WORLD TRADE ORGANIZATION

RESTRICTED

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Negotiating Group on Rules

SUMMARY REPORT OF THE MEETING HELD ON 4 OCTOBER 2005

Note by the Secretariat

1. The Negotiating Group on Rules ("the Group") held a formal meeting on 4 October 2005.

A. ADOPTION OF THE AGENDA

2. The Group adopted the following agenda:

B. REGIONAL TRADE AGREEMENTS

3. The Chairman proposed that the Group appraise the use of the factual presentation by the Secretariat in the context of the Committee on Regional Trade Agreements (CRTA) and further consider the submission made by China, circulated as TN/RL/W/185, which had been subject to preliminary discussions at the previous meeting of the Group, and those submitted by the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and Chile and the Republic of Korea, circulated respectively as TN/RL/W/186 and TN/RL/W/187. The Chairman welcomed the Chairman of the CRTA, Ambassador Ronald Saborío, who had been invited to this meeting to provide the Group with valuable feedback on the first examination of an RTA in the area of trade in goods conducted on the basis of a factual presentation by the Secretariat. Before giving the floor to Ambassador Ronald Saborío, he said that the purpose of the appraisal was to evaluate and, if necessary, discuss eventual changes to the outline for the presentation. He welcomed the opportunity also to discuss how to advance the process related to RTAs in the area of trade in services and invited Participants to make comments in that respect.

4. Ambassador Ronald Saborío expressed his gratitude for having the opportunity to address the Group. In September last year, the CRTA had introduced the preparation of factual presentations on RTAs by the Secretariat as an option in the examination process. The first "live" factual presentation of an RTA had been prepared by the Secretariat for the goods aspects of the Free Trade Agreement between the Republic of Korea and Chile (KCFTA) which had been examined for the first time in the CRTA's 40th Session in July 2005. He thus wanted to provide the Group with his assessment of this experiment and to provide some ideas about how the process might be streamlined. First, he said that the KCFTA factual presentation had been well received by Participants who had expressed the opinion that it had been "highly useful, very cogent, thorough and balanced". The structure of the factual presentation together with the data in the Annex, which set out indicators of trade and tariff liberalization, had been much appreciated. Participants had been unanimous in assessing the factual presentation as significantly helping them in their review of the KCFTA and had welcomed it as a positive contribution to the process of transparency. While many Participants had expressed their

appreciation of the data in the Annex, others had thought it was too detailed and that the factual presentation could stand without it. Some Participants had highlighted the need to increase the digestibility of the document. In his view, if Members wished to satisfy the Group's request for increased transparency on RTAs, then a certain amount of detail was mandatory. With regard to the digestibility of the factual presentation, it was his understanding that the Secretariat had tried to address this issue by, for instance, providing a broad overview of trade liberalization provisions in the main text and the details in the Annex. He said that it would be helpful if Participants could share any concrete suggestions of how to increase the digestibility of the factual presentation without diminishing its utility. He added that some Participants had expressed the need for a fine-tuning of certain aspects, for instance including in the main body of the factual presentation some of the information which appeared in the Annex. Others, in the course of this and subsequent RTA examinations in the last Session of the CRTA, had highlighted the fact that the process of examination of RTAs would be aided if delegations were to make their questions available to the parties to an RTA prior to the examination, thus enabling them to provide a more informed response in the course of the meeting. He thought that this was an issue that Participants were going to raise in the context of the negotiations within the Group. He noted that some questions had emerged in the analysis of the factual presentation, e.g., about the data used, how some of the calculations had been made, and what methodology had been employed to handle trade statistics. He thought that the Secretariat had been able to respond to most of these questions but any remaining issues in that regard could be clarified.

5. In terms of resource implications, the Secretariat had informed the CRTA that the preparation of the KCFTA factual presentation had taken roughly 20-25 working days, but stressed that this figure could vary depending on the complexity of the RTA and the availability of data. It was also important to note that there was a learning curve and that this figure might decline somewhat, though not much, given the benefit of experience. According to the Secretariat, the co-operation of the Parties to the RTA was key as they had quickly satisfied requests for data and had been equally responsive in providing comments on the draft factual presentation. He stressed in this context that while the factual presentation had been prepared on the sole responsibility of the Secretariat, it had been passed to the Parties for their comments prior to its circulation to all Members. In terms of the resource implications for the Parties to the KCFTA, the Parties had acknowledged that the factual presentation had resulted in time saving on their part as it had relieved the burden of the preparation of the Standard Format. He invited the Parties to share with the Group other comments in this regard. Thus, he thought that it was important to view the time taken to prepare the factual presentation in terms of the transfer in resource burden from Members to the Secretariat, not just in absolute terms for the Secretariat. In summary, he said that the experiment had worked very well on that first occasion. The factual presentation provided a standardized view of RTAs which would make the review of RTAs more efficient. The Committee had dedicated almost an entire afternoon to discussion of the KCFTA, which compared with the hour or so that was generally dedicated to the rather perfunctory first examination round of an RTA when based on the Standard Format. One Participant had commented that the examination had been the most interesting she had attended in three years of following the CRTA. In his view, Participants had posed more insightful questions and had learned much more about the KCFTA than was typically the case in a first-round examination, which reflected the fact that the factual presentation had stimulated more interest on the part of Participants, but also demonstrated perhaps that some fine-tuning remained to be done. He concluded by thanking the Republic of Korea and Chile for volunteering for that exercise and he congratulated the Parties for their role in advancing the process of transparency. He sincerely hoped that other delegations would follow their example, thus actively contributing to increasing the transparency of RTAs within the WTO.

6. The Chairman thanked Ambassador Ronald Saborío for the comprehensive information provided and expressed his pleasure to learn that the first application of the factual presentation in the context of the CRTA had been successful and that the scope of this evaluation appeared to be limited

to a possible fine-tuning of the outline rather than changes to its substance. He then invited the Participants to provide their views on any of the points that had been raised.

7. One Party to the KCFTA pointed out that the discussion on the examination of the Agreement had been of a higher quality and more in-depth than usual. In terms of workload, the factual presentation had represented much less of a burden for her capital than providing the Standard Format. In this sense the Secretariat had done well because whenever there were doubts, or additional information was necessary, it had left space available for the Parties to respond. She considered that it had been a satisfactory experiment which she hoped could be replicated with other agreements. In her view, the factual presentation not only contributed to improving the quality of the examination and transparency but also would make it easier for the public to understand the contents of the KCFTA. The other party to the KCFTA clarified the role of the Parties in the preparation of the factual presentation. In his view, one was providing raw data to the Secretariat, and the other was giving feedback on the almost final draft. With regard to the first, he believed that it had not been as burdensome as preparing the Standard Format. There had been some technical difficulties, like the ones arising from differences and changes in HS codes, but these had been easily solved in close consultation with the Secretariat. The second role was key in the process. As for a TPR Report, it involved the final fact checking and accuracy of the data without undermining the objectiveness of the factual presentation. So, in terms of burden to the Parties, he believed that this process was not more burdensome than the preparation of the Standard Format. However, he remained concerned about the resource problem of the Secretariat.

8. One Participant attached great importance to the transparency exercise of RTAs and expressed concerns about whether the new transparency disciplines outlined in document JOB(05)/171 would make the process less burdensome. According to the Annex of JOB(05)/171, RTA parties were expected to provide trade data on the basis of tariff lines for the three years preceding the notification of the RTA; he wondered whether KCFTA parties had provided such data to the Secretariat. One Party to the Agreement answered that the information on tariff lines and preferences provided had been used for negotiations; so it had been no trouble for them to provide it. She supposed that this had been the case for the other Party to the Agreement, who said that his delegation had provided tariff levels and schedules line by line. This had been done on the basis of HS ten-digits because that was the level at which his country had conducted negotiations. He was not sure if his delegation had provided trade statistics because it had already provided them periodically to the WTO.

9. One Participant asked if the Parties had provided schedules for each of the years of the transition period or if they had provided the schedule with a list of the products or chapters subject to a transition period. In other words, had they provided ten different documents with the schedule, one for each year of the transition period? One Party to the KCFTA confirmed that her delegation had at first only provided data containing the initial and the final duties during the transition period but had then subsequently provided the duty levels in each of the transition periods, from 2004 to 2014. This had been provided in a single document with the products in rows and the years in columns. In his opinion, the Secretariat could have produced this itself using the tariff liberalization schedules; some developing countries might face difficulties in providing this level of detail. A representative of the Secretariat confirmed that it had received detailed trade liberalization data, which had made it easier to perform calculations. If the Secretariat had to use raw data, it would certainly lengthen the work in the case of complex tariff liberalization schedules. In addition, the more the data was manipulated, the higher the possibility of making mistakes.

10. One Participant expressed the opinion that the discussion on the KCFTA had been much less adversarial than was the case for other examinations which he sensed was due to a genuine exercise of understanding and getting further information rather than making comments or striking points at the expense of each other. It seemed to him that once there was a lot of information on the table,

provided by the Secretariat, Members had moved into a less adversarial discussion. The Chairman of the CRTA shared that view about the nature of the discussion.

11. The Chairman suggested moving on to the next point on the Agenda, the submission by China, circulated as TN/RL/W/185, which had been subject to preliminary discussions at the previous meeting of Group.

12. The proponent of TN/RL/W/185 announced that he would pick up on the questions and comments regarding his delegation's submission from the last formal meeting of this Group. Some Participants had made the point that RTAs needed to operate within the rules-based system of the WTO, and that the interests of third parties had to be safeguarded so as to minimize the trade-distorting effects of RTAs. While he agreed with the thrust of this point, he did not think that Special and Differential (S&D) treatment implied that RTAs to which developing Members were parties would operate outside the purview of the WTO. In fact, S&D provisions were an integral part of the WTO Agreements. If the Group was to take into account the developmental aspects of RTAs, which was its mandate in the Doha Ministerial Declaration, RTAs should contain specific S&D provisions for developing Members. Other Participants had welcomed the paper for introducing the negotiations on S&D and justifying S&D treatment for RTAs notified under Article XXIV. One Participant had stressed the importance of specific S&D provisions under clarified rules to balance the developmental dimension so Members could preserve the integrity of the multilateral trading system in the face of the current enormous growth in RTAs. Another Participant had agreed that development was an intrinsic part of the WTO Agreement but, in the context of RTAs, his delegation had seen differences in the way in which the exception to the non-discrimination principle had been applied; he had then expressed his intention of further looking at how development aspects could play a positive role in RTA disciplines.

13. The proponent shared the view that the interests of third parties had to be safeguarded so as to minimize the trade-distorting effects of RTAs. Despite the disadvantages of RTAs, many countries participated in them in order to enjoy preferential market access. As an incremental approach to trade liberalization, RTAs could be a catalyst for structural reforms in an economy and in this way conducive to the expansion of trade and the world economy in the long run. But in the short run, trade distortions occurred and the world's resources were not used in an optimal way. It was then not clear how to accommodate the conflict between long term benefits and short term costs. Questions had been raised on how to define "sensitive sectors" in paragraph 5 of TN/RL/W/185 and the meaning of "endurance costs" in paragraph 4. Without prejudice to his delegation's position on the issue of "major sector", he said the term "sensitive sectors" did not refer to any particular sector, since each Member had its own sensitive sectors where it would be difficult to provide duty-free or quota-free treatment for market access. As regards "endurance costs", there appeared to have been some misunderstanding. This referred not to endurance, but to the capacity of a developing country to meet the substantial requirements of RTA rules. One Participant found it particularly important to keep in mind that sensitive sectors in developing country Members often affected the livelihood of a large and poor population, which could make it difficult to liberalize such sectors.

14. The proponent welcomed the recent effort initiated by the Chairman to hold dedicated sessions to further clarify the benchmarks for "substantially all the trade" (SAT) while recognizing the technical complexities involved in defining such benchmarks. The paper suggested concentrating on the quantitative aspects, in particular the two essential benchmarks, i.e. coverage of trade and tariff lines, without prejudice to his delegation's final position on how to combine both benchmarks, or use them separately. He acknowledged the pros and cons of each benchmark and the particular difficulties in deciding the methodology for calculating them and suggested exploring different options for benchmarks with Participants during the negotiations, perhaps using a simulation exercise. It would be useful for Members to provide necessary information so that the Secretariat could make a factual summary of the trade and tariff line coverage of RTAs in force at present. As far as the qualitative aspects were concerned, he looked forward to more information from Participants, on

issues such as other restrictive regulations of commerce (ORRCs). One Participant stressed the importance of the two essential quantitative benchmarks that the proponent had pointed out. He agreed that there were some problems both with the methodological aspects of the benchmarks and with the need for further information on qualitative aspects. He supported the view expressed in TN/RL/W/185, as it was not overly prescriptive but pointed to areas of potential convergence. One Participant expressed his preference for clarifying the term "substantially all the trade" primarily in terms of coverage of trade volume, and have S&D treatment on benchmarks for such coverage. Several Participants agreed with the idea of having some benchmarks differentiated for developing countries, in the case of the definition of SAT, as was pointed out in paragraph 9 of the paper. One Participant considered that there should not be a one-size-fits-all approach and another Participant considered that in view of the impact that liberalization of some sectors could have on developing country Members' economies, establishing differentiated benchmarks would allow developing countries to accede to Article XXIV agreements.

15. One Participant noted that paragraph 5 of the paper suggested a low threshold on the substantive requirements of RTAs' disciplines that should apply to developing countries. Also, several Participants before him had put emphasis on the different benchmarks which should be available to developing countries in the case of Article XXIV agreements. This kind of flexibility was already provided for in the Enabling Clause. In the case of North-South RTAs, while he considered the importance of their development aspects, a departure from MFN could have a negative effect on other non-party developing countries which might be competing for the same market. While reducing the threshold might facilitate the conclusion of Article XXIV RTAs, there was a risk that this would lead to a partial GSP scheme. He considered that giving preference to a developing country for meeting its development needs could be done in several ways and he was not sure that the discriminatory nature of RTAs would benefit developing countries, especially when most of them would not be in one particular agreement. Thus, rather than proposing a different threshold, why not place more emphasis on GSP schemes, which would provide an equal playing field for all developing countries? One Participant was concerned about the possible implications for the rest of the world of S&D treatment in bilateral negotiations. He wondered whether the principle of less-than-full reciprocity – that is, a lower level of liberalization – would be beneficial for developing countries when joining a bilateral RTA with a developed country. Another Participant concurred with that view adding that she believed that differentiated benchmarks were not necessary in Article XXIV; rather, the concerns could be dealt with within a bilateral agreement between the two parties. In the agreements her country had with developing countries, greater coverage contributed to economic growth more than partial agreements. In this respect, she wondered whether the Secretariat could do some research on the economic literature on growth rates for developing countries with comprehensive versus partial RTAs.

16. One Participant suggested that the principle of S&D treatment should apply, not only to Article XXIV RTAs formed between developed and developing countries, but also to RTAs formed between developing countries themselves. One Participant noted that according to paragraph 5 of document TN/RL/W/185 there would be two categories of RTAs, one among developing and developed countries and the other among developing countries themselves. In the latter category, there was no need to define or indicate any depth, coverage or size because they were all in the same category, so they could discuss among themselves what and how much needed to be covered in an RTA. However, in the case of an RTA formed by developed and developing countries, there needed to be a differentiation between the extent of the commitments for these two classifications of countries.

17. The proponent of TN/RL/W/185 pointed out that on S&D treatment, the majority of developing country Participants had showed their support whereas other Participants had expressed concerns. In this respect he confirmed that there should be different benchmarks, not just for North-South RTAs, but also for South-South RTAs. On the issue of GSP, he said that GSP was a unilateral preferential scheme, while RTAs were bilateral. So, they had a somewhat different impact on third

parties. As to the margin of S&D treatment, he was of the view that this should be discussed further at some later stage in the negotiations, although he recalled that his delegation had made the point at previous interventions that at least a ten per cent margin should be provided to developing Members.

18. On the transition period, the proponent said that it was natural, given the development focus of the paper, to establish a linkage between "exceptional circumstances" and the development aspect. The special concerns of developing country Members should be taken into account in the definition of "exceptional circumstances". He agreed that in some cases long implementation periods were necessary to encourage RTAs to go beyond SAT. One Participant supported the proposal in paragraph 11 of the paper that a transition period of more than ten years under the clause of "exceptional circumstances" should be primarily available to developing countries. Several Participants considered that developing countries should have more flexible time-frames in certain cases. Other Participants were disposed to grant longer transition periods depending on the difficulties developing countries faced in opening their markets. One Participant noted that ten years was the general understanding that derived from the text of Article XXIV but in practice, not all agreements had a transition period of ten years – most had less and some had a period between three and eight years – so ten years seemed reasonable. Beyond ten years, there was a need for "exceptional circumstances" which would be decided amongst the negotiating RTA members themselves. Other Members should then honour their judgement as to what were "exceptional circumstances". In this regard, one Participant requested further elaboration from the proponent as to the need to define or attach conditions to the term "exceptional circumstances" as normally such clauses were negotiated between RTA partners themselves. One Participant noted that the proposal suggested that developing countries should have longer transition periods so she wondered if there was a link between transition periods and greater liberalization. If developing countries were to have lower benchmarks and longer periods of transition, was the proponent in favour of developing countries assuming longer transition periods for greater liberalization, thus recognizing the link between both? Another Participant considered that the priority was to achieve greater liberalization and for this purpose longer transition periods could be necessary. The proponent agreed that there was some link between transition periods and the degree of liberalization but he also considered that transition periods should not be abused.

19. One Participant supported the proposal in paragraph 10 of the paper that the Secretariat compile a table showing the situation of trade and tariff line coverage of notified RTAs still in force. He recognized that the WTO Secretariat had prepared a useful survey in its document WT/REG/W/46, but this study seemed to be at a macro level, and dealt with broad issues like determinacy of RTA market openings and with the treatment of different products in RTAs. A more focused study on coverage of trade volume and tariff lines could be a useful complement. One Participant had reservations about the factual summary suggested in paragraph 10 since it could be risky to include such a table with the coverage of RTAs. In her view, Participants might tend to reach a minimum common denominator in establishing rules, which would include all agreements. In addition, it might be difficult for the Secretariat to analyze in the factual summary the reasons behind the coverage of RTAs. Another Participant expressed reservations about the need for a Secretariat factual summary, though acknowledging that it could provide useful information on other aspects. For example, there had been no equivalent factual summary by the Secretariat on the coverage of the Enabling Clause agreements. The Standard Format reports, submitted to the CRTA from 2002 to 2004, provided easily accessible, digestible information on trade and tariff lines. Thus, he asked the proponent to identify his information needs on certain types of agreements. One Participant was puzzled with the suggestion that the only way to complement the Secretariat's study was to look at tariff lines and trade coverage under the Enabling Clause. He recalled that the Enabling Clause disciplines were not under discussion. At this point in time, the Group was trying to understand how to determine the coverage of tariff line and trade volume under the expression, "substantially all the trade" and no such expression existed in the Enabling Clause, so he wondered what was the purpose of adding this additional element. As he understood it, the purpose was to see how Members had operationalized paragraph 3(a) of the Enabling Clause which dealt with the general principle that

RTAs should be designed to facilitate and promote the trade of developing countries and not to raise barriers to the trade of other contracting parties. That was a general principle which was parallel to paragraph 4 of GATT Article XXIV, and document TN/RL/W/185 had been submitted not in connection with paragraph 4 of Article XXIV, but paragraph 8 of Article XXIV where there was specific reference to SAT. He supported the idea expressed in paragraph 7 of the paper that the Enabling Clause was a tailor-made instrument for developing country Members, and any clarification or improvement of GATT Article XXIV should not be detrimental to developing country Members' rights under the Enabling Clause. One Participant had the impression from what that previous Participant had said about the Enabling Clause that he was actually changing its substantive terms so he requested a clarification. He emphasized that paragraph 3(a) of the Enabling Clause necessitated the facilitation and promotion of trade of developing countries and not to raise barriers. However, at the same time the obligation of the RTA parties under the Enabling Clause was to notify the agreement under paragraph 4(a). Paragraph 4(b) provided for a mechanism for prompt consultation if any interested Member sought clarifications. He failed to see any reference in TN/RL/W/185 and in the Chairman's roadmap to agreements under the Enabling Clause, so he wondered why and how the Enabling Clause got into the discussion while considering RTAs under Article XXIV of the GATT. He believed those were separate entities altogether and the Enabling Clause need not be referred to in the discussion at all. He agreed with the proponent's contention to have other factors in the factual summary by the Secretariat because the current paper did not provide a true picture of what the actual needs of developing countries were and did not indicate what the actual gap was between various Members in reaching mutually beneficial trade agreements. Hence his delegation supported the idea of having a paper by the Secretariat with a special focus on providing these decision making indicators. One Participant considered it important to extend the summary to the Enabling Clause agreements because he recalled that the Chairman had given Participants a list of six issues that they had discussed at the last meeting and in point five – coherence with WTO rules – he had indicated the application of trade defence instruments, the degree of flexibility for South-South RTAs versus North-South RTAs, and the relationship between various rules for RTAs, including the Enabling Clause. While his delegation wanted to work on the basis of all six points on the agenda, it lacked information for point five, and it was his intention to try to fill that lack of understanding or knowledge of the Participants. He clarified that he had not suggested that GATT Article XXIV provisions, however imprecise they could be, be applied to any review of Enabling Clause agreements. The study would be without prejudice to the legal provisions of the Enabling Clause. However, he thought that there was a need to know what was in the Enabling Clause agreements in order to understand how their existing users had approached their obligations under paragraph 3(a). In addition, he did not agree with the description of paragraph 3(a) as a generalized principle like paragraph 4 of Article XXIV which had been interpreted by a panel in the Appellate Body as to give a general framework for analyzing later provisions because, as they all knew, the Enabling Clause lacked the later provisions. The proponent shared the views of some developing country Members that the factual summary was very important in order to analyze the real situation faced by Members and of great systemic concern to the WTO since more and more Members were involved in RTA negotiations. For the sake of transparency, which was one of the important aspects of the work of the Group, it was necessary to have such information.

20. Several Participants supported the proposal in paragraph 12 that any newly clarified rules should be retroactive and applicable to all RTAs. One Participant considered that most RTAs had been concluded and implemented after the failure of the Cancun Ministerial, as a sort of alternative to the multilateral forum; there was now a need to get RTAs back on track and into the mainstream of multilateralism. A way of achieving that would be through the retroactivity of RTAs. One Participant agreed with the retroactivity proposal under paragraph 12, but wondered if any flexibility would apply. Another Participant was of the view that some flexibility might be needed, for example, in the case of application of the transparency regimes. The proponent clarified that on the issue of retroactivity, the term might not be very clear or accurate from a legal perspective, so it might be interpreted as the applicability of new disciplines on RTAs. He noted that this issue could not be settled at this stage, and that it could be further discussed at a later stage of the negotiations. He

confirmed his view that these new disciplines should be applied to all RTAs because the situation was now different from when the GATT 1947 was initially negotiated.

21. The Chairman suggested that the Group consider the second submission by Chinese Taipei, circulated under as TN/RL/W/186. The submission provided answers to questions raised by Participants in relation to discussions held at previous meetings of the Group on the earlier submission by Chinese Taipei distributed in document TN/RL/W/182. It also further elaborated on the main ideas contained in that submission. Since the Group had already had the opportunity to discuss many of these ideas earlier, he invited the proponent to provide new comments on this issue.

22. The proponent thanked Participants for the comments made on his delegation's earlier submission. He explained that the reason his delegation had prepared document TN/RL/W/186 was for clarification purposes to see if Participants were willing to include the topic of strengthening the multilateral trading system via open regionalism in their future discussions. Also, he wanted to ensure that the RTA disciplines were as non-discriminatory as possible, so that all WTO Members could really benefit from RTAs. In his view, the submission was quite timely because the next document in this meeting's Agenda, Best Practice for RTAs/FTAs in APEC, included this issue among the topics to be presented. As APEC was a forum which discussed best practices, the WTO could benefit from selecting those items that improved the multilateral trading system.

23. One Participant appreciated the underlying concern of the proponent which had prompted the original submission TN/RL/W/182, namely to discipline an ever proliferating mass of RTAs. He appreciated the detailed response given in TN/RL/W/186 to the questions and observations of the Participants on the original proposal. He informed the Group that his delegation shared several of the concerns raised by other Participants on this proposal. As he viewed it, the decision by a Participant to form an RTA with another was governed by a mix of motivating factors. These could be political, economic, security based and others, so it was likely that the same set of motivations might not be universally shared by all potential applicants who sought cooperation as additional parties to an existing RTA. Thus, after looking at the answers given by the proponent, he still had concerns in having a minimum, mandatory accession provision in each Article XXIV and GATS Article V agreement, which would be then subject to dispute settlement. According to the proposal and the explanations provided, any application for accession to an existing RTA needed to be responded to "sympathetically" and accorded "good faith" opportunities. As it was rightly expected, there should be no blank rejection of an accession application. In his view, it followed that each application would need an investment in negotiating time by RTA parties and given that such resources were already quite scarce in developing countries, such a requirement would stretch them even more. If the assessment of the proponent was that not many applications would result under such an accession clause, he wondered what was the merit in having such a provision. He also pointed out that an RTA was a delicately balanced outcome of keen and often protracted negotiations; it might thus be difficult for RTA partners to re-open the agreement in order to arrive at the fresh balance between new and original partners. This would be particularly difficult in terms of product coverage, and the associated rules of origin, because domestic sensitivities often varied; re-opening these issues to accommodate a third party would be an extremely difficult exercise. It would perhaps be more cost-effective and efficient for an interested non-party to an RTA to negotiate a new RTA with the concerned parties. His delegation was unable to appreciate the logic of the comment in the concluding section which said " ... allowing third parties to negotiate possible accession could have the effect of reducing the need for creating new RTAs, thus reversing the trends towards regionalization of the trading system". As mentioned by the proponent, if likely applicants were few, then this hypothesis could not be true. If more applicants succeeded in joining existing RTAs, it would continue to add to the proliferation of RTAs, in as much as more and more trade would be channelled through RTAs. Again, it would only mean that the physical number of RTAs would not grow as much. Concurring with what the previous Participant had said, one Participant deemed that although her country had signed the Best Practices document in the context of APEC, where the option of accession was kept open for third parties, she was concerned about the possible implications

of such a clause at the WTO level, in particular with regards to the effects it could have on dispute settlement.

24. The Chairman thanked the proponent for the submission of this paper and Participants for presenting comments to it. He suggested the Group consider document TN/RL/W/187, a joint communication by the Republic of Korea and Chile, describing the Best Practice for RTAs/FTAs in APEC.

25. One proponent explained that the reason the two delegations had submitted the paper was that both countries had hosted the two meetings where Best Practices in APEC had been discussed. She clarified that these were not compulsory Best Practices for APEC, much less for WTO. Nonetheless, these were guidelines which APEC countries took into account when negotiating RTAs because they believed they reinforced several of the underlying principles of RTA negotiations at the WTO. The second proponent considered that it was now the WTO's task to build on these principles and to move to the next step. He explained that the reason for having submitted them at this point in time was, in addition to the fact that they were approaching the Hong Kong Ministerial that APEC Members believed that this was one of the possible areas that could be agreed upon at the Hong Kong Ministerial.

26. Several Participants welcomed the submission, which they considered a good starting point for upgrading WTO disciplines. One Participant considered that these Best Practices covered a wide range of aspects of RTAs, such as comprehensiveness, transparency, sustainable development and others, and informed the Group that APEC members were now at the stage of discussing how to utilize these Best Practices in their own RTA negotiations. He considered that the Group could learn much from APEC's work in how to clarify and improve WTO disciplines. In this respect, he suggested that APEC explained to the Group its work on these Best Practices so as to contribute to the understanding of the meaning of what were high quality RTAs. One Participant considered that these Best Practices embodied some important principles such as comprehensiveness of agreements and transparency, as had been discussed in this Group and encouraged all Participants, whether or not APEC members, to live up to these commitments. Two Participants highlighted the fact that these Best Practices were supported by APEC's 21 diverse member economies including developed countries, developing countries and emerging economies. Another Participant believed that these Best Practices for RTAs clearly showed that APEC members generally shared the objective of concluding and promoting high level RTAs which would promote liberalization worldwide. This Participant encouraged APEC members to continue working closely among themselves and with other WTO Members to pursue the objective of multilateral liberalization.

27. One Participant, who took the proposal in the spirit of a guideline, shared his thoughts on some of the elements which had been mentioned as Best Practices for RTAs. In his assessment, the elements enumerated were useful to improve the value of an RTA as a building block to the multilateral trading system but he believed that it might be difficult to accept some of the principles enumerated therein. For instance, he pointed out that taking into account domestic sensitivities, it might not always be possible to have a comprehensive RTA providing for full liberalization in all sectors. Also, it might not always be possible to have consistent rules of origin across all RTAs, and that could be both on account of domestic sensitivities and because of different requirements of different RTA partners. With respect to the accession clause, he had already expressed his concerns. In addition, he was unable to share the view that RTAs that involved developing economies to whom the Enabling Clause applied should, whenever possible, conclude agreements which were consistent with GATT Article XXIV. If developing countries chose to have an ambitious RTA, they could in any case take the cover of GATT Article XXIV, but at the same time, if they wanted to have a limited opening of their economy through partial scope agreements, they were free to do so under the cover of the Enabling Clause. Another Participant asked whether there was any track record of APEC members' fulfilment on this issue. One proponent answered that there was no track record on these initiatives but at an individual level, Chile, as well as Mexico, were trying to upgrade their agreements

to high levels and make them compatible with Article XXIV. She reiterated that the logic was that each country individually made the effort, and in such a case, tracking was not so relevant.

28. One Participant had a question under the heading "Trade facilitation". Given that border procedures were normally uniform for imports from all Members, he asked in what manner APEC members extended selective and more-facilitative procedures to their RTA partners and whether those procedures were tailored differently for different RTAs. One proponent explained that all the questions had to be looked at using APEC's logic, which was very different from the WTO's. In APEC, countries defined certain guidelines or principles and then it was up to each country to commit to them, coming forward with their plans of action, their schedules and their ideas. There were no control systems or dispute settlement procedures. It was within that logic that she answered the questions raised. On trade facilitation, she explained that what made this issue different from others was that once they started implementing trade facilitation measures at the border for one country, it was quite easy to implement them for all countries, especially for goods, since there was no different treatment for goods coming from different countries. In addition, APEC had included the issue of trade facilitation not only for goods but also for services, movement of persons, etc., in which APEC had been strong at facilitating trade. The second proponent added that whether the element of trade facilitation applied only to RTA partners or not depended on whether customs procedures were considered as "other regulations of commerce" in the sense of GATT Article XXIV. If they were, it was then possible for RTA partners to provide an express line to their partners. However, he emphasized that the key issue was to facilitate trade because in view of all the RTAs that were in place, countries were forced to apply different tariff rates to each imported product depending on their origin.

29. One Participant told the Group that he had seen the Best Practices on APEC webpages and had been intrigued by them and considered them a good starting point. He was struck by some of the comments made on the diversity of APEC members. However, he had some questions on the second part of consistency with WTO – developing countries whenever possible should make their agreements consistent with Article XXIV of GATT and Article V of GATS – bearing in mind that there was no Enabling Clause for services. In particular, he requested information on the discussions on that basic principle or on whether there was any track record of APEC members fulfilment of this principle.

30. One Participant noted that open regionalism had been one of the core principles of APEC when it was launched but he believed it now seemed to have taken a secondary place. In this respect, he asked whether there were any discussions in APEC on the difference between preferential and MFN rates, as well as what was APEC members' policy with respect to trying to make those rates converge. As he recalled, open regionalism meant that APEC members would multilateralize their commitments made under RTAs, and he wondered whether there had been any progress in this respect. One proponent answered that open regionalism was still a driving force of APEC but she was not fully aware of the latest developments in terms of bringing together preferential and MFN rates. The other proponent added that the purpose of narrowing the gap between preferential and MFN rates was really an ideal. Since preferential rates for most products was zero, narrowing the gap could mean complete liberalization. APEC had an Individual Action Plan (IAP) that was unilateral and voluntary. Finally, he highlighted that APEC members were strongly committed to trade liberalization and were actively working on unilateral and voluntary trade liberalization.

31. Another Participant asked whether the guidelines dealt with the elimination of non-tariff barriers, since there was a reference to comprehensiveness in the Best Practices. One of the proponents replied that the elimination of non-tariff barriers was included in the Chapter on comprehensiveness. One Participant expressed concerns on the third last bullet of the document that referred to Sustainable Development. The guidelines reflected the inter-dependence and mutually supportive linkages between the three pillars of sustainable development – economic development, social development and environmental protection. He wondered what criteria and what benchmarks

APEC countries used to make an assessment of these three areas of development needs of the member states, and how they set a certain weight to these concerns while negotiating RTAs. One proponent explained that this again was a general principle and if countries felt they could incorporate such measures in their agreements, they would do so on an individual basis. The other proponent informed the Participant that they would refer this question to capital and answer promptly.

C. OTHER BUSINESS

32. The Chairman informed the Group that the meetings scheduled up to the Ministerial Conference in Hong Kong would take place on 14, 21, 31 October and 11 and 18 November, for the informal meetings and that the last formal meeting would take place on 1 November. He said he would send the agenda of the next informal meeting to the Group by fax. Finally, he reiterated that Members had very little time ahead of them, so he urged Participants contemplating further submissions to submit them in the shortest possible delay. One Participant pointed out that while his delegation shared the urgency to work towards a concrete and ambitious outcome for Hong Kong, meetings which were held at close intervals placed a great burden upon delegations with limited manpower. Thus, he requested the Chairman to schedule meetings at longer intervals which did not clash with other meetings. The Chairman replied that he would stay in touch with delegations to see what was the best possible way of keeping the agenda to what was really essential so as to cut, if possible, the number of meetings without jeopardizing the objective of making as much headway as possible by the Hong Kong Ministerial Conference.