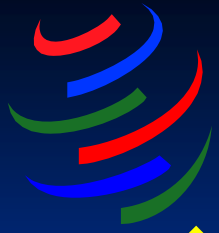


WTO Rules on RTAs



- ❖ Overview
- ❖ GATT Article XXIV and the Understanding 1994
- ❖ The Enabling Clause
- ❖ Article V of GATS
- ❖ Transparency Mechanism
- ❖ Summing Up



Overview

- The Preamble to the WTO Agreement highlights “... the **elimination of discriminatory treatment** in international relations” as an objective of the MTS
- The **MFN (most-favoured-nation) commitment** taken by WTO Members is a fundamental instrument for achieving that aim.
- When establishing an RTA, a WTO Member will need some kind of **derogation** to avoid legal inconsistency with the MFN rule.



Overview

The WTO Member has always the possibility of seeking a waiver...

BUT, over time, the System itself has developed a series of conditional exceptions which Members can invoke when departing from their MFN commitment:

Since 1947→GATT Article XXIV

Since 1979→“Enabling Clause”

Since 1994→Understanding on GATT Art. XXIV

Since 1994→GATS Article V

Since 2006→The RTA Transparency Mechanism

Common Principles*

- ❖ The purpose of an RTA is to facilitate trade among the parties
- ❖ The goal of internal trade liberalization must not result in barriers towards third parties higher than those existing before the formation of the RTA
- ❖ The RTA must provide for mutual/reciprocal trade concessions

*GATT Art. XXIV:4; “Enabling Clause” para. 3(a); GATS Art. V:4



GATT Article XXIV & Understanding

Provides for agreements which result in the establishment, among WTO Members, of 2 types of trade relations:

- Customs Unions
- Free Trade Areas

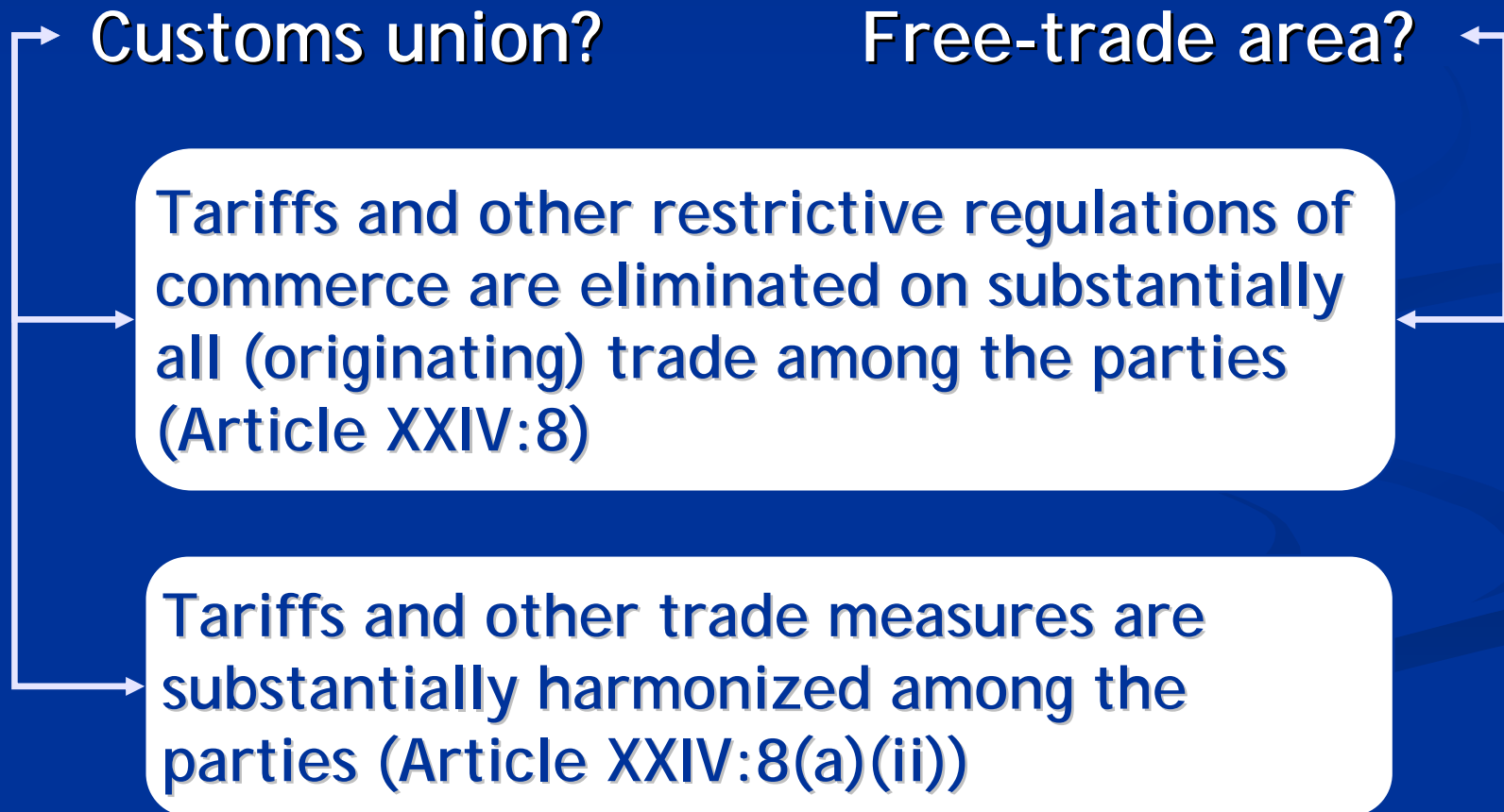
It also provides for:

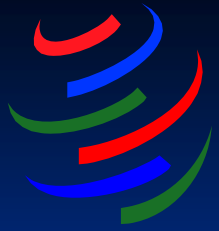
- Interim Agreements (CU or FTA implemented in stages)



GATT Article XXIV & Understanding

Under which criteria can an RTA be deemed to be a :



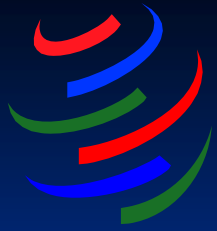


GATT Article XXIV & the Understanding



Some questions about these criteria:

- What is the meaning of “**substantially**” (XXIV:8(a)(i) & (b)), and “**substantial**” (XXIV:7(c))?
- What if a “**major sector**” is excluded from RTA coverage?
- What if RTA parties reduce (rather than eliminate) duties on some products?
- What are “**other restrictive regulations of commerce**”?
- Can RTA parties provide for the application of trade remedy actions among themselves?



GATT Article XXIV & Understanding

How can we assess whether or not barriers towards third parties have increased, i.e. has the criterion of neutrality been respected?

Parties to a
free-trade area

MFN (applied) duties and “other regulations of commerce” should not be higher than before (Article XXIV:5(b))

Customs union

➤ On average, no increase in applied MFN duties (Article XXIV:5(a)) - the general incidence test



GATT Article XXIV & Understanding

How is the General Incidence or “economic test” calculated?

- Based on an overall assessment of weighted average *applied* tariff rates and customs duties collected
- The comparison is made for a period prior to the formation of the CU and after, on a tariff-line basis in values and quantities, by WTO country of origin (para. 3, Understanding)
- Examples: EU (15), (25) and 27 Enlargements, MERCOSUR



GATT Article XXIV & Understanding

What if a CU member breaks its bindings when applying the CET?

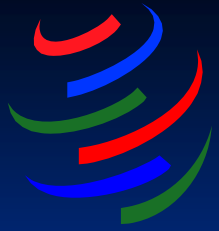
- The procedure for renegotiation of tariff bindings under GATT Article XXVIII must be undertaken *before* tariff concessions are modified (para 4. Understanding)
- Due account must be taken of reductions of duties on the same tariff line made by other CU members. If not sufficient, the CU may offer compensation in the form of reductions of duties on other tariff lines. (para 5. Understanding)



GATT Article XXIV & Understanding

“Interim agreements” are required:

- To lead to either a free-trade area or a customs union.
- To contain a plan and schedule to achieve that aim (Article XXIV:5(c)).
- To foresee a **maximum transition period of 10 years** (unless exceptional circumstances can be fully explained and acknowledged by WTO Members) (para 3 of Understanding).
- Not to be put in force or maintained unless any WTO recommended modification has been made by the parties (para 10 of Understanding).



GATT Article XXIV & the Understanding



- Para. 12 of the Understanding specifies that WTO dispute settlement provisions “may be invoked with respect to any matters arising from the application of Article XXIV”

Any disputes involving Article XXIV?



GATT Article XXIV & the Understanding



*Turkey-
Textiles
(DS34)*

GATT inconsistent measures can be “covered” under Art. XXIV provisions if the RTA is found in conformity with these provisions, and the measures were necessary to the formation of the RTA.

The panel should assess, in particular, such conformity.

Burden of proof is with Member using Art. XXIV as a defence.

*Argentina-Footwear
(DS121)*

“Parallellism” in safeguard actions

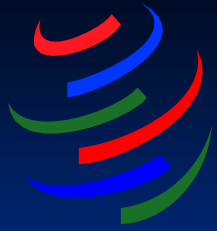
NO RTA HAS BEEN CHALLENGED AS SUCH!



Enabling Clause

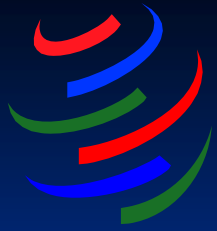
Authorizes, **in its paragraph 2(c)**, WTO developing country Members to **depart from the MFN clause** (Article I), when concluding:

1. among themselves
2. preferential regional or global arrangements
3. containing mutual concessions
4. on (reduced or zero) tariffs
5. and non-tariff measures (subject to WTO guidelines, in principle).



Enabling Clause

- Such agreements must be notified (para 4(a))
- Adequate opportunity must be provided for “prompt consultations” at the request of any interested member



Enabling Clause vs GATT XXIV

- Common aspects
 1. Goods only
 2. Reciprocity
 3. Neutrality criterion, i.e. no higher barriers
- Differences
 - Enabling Clause only an option for developing countries
 - Reduction OR elimination of tariffs (Enabling Clause) vs. elimination of duties (GATT XXIV)...
 - ...and reduction OR elimination of non-tariff barriers vs. elimination of ORRCs



Summing-up

When entering an RTA containing provisions on goods, a WTO Member should invoke one of the following provisions, and comply with the relevant conditions:

	RTA parties		
	Developed only	Developing only	Developing & developed
Trade in goods	GATT XXIV	GATT XXIV Enabling Clause	GATT XXIV