

# WTO/EPA ISSUES

## Article XXIV

Gerhard Erasmus

[mge@tralac.org](mailto:mge@tralac.org)

Trade Law Centre for Southern Africa

## THE BASIC IDEA



- ▶ The Multilateral trading System is based on MFN
- ▶ RTA is an exception within **legal** limits
- ▶ Has to meet substantive and procedural requirements
- ▶ Substantive requirements are in Art. XXIV
- ▶ Notification and CRTA -- where all Members scrutinize

## WHAT HAS BEEN HAPPENING?



- ▶ Complicated relationship between Multilateralism/Regionalism
- ▶ 149 RTAs notified since 1995 but not completed
- ▶ Systemic failure?
- ▶ Upsurge --- USA etc
- ▶ EPAs
- ▶ Part of a new fabric



## BASIC LEGAL FRAMEWORK



- ▶ Art. XXIV GATT 1994 (goods)
- ▶ Par.2(c) Enabling Clause (developing Countries)
- ▶ Art V GATS (Services)
- ▶ Understanding on Interpretation of Art. XXIV
- ▶ ” facilitate trade between the constituent territories...avoid creating adverse effects on other Members...”
- ▶ RTA covering more than goods will be subject to different WTO disciplines
- ▶ This is the present position

## CUSTOMS UNIONS, FTAs, INTERIM AGREEMENTS



- ▶ CU requirements are: substantially all trade (internal dimension) and common external tariff (external dimension)
- ▶ What is subst. All trade? (Turkey-Textiles AB “some flexibility”) (i)% of trade ii) number of tariff lines
- ▶ Duties not on the whole higher than before
- ▶ FTA = “group of two or more customs territories...duties eliminated on subst. all the trade between the constituent territories on products originating in such territories.”
- ▶ No common external tariff
- ▶ RoO
- ▶ Not higher than before
- ▶ Interim Agr.”shall include a plan and schedule...within reasonable time..”

## WHAT DO EC PARTNERSHIP AGREEMENTS FORESEE?



- ▶ WTO Conformity, including S+D, taking account of levels of development and mutual interests.
- ▶ Form FTA. Implication = formal standards apply
- ▶ Implementation by 2018? Is this possible? Exceptions? Cannot be open ended.
- ▶ Integration within ACP countries – intra ACP negotiations
- ▶ Respect existing RTAs among ACPs
- ▶ Other options? (GSP and LDCs)
- ▶ Future of asymmetry?



## IMPLICATIONS FOR SACU AND SADC



- ▶ Objective of integration
- ▶ Objective of development via local needs
- ▶ Not one size fits all
- ▶ Beyond goods?
- ▶ Easiest way to meet Art XXIV requirements?
- ▶ Remember Art. 31 SACU Agreement
- ▶ Remember TDCA
- ▶ If it aint broke , don't fix it

## EU OBJECTIVES AND BROADER ISSUES



- ▶ Systemic interests of WTO, reasonableness and development
- ▶ Status quo not optimal; insufficient clarity and authoritative guidance
- ▶ Subst. all trade ... future quantitative benchmarks?
- ▶ Reasonable time ..no clear single practice
- ▶ Neutrality: Other regulations of Commerce?
- ▶ Development dimension: (i) distinguish between different RTAs (ii) North/South RTAs promote development
- ▶ Flexibility. Part of Doha?
- ▶ Who is in the ACP mix?
- ▶ Implication: the disciplines of a rules-based dispensation

