

**PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE**

Proposal on Regional Trade Agreements

*Communication from Australia*

The following communication, dated 19 May 1999, has been received from the Permanent Mission of Australia.

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**Proposal**

1. That a new understanding of regionalism and its relationship to the multilateral trade system, involving greater precision of rules governing regional trade agreements, be established as one of the goals of a new round. Australia proposes that two bodies of work addressing systemic and procedural issues associated with regional trade agreements be completed within three years, in line with the time-frame agreed for key sectoral negotiations.

**Background**

2. WTO rules recognize the legitimacy of pursuing economic development through preferential trading agreements. But the consistent failure of the WTO to come to a conclusion on the application of those rules to the many regional trade agreements (RTAs) that have come into being since the establishment of the GATT demonstrates that these rules should be revisited.

3. During the Uruguay Round some important work was done on clarifying existing GATT rules and complementing them with rules to cover regional agreements for trade in services. However, this work was not taken far enough. The primacy of the multilateral trading system is now under some threat from substantial derogation of the WTO's principles of non-discrimination in a way which was not anticipated, or intended, by the original architects of the multilateral trade system. Perhaps over 40 per cent of world trade is now conducted under preferential trading conditions, and there are indications that this proportion will increase.

4. The scope and intent of the WTO rules on regional trade agreements are ambiguous, making effective implementation of existing WTO agreements impossible, undermining the value of future multilateral concessions and commitments and creating uncertainty for the negotiators of regional trade agreements.

**Objectives of the proposal**

5. Australia proposes two bodies of work to cover issues of importance to WTO Members, to be completed within three years, in line with the time-frame agreed for key negotiations on agriculture

and services. This would ensure that outcomes of these negotiations are not undermined by even greater derogation from MFN obligations as RTAs continue to be established.

6. One body of work would examine the systemic issues associated with RTAs. The relationship between RTAs and the multilateral trading system should be scrutinized, leading to clarification of the legal rights and obligations of WTO Members when negotiating RTAs.

7. The other body of work would relate to improving the procedures for the WTO's work on RTAs. Following are issues which Australia considers should be addressed in any review of WTO's rules on regionalism.

### **Systemic issues - Clarifying the rights and obligations of WTO Members in establishing RTAs**

- Decide whether the various WTO rules on RTAs should be integrated into a single framework, including whether "substantially all the trade" (GATT Article XXIV) should be measured in terms of goods and services together.
- Clarify thresholds for meeting basic requirement that RTAs cover "substantially all the trade" (GATT Article XXIV) or have "substantial sectoral coverage" (GATS Article V), including the GATS requirement that "agreements should not provide for a priori exclusion of any mode of supply".
- Clarify scope of "other regulations of commerce" and "other restrictive regulations of commerce" (Article XXIV of the GATT). Firstly, whether the listing of regulations permitted in RTAs (GATT Article XXIV:8 and GATS Article V:1) is exhaustive or illustrative, and also identify what constitutes "other restrictive regulations of commerce" (GATT) and "discriminatory measures" (GATS) which should be eliminated.
- Clarify the extent to which WTO rights and obligations for regulations of commerce can be derogated in regional trade agreements. For example, decide whether:
  - regulations of commerce can be applied differently during the transition period to full implementation;
  - antidumping, countervailing and safeguards provisions are allowed in regional trade agreements once they have been fully implemented;
  - anti-dumping, countervailing and safeguards provisions be applied differently for those products which are covered and those excluded by the RTA;
  - the above regulations can be applied to RTA members in a more favourable way.
- Develop disciplines on preferential rules of origin.
- Develop ways to measure "level of duties and other regulations of commerce" (GATT Article XXIV) and "level of barriers" (GATS Article V).
- Decide whether agreements covered by the Enabling Clause (1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries) should be subject to the disciplines of GATT Article XXIV.

- Clarify whether other thresholds for RTAs need to be introduced, for example, linking the extension of preferences under a proposed RTA to a reduction in trade barriers on an MFN basis.

**Procedural issues - Improving the efficiency and effectiveness of the WTO's Work on RTAs**

- Clarify the notification requirements, particularly in terms of time-frames.
  - Agree on ways to improve the examination of RTAs, including as rules are clarified - for example, through the strengthening of notification requirements for trade statistics to be provided to the WTO to justify "substantially all the trade" (GATT Article XXIV) or "substantial sectoral coverage" (GATS Article V).
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