



Customs Unions and other RTAs - WTO Provisions and Countries' experiences

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Yerevan, 21 October 2015



WTO Rules on RTAs

- EAEU: preferential treatment, derogation for WTO MFN principle
→ needs a legal cover!
- EAEU legal cover in the WTO and related requirements
 - Goods: Article XXIV of the GATT 1994 (+ "Understanding")
 - Services : Article V of the GATS
 - ... and procedural requirements
 - "Transparency Mechanism for RTAs", 2006 Decision of the General Council

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GATT Article XXIV & Understanding



XXIV:8, CUs – facilitate trade

- *intra-trade ... "free"-trade on "substantially all trade" (SAT)*
 - tariffs and "other restrictive regulations of commerce" are eliminated on among the parties
- *trade with third parties ... "common" external trade regime*
 - tariffs and other regulations of commerce (ORCs) are substantially harmonized among the parties

XXIV:5, CUs – neutrality towards third parties

- Standstill in MFN applied duties and ORCs
- General incidence of the formation of the CU: before/after assessment

... **AND XXIV:6, if applicable, for CUs**

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XXIV:5 – General incidence



General incidence of a CU : XXIV:5(a) & Understanding §2:

- Duties:
 - **overall** assessment
 - **weighted average** tariff rates & customs duties collected
 - using **applied** rates of duty
 - data from Parties: import statistics for last 3 years prior EIF, by tariff line, broken down by WTO country of origin
 - calculation by the Secretariat
 - ORCs:
 - examination of individual measures, regulations, products covered and trade flows affected may be required
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XXIV:5 – General incidence

General incidence: Example

Enlargement to EU(27) in January 2007

- Average tariffs:
 - average of EC(25) and the two acceding countries' MFN applied tariffs on 1.1.06
 - weighted by aggregated 2004-06 import values of the parties, by tariff line, for the 2004-06 period, excluding trade (i) intra-CU; (ii) under contractual preferences; and (iii) with non-WTO Members

- Customs duties collected: derived from the average tariff rates (as above) and annual average import values in 2004-06

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XXIV:5 – General incidence

EU(27): General incidence results

	Pre-Enlargement	Post-Enlargement
Weighted average tariff rates	3.90%	3.72%
Average customs duties collected	US\$29,888 million	US\$28,504 million

EU(27): General incidence major parameters

	Average imports in 2004-06 (US\$ million)	National weighted average tariff rates		Estimated customs duties collected (US\$ million)	
		Initial rates (pre-Enlarg.)	Final rates (post-Enlarg.)	At initial rates	At final rates
Bulgaria	2,085	8.58	10.25	179	214
Romania	4,917	32.49	8.94	1,597	439
EU (25)	759,466	3.70	3.67	28,112	27,851
Three parties of C.U.	766,467	3.90	3.72	29,888	28,504

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XXIV:6 – Break of bindings

- If CET > bound rate of CU Member
 - break of bindings → **renegotiation under XXIV:6**
 - **alternatively, exception to the CET**

- **Art. XXIV:6** & Understanding §4-6
 - Uses procedures of XXVIII
 - Procedures must **commence before modification** or withdrawal of concessions
 - “Mutually satisfactory compensatory adjustment”
 - If no agreement within “reasonable period”
 - Concession can be modified / Retaliation is possible
 - “Due account” of reductions in **same** tariff line / “take into consideration” reductions in **other** tariff lines
 - No counter-compensation

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XXIV:6 – Break of bindings

- Examples of break of bindings : Various EC/EU Enlargements
 - Renegotiations undertaken
 - In few cases, retaliation
 - Enlargement has taken place

- “Potential” for break of bindings: MERCOSUR
 - Information circulated
 - No renegotiation conducted
 - CET exemption instead
 - In any case, it is under the Enabling Clause!

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XXIV:6 – EAEU

- Armenia and Kyrgyz Republic have invoked XXIV:6
- Russian Federation has no problem with its bindings
- Kazakhstan accession to the WTO
 - Tariff negotiations completed, but some CET rates higher
 - Compromise: CET exceptions will be taken for a period of time, after which WTO renegotiations will be launched
- Belarus is not yet a WTO Member

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EAEU – Schedules of Members/XXIV:6

- Situation of Schedules of WTO Members:
 - G/MA/W/23/Rev.11 of 20 May 2015 (extracts)

Item No.	WTO Member	Schedule Number		Transposition of Schedules due to HS amendments	Rectifications/ Modifications to Schedules	Renegotiations under Article XXVIII
(1)	(2)	(3)		(6)	(7)	(8)
5	Armenia	CLV (155)	Pre- UR Schedule and Annexed to the MP, or to a PA (4)-(5) not reproduced	Accession schedule in HS96. HS2002 and HS 2007 circulated and certified.		G/SECRET/37. Armenia initiated procedures under GATT Articles XXIV:6 and XXVIII to take account of accession to the EAEU. Circulated 4.11.14
68	Kyrgyz Republic	CXLII (142)		Accession schedule in HS96. HS2002 and HS2007 circulated and certified.		G/SECRET/38. Kyrgyz Rep. initiated procedures under GATT Articles XXIV:6 and XXVIII to take account of accession to the EAEU. Circulated 16.04.15
106	Russian Fed	CLXV (165)		Accession schedule in HS2007. Under waiver for the introduction of HS2012 changes.	G/MA/TAR/RS/406 (other) was circulated.	

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GATS Article V

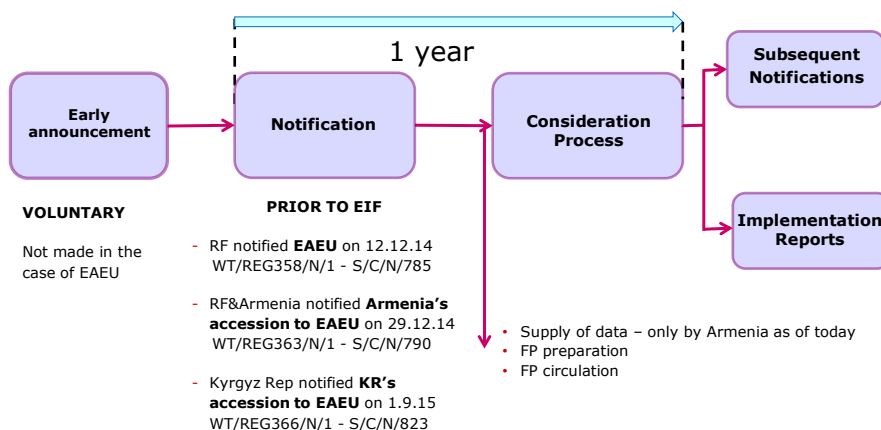
As GATT XXIV, GATS V is a conditional derogation from MFN ...

- Members can conclude economic integration agreements (EIAs), BUT
 - **V:1** (intra-trade): EIA has “substantial sectoral coverage” & no *a priori* exclusion of a mode of supply
 - **V:4** (neutrality): No non-party WTO Member shall face a higher overall level of barriers to its services trade as a result of the EIA
 - **V:5** (if applicable): renegotiations of specific commitments might be needed (using procedures of GATS Art. XXI)

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EAEU & the Transparency Mechanism



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NOTIFICATION OF REGIONAL TRADE AGREEMENT

Notification of the Accession of Armenia to the Eurasian Economic Union (EAEU)

1. Member(s) notifying: Republic of Armenia and Russian Federation
2. Date of notification: 28 December 2014
3. Notification pursuant to: <input checked="" type="checkbox"/> Article XXIV:1(a) of GATT 1994 <input checked="" type="checkbox"/> Article V:1(b) of GATS <input type="checkbox"/> Paragraph 4(a) of the Enabling Clause
4. Parties to the Agreement: Russian Federation, Republic of Belarus, Republic of Kazakhstan and Republic of Armenia
5. Date of signature: 18 October 2014
6. Date(s) of entry into force: 2 January 2015
7. Brief description of the Agreement: The Treaty establishes the accession of Armenia to the Treaty on the Eurasian Economic Union (EAEU) between the Russian Federation, the Republic of Belarus and the Republic of Kazakhstan that provides for the free movement of goods, services, capital and labour as well as co-ordinated, agreed or common policy in different areas.
8. Text and related schedules, annexes and protocols are: <input type="checkbox"/> submitted to the WTO Secretariat (electronic format) English version to be provided shortly. <input checked="" type="checkbox"/> available from the following official Internet link(s): http://distribution.wto.org/in/TradeArea/ViewDocument.aspx?DocID=150720 http://www.eurasiancommission.org/En/Content/WT/Doc/Pages/150720.aspx

RTAs Transparency Mechanism

Some figures – as of 13.10.2015

RTAs in force

GATT Art. XXIV (FTA)	223
GATT Art. XXIV (CU)	17
Enabling Clause	39
GATS Art. V	134
Total	413

 ... of which customs unions **18**
Physical RTAs in force

Goods	137
Services	1
Goods and Services	127
Total	265

RTAs and the Transparency Mechanism

Factual Presentation not distributed	104
Factual Presentation on hold	4
Factual Presentation distributed	207
Factual Abstract not distributed	0
Factual Abstract distributed	72
Report adopted	18
No report	8
Total	413



THANK YOU !

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