all elements proposed.

9. I reaffirm my advice to Members that unless they adopt a pragmatic, flexible and less doctrinaire approach to these negotiations it is unlikely that this impasse will be overcome.
