

## Regional Trade Agreements

### Introduction

GATT rules on Regional Trade Agreements, as laid down in GATT Article XXIV and clarified in the Understanding on the provision, permit departures from the Most-Favoured Nation treatment as they allow parties to an RTA (involving developed countries) to grant each other trade preferences without multilateralising concessions. GATT Article XXIV is a conditional exception to the MFN Article as it subjects the formation of RTAs to compliance with a number of rules thereunder. It should be noted that the negotiations between the EC and the six ACP regions, in the context of the EPAs, should be compatible with GATT Article XXIV provisions. In other words, the basis on which EPA compatibility with WTO rules will be tested is on whether the substance of the agreement is consistent with the rules as prescribed under GATT Article XXIV, as one of the parties to the EPA, namely the EU, consists of developed countries.

2. This notwithstanding, the very rules on which WTO compatibility will be judged remain unclear. In particular, the requirements of GATT Article XXIV are broadly worded and consensus has yet to emerge on their interpretation. Secondly, RTAs are being reviewed for consistency with GATT rules by the Committee on Regional Trade Agreements (CRTA); however, the issue of consistency has been left unresolved in all cases but one.

3. It is against this backdrop that paragraph 29 of the Doha Ministerial Declaration calls on members to *clarify and improve* disciplines and procedures of the existing WTO rules applying to regional trade agreements. Importantly, the declaration also called for negotiations to take into account the developmental aspects of RTAs, consistent with the overall emphasis in the Doha agenda to give primacy to the development dimension in the negotiations and the resulting agreements.

4. It should be noted that, negotiations on regional trade agreements are taking place within the Negotiating Group on Rules (NGR). Under the purview of the NGR, negotiations have been dissected into systemic and procedural issues. This two-track approach has resulted in the discussion on a myriad of systemic issues related to GATT Article XXIV as well as procedural issues related to RTA transparency.

### Objective of the mandate on RTAs

5. The object of negotiations on RTAs is to clarify and improve disciplines and rules on WTO compatibility and enhance their development content. The main elements of these rules were before the launch of the DDA, already established under GATT 1994 Article XXIV but had not been consistently applied, in spite of the adoption of an Understanding on their interpretation in the Uruguay Round.

6. The current negotiations are focused on two main aspects of RTA rules: - the procedural aspects and the substantive rules. , include:-

8. Since the beginning of the Doha negotiations, and in particular, between 2005 and 2006, the NGR discussion on RTAs has focused on the improvement of the transparency of RTAs through the establishment of a mechanism that would, inter alia, clarify and improve the transparency and procedural requirements contained in the existing WTO provisions.

- 9. In December 2006, a transparency mechanism was agreed by the General Council to be implemented on a provisional basis in accordance with paragraph 47 of the Doha Ministerial Declaration. It should be recalled that this transparency mechanism is established within the Committee on Regional Trade Agreements and is restricted to reviewing RTAs notified under GATT Article XXIV and GATS Article V. The main elements of the Mechanism are:
  - early announcement to the WTO on the launching of an RTA;
  - notification to the WTO on conclusion of RTAs arrangements;
  - subsequent notification and reporting i.e. updating of information;
  - procedures for examination of notified RTAs in the WTO.

It is noteworthy that the mechanism has not been able to break the deadlock in the CRTA regarding the consistency or otherwise of notified regional trade agreements.

The Substantive issues

10. It must be borne in mind that the ACP Group of Countries which includes African Countries submitted a proposal entitled "Submission on Regional Trade Agreement". This Paper, TN/RL/W/155, was officially submitted to the Negotiating Group on Rules on 26 April, 2004 and seeks to re-inforce the mandate by calling on Members to address the Developmental Aspects of Regional Trade Agreement and Special and Differential Treatment in the WTO Rules: GATT 1994 Article XXIV and the Enabling Clause. The Paper stresses on the need for the mandate to be executed i.e. clarifying and improving disciplines and procedures under the existing WTO provision applying to regional trade agreements while taking into account their "developmental aspects".

11. The substantive WTO rules governing regional trade agreements are dealt with under sections 5-8 of the Article. These are:

- Duties and other restrictive regulations of commerce must be eliminated with respect to **substantially all the trade**, among parties.
- **Duties and other regulations of commerce** must not be higher or more restrictive than prior to the RTA formation.
- Transition period: Reasonable length of time to be given for the formation of the RTA should not exceed 10 years only in exceptional cases.

12. With a view to ensuring that the mandate is complied with, the African Group is taking a very close look at the Enabling Clause.

13. It must be stressed here that the scope of the Enabling Clause covers regional or global trade arrangements entered into among developing countries for the mutual reduction or elimination of tariffs and non-tariff measures. The Clause therefore aims at facilitating trade between developing countries and not to impede the trade of other Members.

14. It bears emphasizing here too that the Enabling Clause does not assume a formal link with GATT Article XXIV conditions. It is less stringent in application than GATT XXIV, as it permits reciprocal

preferences on a limited range of products, and not "substantially all the trade" as provided for under Article XXIV. The Clause also permits reduction in tariffs only

### **African Group's position**

15. The African group has consistently supported the ACP proposal on the review of GATT Article XXIV provisions to imbue them with developmental aspects. For example, the AU Conference of Ministers Meeting in Addis Ababa in March this year (2009) adopted a declaration on EPAs that, *inter alia*, "Call upon the African group in the WTO, in collaboration with other members to intensify efforts towards appropriately amending Article XXIV of GATT 1994 with a view to allowing for necessary Special and Differential Treatment, less than full reciprocity principle and explicit flexibilities that are consistent with the asymmetry required to make the EPA's development oriented;".

16. The position of the African group is clear: the substantive provisions of GATT Article XXIV presently must be revised i.e changed, in such a manner so as to facilitate establishment of development-oriented RTAs between developed and developing countries. Such development-oriented agreements would allow developing countries to eradicate poverty, achieve sustainable growth, deepen internal (African) integration, and facilitate their effective integration into the global trading system and economy.

17. How should GATT Article XXIV provisions be revised to attain the above goal desired by African Trade Ministers?

Discussions on various S&D treatment provisions that could be provided as flexibilities under GATT Article XXIV have become very cumbersome, technical and confusing at times. Strategically there seems to be two approaches to realizing the objectives. One approach is to get involved in the details of the negotiations of flexibilities regarding elements such as the substantially all the trade coverage, the transition period and the degree of asymmetry in reduction of trade barriers. This has been the approach that has been followed since the ACP group of States made their proposal. It is a logical approach since it ensures that there will be specific provisions in any eventual agreement conferring these flexibilities on developing countries.. However, it seems to me that time is not on

our side for engaging in such detailed negotiations.

18. The second approach and one which could be proposed for consideration and taken up is to embrace a global approach that would call for a generic S&D provision to be inserted into GATT Article XXIV. This is somewhat contrary to the position of developing countries for specific and clear S&D provisions. However this approach is being suggested for the reason already stated. In this approach the African group can make a proposal as suggested below. Once we get such a generic language, the actual details of the flexibilities that would be accorded to developing countries would be the subject of negotiations between the parties to an agreement. Once such an agreement is reached, the flexibilities would have legal cover under the amended Article XXIV.

19. What should a generic S&D provision on GATT Article XXIV look like? The following is being proposed for your consideration. This is an idea that has been discussed some time back in the ACP Group and I would like to reiterate it.

Pursuant to the Doha mandate on regional trade agreements (paragraph 29 of the Doha Ministerial Declaration), and in the spirit of the development focus of the Doha Round, the African Group of States maintains that SDT (special and differential treatment) in regional trade agreements under GATT 1994 Article XXIV conditions as proposed in the ACP Group of States' submission of April 2004 constitutes an overriding systemic issue to be addressed on a priority basis in the Doha negotiations. Without prejudice to the right of African Group to submit specific proposals on GATT Article XXIV such as on substantially all the trade requirement in duties and other restrictive regulations of commerce and transition period, the African Group proposes that SDT shall be formally incorporated in GATT 1994 Article XXIV in respect of its substantive requirements in paragraphs 5-9. The following provision also mirroring GATS Article V:3(a), is proposed for inclusion in GATT 1994 Article XXIV:

- *“Where developing countries are parties to an agreement with developed countries for the formation of a customs union, a free trade area, or an interim arrangement leading to either a customs union or a free trade agreement, special and differential treatment shall be provided to developing countries*

*regarding the conditions set out in GATT 1994 Article XXIV paragraphs 5 to 9 inclusive, in particular subparagraph 5(c) and subparagraph 8(a)(i) and (b).”*

20. If the African Group can mobilize the ACP States to support this proposal, it is likely that the Group can begin to put some teeth into the development content of GATT Article XXIV.

21. There must also be an affirmation by the Group that the Enabling clause should be preserved to provide legal cover to developing countries to the extent that its provisions are not undermined by Article XXIV.