

## SUBMISSION ON REGIONAL TRADE AGREEMENTS BY CHINA

### Paper by China

The following submission, dated 20 July 2005, is being circulated at the request of the Delegation of China.

#### **I. INTRODUCTION**

1. This submission of China on regional trade agreements (RTAs) sets out comments and proposals concerning some core systemic issues in RTA rules negotiation based on the Doha Mandate, without prejudice to China's positions on future transparency requirements for all RTAs, as well as other substantive disciplines on RTAs.

2. RTAs, which are deemed to be supplementary to the multilateral trading system, play an important role in promoting economic development and enhancing economic relations among nations and regions. However, it has long been the case that due to the ambiguity of many elements in RTA rules, Members have different understandings on the application of these rules. The report named "The Future of the WTO - Addressing Institutional Challenges in the New Millennium" (the Sutherland Report) points out that the "spaghetti bowl" phenomenon caused by various kinds of RTAs has been eroding the multilateral trading system. With a view to better promoting the development of the multilateral trading system, it is essential for this Negotiating Group to further discuss issues concerning the clarification and improvement of RTA rules.

3. A new trend witnessed in recent years is that developing country Members have paid increasing attention to the role of RTAs in their own development process. RTAs among them (the south-south RTAs) are also on the growing trend. Economic integration in the form of RTAs has become a core part of the development strategy for many developing country Members. That is also an important reason why the Doha Ministerial Declaration requires that the developmental aspects should be taken into consideration in the RTA rules negotiations.

#### **II. DEVELOPMENTAL ASPECTS OF RTAS**

4. Paragraph 29 of the Doha Ministerial Declaration states: "We also agree to negotiations aimed at clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements. The negotiations shall take into account the developmental aspects of regional trade agreements." The last sentence, we believe, means that the development issue persistently permeates the whole process and calls for careful consideration at every stage of the negotiation. In this regard, China agrees to the statement in the submission of the ACP group of States (TN/RL/W/155) that "the clarification and improvement in WTO rules on the formation and

operation of RTAs should support the development strategy of developing countries through regional integration by providing a supportive multilateral framework". The consideration of developmental aspects, demanded in the Doha Declaration, should be reflected firstly by considering endurance and adjusting cost of developing participants in the substantive requirement of RTA rules and secondly by refraining from imposing unnecessary restrictions on the developing country Members in the implementation of their developmental strategies through regional integration.

5. Developing Members greatly differ from the developed ones in terms of level of economic development, tariff level, industrial structure, trade pattern and capability of withstanding risks and strikes. More importantly, the sensitive sectors in developing country Members often affect the livelihood of a large poor population. Therefore, specific special and differential treatment should be granted to developing country Members so that they will be subject to a lower threshold and receive other less-than-full-reciprocity treatment on the substantive requirement of RTA disciplines, thus truly reflecting the developmental aspects required by paragraph 29 of the Doha Mandate.

6. The above-mentioned special and differential treatment should be granted to all developing country Members and any form of attempt to reclassify developing country Members other than LDCs is legally unauthorized, economically infeasible and politically risky, which will only lead to a deadlock in the whole DDA negotiations.

7. The Enabling Clause is a tailor-made instrument only for the developing country Members. It serves regional economic cooperation in various forms and at different levels among developing country Members. This very nature predetermines its difference from GATT Article XXIV. RTAs concluded within the framework of the Enabling Clause should therefore be governed by provisions as set in the Enabling Clause. Any clarification or improvement of GATT Article XXIV should not be detrimental to developing country Members' rights under the Enabling Clause.

### **III. SUBSTANTIALLY ALL THE TRADE**

8. The provision on "substantially all the trade" in Article XXIV:8 of GATT is a systemic issue as an important substantive requirement in RTA disciplines. While both quantitative and qualitative aspects of this provision should be considered, we could first concentrate on the quantitative aspect and in particular, the two essential quantitative benchmarks, i.e. coverage of trade volume and coverage of numbers of tariff lines.

9. As to the level of each benchmark, a one-size-fit-all approach is inappropriate. Bearing in mind the aforementioned differences of economic development levels, developed Members should be subject to a stricter set of benchmarks than developing ones.

10. Meanwhile, China suggests that the Secretariat work out a table which includes the real situation of trade coverage and tariff lines coverage in all the notified RTAs which are still in force, and then analyze reasons for this situation, gains and losses for the multilateral trading system and possible difficulties and obstacles in changing this situation. This empirical research and analysis would be very helpful for the establishment of benchmarks for "substantially all the trade".

### **IV. TRANSITIONAL PERIOD**

11. The GATT Article XXIV:5(c) requires that agreements of establishing Customs Unions or Free Trade Areas should be concluded within "reasonable period of time". "The Understanding on Article 24 of GATT 1994" stipulates that the "reasonable period" is normally deemed to be ten years and it can be over ten years only under "exceptional circumstances". However, there is no clear definition of the "exceptional circumstances". China believes that the ten-year transitional period is a practically advisable timeframe, but the "exceptional circumstances" should be clearly defined in

order to be well targeted and not to be abused. A linkage between the “exceptional circumstances” and the developmental aspect should be established, taking the difficulties developing country Members have encountered in their implementation of RTAs as an essential element in defining the “exceptional circumstances”. Only developing countries can take advantage of “exceptional circumstances” and have the right to go beyond ten years in terms of transitional period.

## **V. RETROACTIVITY**

12. Any newly-clarified RTA rules should be retroactive and applicable to all the RTAs. If the new rules are not retroactive in reality, there will be only a small number of RTAs bound by newly-clarified rules, leaving the majority of RTAs outside of the multilateral trading system. This is completely against the principle of non-discrimination. Discussions should be continued on the issue of reasonable transitional period and/or reasonable exceptions needed to make the RTAs currently in force in line with the clarified rules.

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