

Customs Union Negotiations - a tough or simple task?

A presentation by
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Structure of the Presentation

- Different kinds of Trade Agreements
- Status of RTA commitments made by members of League of Arab States and their implications for a Customs Union
- Basic elements of a Customs Union and how could a Customs Union benefit members of LAS
- Relevant WTO provisions for a Customs Union
- A few suggestions for a Customs Union negotiations

Preferential vs. Regional Trade Arrangements

- Preferential Trade Arrangements (PTAs) are basically unilateral tariff preference agreements like GSP, Duty Free Quota Free (DFQF) for LDCs.
- Regional Trade Arrangements (RTAs) can be Regional Trade Agreements under Article XXIV of the GATT or the “Enabling Clause” of 1979 (in the latter case provided at least one of the partners is a developing country)
- A Customs Union is a special form of an RTA, distinguished by a Common External Tariff (CET)
- A Partial Scope Agreement (PSA) or a Preferential Trade or Access Agreement is an RTA covering only some products. They are normally under the Enabling Clause.

Snapshot of RTAs/Customs Unions

- As of 20 June 2017, there were 279 RTAs notified to the WTO, of which 16 are Customs Unions (listed below):
- Andean Community, CARICOM, Central American Common Market (CACM), COMESA (including Egypt), East African Community (EAC), EU, Economic and Monetary Community of Central Africa (CEMAC), Economic Community of Western Africa (ECOWAS), EU- Andorra, EU- San Marino, EU-Turkey, Eurasian Economic Union, Gulf Cooperation Council, SACU, MERCOSUR, West African Economic & Monetary Union (WAEMU)

Other Customs Unions in line ?

- ASEAN- In 2014, **AEC** was collectively the third largest **economy** in Asia and the seventh largest in the world. The **AEC Blueprint 2025**, adopted by the **ASEAN** Leaders at the 27th **ASEAN** Summit on 22 November 2015 in Kuala Lumpur provides broad directions through strategic measures for the **AEC** from 2016 to 2025. Work proceeding at serious pace
- Even for such deeply integrated economies as the ASEAN, a 10 year time frame has been set for full integration.
- Arab States should draw inspiration from this and work with renewed vigour to achieve their objective.

Taking stock- how many RTAs exist for League of Arab States (LAS)?

- EFTA-Egypt, EFTA-Jordan, EFTA-Lebanon, EFTA-Morocco, EFTA-Tunisia
- Egypt-Turkey
- EU-Jordan, EU-Morocco, EU-Syria, EU-Tunisia
- Gulf Cooperation Council (GCC) Customs Union
- GCC-Singapore
- Jordan-Singapore
- Pan (Greater) Arab Free Trade Area (PAFTA/GAFTA)
- Turkey-Jordan, Turkey-Morocco, Turkey-Syria
- US-Jordan, US-Morocco, US-Oman
- [Progress Unknown- Agadir Agreement- Agreement for Establishing a Mediterranean Free Trade Area]

Implications of these RTAs

- If a League of Arab State (LAS) “A” is committed to allow entry of a product of non-LAS country “B” at “X” rate in terms of an RTA, the Common External Tariff (CET) ultimately worked out among LAS will have to factor this in.
- The EU has FTAs with Jordan, Morocco, Syria and Tunisia. These agreements would have to be studied to see whether there is a built in “Ratchet Clause” in them in line with the EU’s model Economic Partnership Agreement (EPA).
- The Singapore, EFTA and US FTAs with a few LAS countries also need to be examined thoroughly in this light.

Stages of Economic Integration*

- Stage I- A limited Partial Scope Agreement
- Stage II- A complete Free Trade Area
- Stage III- A Customs Union
- Stage IV- A Common Market
- Stage V- An Economic Union
- Stage VI- A Monetary Union
- Stage VII- Complete or Full Economic Integration

* Source- UNESCWA, Beirut website

Core elements of a Customs Union

- A simple Customs Union pertains only to trade in goods. Its core elements are as below.
- Common External Tariff (CET) for all members
- Zero Tariff and Free Movement of goods across member country borders (ideally no border controls as in the EU) provided a good has “originated” in another member or members of the Customs Union
- Specialised Rules of Origin for goods to determine country of “origin” (required if CET is high)
- Harmonised regulations on Technical Barriers to Trade
- Harmonised Sanitary and Phytosanitary standards
- Fast Track Dispute Settlement Mechanism

Add-ons for a Customs Union

- Very rarely is a Customs Union negotiated with the provisions covering only trade in goods because the economic benefits in that case are not large. Normally, the agreement covers some or all of the areas listed below.
- Agreement on Services
- Harmonised Domestic Regulations in Services(if possible)
- Agreement on Investment(incl. ISDS)
- Agreements on Common Customs Procedures, Trade Facilitation, Labour Standards, Environment, Sustainable Development, Data Protection, Government Procurement, Competition Policy etc.

Why Customs Union for LAS?

- The LAS region has one of the lowest levels of intra-regional trade in the world (11%) despite preferential market access and significant cultural homogeneity*
- In comparison the EU has 60%, ASEAN has 23%
- The International Trade Centre's recent analysis shows that there is a potential to increase total trade of LAS members by 10% and create at least 2 million additional jobs

[* Source- Available at International Trade Centre, Geneva, website: “League of Arab States’ Regional Integration- Opportunities for Trade and Employment: Executive Summary”]

Positives for an LAS Customs Union

- Trade within the 4 sub-groups like the Maghreb states (Algeria, Libya, Mauritania, Morocco, Tunisia), the Mashreq states (Egypt, Jordan, Lebanon, Syria), the Gulf states (Bahrain, Kuwait, Oman, Qatar, S.Arabia, UAE) and the others (Djibouti, Somalia, Sudan, Yemen) is significantly higher than in overall intra-Middle East and North Africa region (MENA)*
- A great beginning already made- Greater Arab Free Trade Area (GAFTA)- Work in Progress- Has the potential to help immensely in Customs Union negotiations

[* Source-The Institute for Domestic and International Affairs, Inc. (2007) document prepared for Rutgers Model United Nations 2007]

Relevant WTO Legal Provisions

- Article I of GATT- General Most Favoured Nation Treatment
- Article III of GATT- National Treatment on Internal Taxation and Regulation

Relevant Legal Provisions (contd.)

- Article XXIV of GATT- Cornerstone of Customs Union negotiations
- Article XXIV (4)- “..They also recognise that the purpose of a customs union or of a free trade area should be to facilitate trade between the constituent territories *and not to raise barriers to the trade of other contracting parties with such territories.*”

Relevant Legal Provisions (contd.)

- Article XXIV(5)(a) of GATT- “..the duties and other regulations of commerce imposed at the institution of any such union or interim agreement in respect of trade with contracting parties not parties to such union or agreement ***shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union or the adoption of such interim agreement, as the case may be;***”

WTO Understanding on Article XXIV(5)(a)

- *“.. The evaluation under paragraph 5(a) of Article XXIV of the general incidence of the duties and other regulations of commerce applicable before and after the formation of a customs union shall in respect of duties and charges be based upon an overall assessment of weighted average tariff rates and of customs duties collected. This assessment shall be based on import statistics for a previous representative period to be supplied by the customs union, on a tariff-line basis and in values and quantities, broken down by WTO country of origin. The Secretariat shall compute the weighted average tariff rates and customs duties collected in accordance with the methodology used in the assessment of tariff offers in the Uruguay Round of Multilateral Trade Negotiations. For this purpose, the duties and charges to be taken into consideration shall be the applied rates of duty. It is recognized that for the purpose of the overall assessment of the incidence of other regulations of commerce for which quantification and aggregation are difficult, the examination of individual measures, regulations, products covered and trade flows affected may be required.”*
- Source- https://www.wto.org/english/docs_e/legal_e/10-24_e.htm

Legal Provisions (contd.)

- Article XXIV(8)(a)(i)- “duties and other restrictive regulations of commerce (except where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) ***are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and***”

Trade in Services

- Article V(1)(a) of GATS- RTAs permitted provided there is “Substantial sectoral coverage” - implying that no sub-sector or mode of service should be left out.
- Article V(4) of GATS- For members outside an agreement, the overall level of barriers to trade in services within the respective sectors or subsectors should not be raised compared to the level applicable prior to such an agreement.

Customs Union Negotiations- a few suggestions

- Strong Political commitment
- Extensive domestic Industry consultations to ascertain the vulnerability of industries, especially labour intensive ones, to fix low CET. Import quotas intra-CU for vulnerable industry products could be considered.
- Detailed calculations for Article XXIV(5)(a) stipulations
- Careful crafting of detailed Rules of Origin, so that goods primarily originating abroad do not harm nascent/labour intensive industries by minimal value addition within CU.
- Special attention to be paid to Agricultural tariff lines to ensure that distress in agriculture is avoided and agri-processing investment within the CU is encouraged.

Contd.

- Common Customs procedures (including Forms) need to be developed and adopted, even before the Customs Union comes into force. Forms already developed by the UN and WCO could be adopted.
- Special Trade Facilitation measures need to be introduced for products of partners. Fast track or Green Channel clearances for such products till complete removal of border controls
- Agencies to be designated, which would issue “Origin” certificates. They should follow common procedures so that unnecessary disputes are avoided.
- Transport infrastructure, especially at points through which partner country products enter, should be improved on priority basis

Removal of other charges and non-tariff barriers

- Discriminatory local taxes or charges should be identified and removed
- Sanitary and Phytosanitary standards and Technical Regulations have to be harmonised
- Mutual Recognition Agreements to be entered into for designated agencies for issuing sanitary and phytosanitary certificates and Conformity Assessment w.r.t. technical regulations

A simple story

- A farmer died leaving behind three sons and 17 sheep. He wanted his sons to inherit all the sheep.
- A small problem- He wanted the 1st son to get $\frac{1}{2}$ the sheep, the 2nd one to get $\frac{2}{3}$ of the remaining sheep and the youngest to get $\frac{1}{3}$ of what the 2nd son got.
- The sons could not solve the problem. They approached the wise man of the village to help them.
- After pondering for a while, the wise man added 1 sheep from his own flock to the 17.
- The 1st son got 9, the 2nd got 6, the 3rd got 2 and the wise man got back his lone sheep.

Any lessons for us?

- If we work together, we can find solutions to problems.
- Our commitment and belief in a final outcome is extremely important.
- Sometimes the negotiators are too entrapped by the complexities of a problem to think out of the box and devise solutions.
- An independent and experienced resource person, acting as a facilitator/mediator, can look at the broader picture and suggest out of the box solutions



Thank You