

IULES AND PROCEDURES

WTO Rules and Procedures related to RTAs



RULES AND PROCEDURES

- * Overview
- GATT Article XXIV and the 1994 Understanding
- * The "Enabling Clause"
- GATS Article V



RULES AND PROCEDURES

Overview

The Preamble to the WTO Agreement highlights "... the elimination of discriminatory treatment in international relations" as an objective of the Multilateral Trading System.

The MFN (most-favoured-nation) commitment taken by WTO Members is a fundamental instrument for achieving that aim.

When establishing a preferential trade regime in favour of some trade partners (e.g., through the formation of an RTA), a WTO Member will need some kind of derogation to avoid legal inconsistency with the MFN rule.



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Overview

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

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

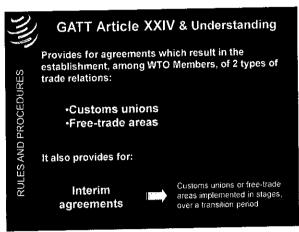
Since 1947 - GATT Article XXIV

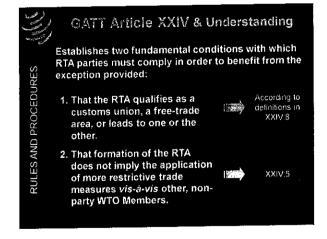
Since 1979—"Enabling Clause"

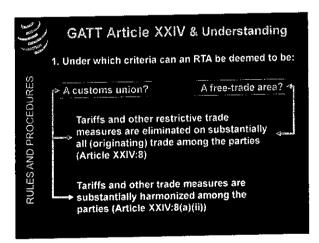
Since 1994-→Understanding on GATT Art. XXIV

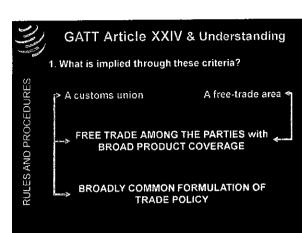
Since 1994 → GATS Article V

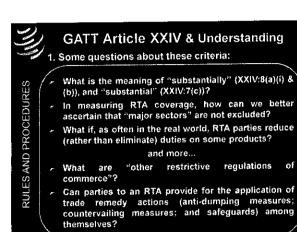


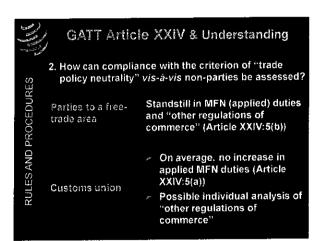














GATT Article XXIV & Understanding

"Interim agreements" are also required:

To lead to either a <u>free-trade area</u> or a <u>customs</u> 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).



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GATT Article XXIV & Understanding

When entering a customs union and applying the common external tariff, a party, Member of the WTO, may break its prevailing MFN tariff bindings.

To maintain the balance of rights and obligations within the GATT, customs unions are thus also required:

To enter into a re-negotiation of tariff bindings with interested Members (Article XXIV:6).



For procedural details, see paras. 4-6 of the Understanding



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GATT Article XXIV & Understanding

Finally:

Para. 12 of the Understanding specifies that:

WTO dispute settlement provisions "may be invoked with respect to any matters arising from the application of those provisions of Article XXIV..."

Any disputes involving Article XXIV?



GATT Article XXIV & Understanding

Jurisprudence - Main points:

RULES AND PROCEDURES 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 . "Parallellism" in safeguard actions

NO RTA HAS BEEN CHALLENGED AS SUCH!



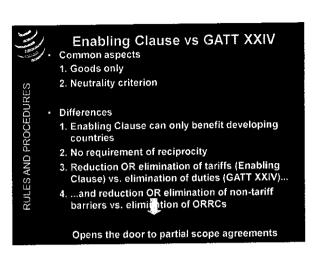
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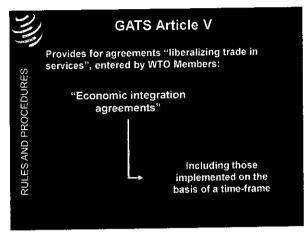
Enabling Clause

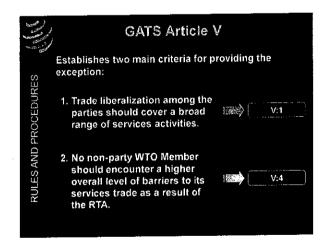
Authorizes, in its paragraph 2(c), WTO developing country Members to depart from the MFN clause (Article I), when concluding:

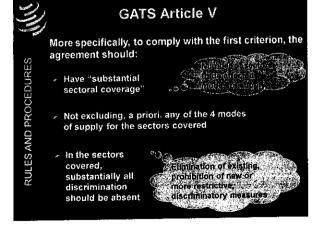
- 1. among themselves or from dev'd to deving
- 2. preferential regional or global arrangements
- 3. containing mutual concessions
- 4. on (reduced or zero) tariffs
- 5. and non-tariff measures (subject to WTO guidelines, in principle).

Only additional criteria are contained in para. 3(a & b).











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GATS Article V

As to the second criterion:

No particular guidelines or detailed procedure on how to assess whether "the overall level of barriers" has been raised for any non-party Member's trade in services.

However, as in GATT Art. XXIV, to maintain the balance of rights and obligations within the GATS:

> If, when entering the agreement, a Member's restrictive, these should be renegotiated (GATS V:5)



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GATS Article V

S&D provisions:

Developing countries participating in an agreement are granted flexibility in terms of:

- Substantial sectoral coverage
- Elimination of discrimination Para. 3a in the sectors covered

When the agreement is concluded among developing countries:

Preferences may be granted to the parties' "own" service Para 3b providers only



Summing-up

When entering an RTA, 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
Trade in services	GATS V	GATS V	GATS V

... Or else the Member should seek a waiver!