

**PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE**

Recommendation Concerning Implementation of WTO Agreements  
and Decisions Relating to Regional Trade Agreements

*Communication from Hong Kong, China*

The following communication, dated 28 April 1999, has been received from the Hong Kong Economic and Trade Office.

**Introduction**

1. Regional Trade Agreements (RTAs) have expanded rapidly in number, scope and coverage. The number of RTAs notified to the GATT/WTO has exceeded the total WTO membership and reached 162 in 1998. Today, the vast majority of WTO Members are parties to RTAs and in many cases to more than one.
2. Hong Kong, China recognizes fully that RTAs can promote further trade liberalization and complement multilateral efforts in that direction. We also readily acknowledge and appreciate that many parties to RTAs are among the strongest proponents of multilateral trade liberalization. However, by their very nature, RTAs constitute a departure from the fundamental MFN principle of the multilateral trading system. The proliferation of RTAs thus gives rise to legitimate concerns regarding their relationship with and implications for the WTO.
3. WTO Members and indeed their GATT predecessors have long recognized the need to ensure coherence of RTAs with the multilateral trading system through multilateral disciplines. The relevant WTO/GATT rules, some written in 1947, stipulate that the purpose of RTAs should be to facilitate trade between the constituent territories and that they should not raise barriers to the trade of other Members with such territories. In the Singapore Ministerial Declaration, Ministers of WTO Members reaffirmed the primacy of the multilateral trading system and renewed their commitment to ensure that RTAs were complementary to the multilateral trading system and consistent with its rules.

**The problem**

4. In accordance with a General Council decision in February 1996, the WTO established the Committee on Regional Trade Agreements (CRTA) to undertake, among other things, two major tasks. The first is to examine individual RTAs in the light of the relevant WTO rules and procedures; and the second to consider the systemic implications of RTAs for the multilateral trading system and make appropriate recommendations to the General Council. The Singapore Ministerial Declaration endorsed this work and noted that it is "important to analyse whether the system of WTO rights and obligations as it relates to regional trade agreements needs to be further clarified".

5. Subsequent developments have demonstrated that those rights and obligations do indeed need to be further clarified. Today, more than three years have elapsed since the establishment of the CRTA. Not a single RTA has completed its examination process; and the draft conclusions of many examination reports under consideration resemble an inventory of the disagreement among Members. It has become clear that the assessment of conformity of RTAs with the multilateral trading system is characterized by uncertainty.

6. Unfortunately, the CRTA's consideration of systemic issues related to the relevant WTO rules is in a similar state of deadlock. Members are nowhere close to making any appropriate recommendations to the General Council. In its 1998 report to the General Council, the CRTA acknowledged that the progress in the process of examination was slowed, *inter alia*, by a lack of consensus on the interpretation of certain elements of those rules relating to RTAs. Some of these rules were formulated half a century ago and were not designed to cater for the current situation in which RTAs have become the norm rather than the exception.

7. Illustrative of the difficulties are the terms "substantially all the trade" and "substantial sectoral coverage" in GATT Article XXIV and GATS Article V respectively. Although they purport to set out one of the basic requirements for RTAs in fulfilling the WTO obligations, their meaning is manifestly uncertain and lacks the precision necessary to form the basis for any credible examination process. There are many other imprecise concepts which also need to be tackled.

8. It would be wrong to assume that the current impasse affects only the interests of the few WTO Members who are not parties to any RTA. RTA parties, too, have good reasons to be concerned. First and foremost, all Members, RTA parties or not, have a genuine interest in maintaining the integrity and primacy of the multilateral trading system. Not only is the credibility of the rule-based system at stake but also no WTO Member is party to all RTAs. An RTA party could still be adversely affected by other bilateral or plurilateral arrangements. Secondly, RTA parties or potential parties have a legitimate interest in knowing what exactly their WTO rights and obligations are. They also need to know with a greater degree of certainty that their RTAs are fully consistent with WTO rules. It will be most unsatisfactory if this has to be tested *ex post* in the WTO dispute settlement mechanism.

9. The new round of multilateral trade negotiations to be launched at the Third Ministerial Conference provides an excellent opportunity for Ministers to inject much-needed impetus into the important task of removing the current uncertainties, which would in turn facilitate progress with examinations.

### **Proposal**

10. In the light of the foregoing, Hong Kong, China proposes that the recommendations to the Third Ministerial Conference regarding the new round of multilateral trade negotiations should include the following:

"In order to modernize the legal framework for RTAs, to provide greater security and predictability, to sustain the primacy of the multilateral trading system, and further to promote the complementarity of RTAs with it, Ministers agree that existing WTO rules and decisions relating to RTAs should be clarified and, where appropriate, reinforced."

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