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

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
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
**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**

<table>
<thead>
<tr>
<th></th>
<th>Pre-Enlargement</th>
<th>Post-Enlargement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weighted average tariff rates (%)</td>
<td></td>
<td>3.90%</td>
</tr>
<tr>
<td>Average customs duties collected (US$ million)</td>
<td>US$29,888</td>
<td>US$28,504</td>
</tr>
</tbody>
</table>

**EU(27): General incidence major parameters**

<table>
<thead>
<tr>
<th></th>
<th>Average imports in 2004-06 (US$ million)</th>
<th>National weighted average tariff rates</th>
<th>Estimated customs duties collected (US$ million)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Initial rates (pre-Enlarg.)</td>
<td>Final rates (post-Enlarg.)</td>
<td>At initial rates</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>2,085</td>
<td>8.58</td>
<td>10.25</td>
</tr>
<tr>
<td>Romania</td>
<td>4,917</td>
<td>32.49</td>
<td>8.94</td>
</tr>
<tr>
<td>EU (25)</td>
<td>759,466</td>
<td>3.70</td>
<td>3.67</td>
</tr>
<tr>
<td>Three parties of C.U.</td>
<td>766,467</td>
<td>3.90</td>
<td>3.72</td>
</tr>
</tbody>
</table>

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FAO/EEC Workshop on WTO and the EAEU  
Yerevan, 21 October 2015
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

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!
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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**XXIV:6 – EAEU**

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

<table>
<thead>
<tr>
<th>Item No.</th>
<th>WTO Member</th>
<th>Schedule Number</th>
<th>Pre-UR Schedule and Annexed to the MP, or to a PA</th>
<th>Transposition of Schedules due to HS amendments</th>
<th>Rectifications/Modifications to Schedules</th>
<th>Renegotiations under Article XXVIII</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Armenia</td>
<td>CLV (155)</td>
<td>Accession schedule in HS96, HS2002 and HS2007 circulated and certified.</td>
<td>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</td>
<td></td>
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</table>

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**EAEU – Schedules of Members/XXIV:6**

Belarus is not yet a WTO Member
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)

EAEU & the Transparency Mechanism

VOLUNTARY  
Not made in the case of EAEU

1 year

Prior to EIF
- RF notified EAEU on 12.12.14  
  WT/REG358/N/1 - S/C/N/785
- RF & Armenia notified Armenia’s accession to EAEU on 29.12.14  
  WT/REG363/N/1 - S/C/N/790
- Kyrgyz Rep notified KR’s accession to EAEU on 1.9.15  
  WT/REG366/N/1 - S/C/N/823

Implementation Reports
- Supply of data – only by Armenia as of today
- FP preparation
- FP circulation

Subsequent Notifications

Notification

Consideration Process

Early announcement
RTAs Transparency Mechanism

Some figures – as of 13.10.2015

<table>
<thead>
<tr>
<th>RTAs in force</th>
<th>Physical RTAs in force</th>
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</thead>
<tbody>
<tr>
<td>GATT Art. XXIV (FTA)</td>
<td>223</td>
</tr>
<tr>
<td>GATT Art. XXIV (CU)</td>
<td>17</td>
</tr>
<tr>
<td>Enabling Clause</td>
<td>39</td>
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<tr>
<td>GATS Art. V</td>
<td>134</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>413</strong></td>
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RTAs and the Transparency Mechanism

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<td>Factual Presentation not distributed</td>
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<tr>
<td>Factual Presentation on hold</td>
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<tr>
<td>No report</td>
<td>8</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>413</strong></td>
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</tbody>
</table>
THANK YOU!

Presentation by Maria Donner Abreu
Counsellor, WTO

FAQ/EEC Workshop on WTO and the EAEU
Yerevan, 21 October 2015