

# FITTING THE NETHERLANDS ANTILLES INTO THE VARIOUS INTERNATIONAL TRADE REGIMES

Stepping stone to a Balanced International Trade  
Policy

Conference on International Trade in Curaçao  
June 26 2004

Dr. Rutsel Silvestre J. MARTHA

# World Politics and World Order

- The international trade strategy must be designed with due regard to the dynamics of world politics and the so-called world order.
- Recent work of several authors dispel the major challenges - Recommended readings:
  1. Robert Cooper: **The Breaking of the Nations** (2004): how to deal with a world in which missiles and terrorists ignore borders and where Cold War alliances no longer guarantee security
  2. Amy Chua: **World on Fire** (2003): how exporting of free market democracy breeds ethnic hatred and global instability

# World Politics and World Order

3. Andrew Hurrell & Ngaire Woods (eds.): Inequality, **Globalization, and World Politics** (1999): globalization is increases the gap between rich and poor, which reduces the capacity of governments and international institutions to manage problems effectively

4. Philip Allot: **The Health of Nations** (2002): Old social structures are being overwhelmed by forces of social transformation which are sweeping across political and cultural species.

# World Politics and World Order

5. Thomas L. Friedman: **The Lexus and the Olive Tree** (2000): The tension between the globalization system and the ancient forces of culture, geography, tradition and community.

6. Anne-Marie Slaughter: **A New World Order** (2004): The modern political world, consists of States whose component parts are becoming as important on the international stage as the central/sovereign government.

# International Trade Regimes

- Regional
- Sub-regional
- Trans-regional
- Bilateral
- Universal

**Because of time I will only discuss the  
Universal and Regional Options**

# Strategic Options

**Exclusive regionalism**, (tariff clubs) i.e. becoming part of a customs union or economic and monetary union.

Examples: EU, including the Outermost  
Regions (UPG)  
CARICOM  
MERCOSUR

**Open regionalism**, i.e. promoting parallel trade arrangements with multiple partners

Example: US international trade strategy

# Open Regionalism in the Netherlands Antilles

- 1947: GATT Tariffs Schedule Benelux Part D
- 1957/1964: Treaty Establishing the European Economic Community
- 1989: Facing “EUROPE 1992”
- 1994: Declaration to the Uruguay Round
- 2001: Policy Paper on External Trade Policy

# Fitting the Netherlands Antilles into the FTAA

**All instruments for economic governance, relevant to the FTAA are vested in the Netherlands Antilles (art. 41 Charter of the Kingdom).**

*The Netherlands Antilles are separate and (economically) self-governing territory.*

- The Kingdom of the Netherlands consists of three separate economies.
- The economic governance is an autonomous matter.

# Fitting the Netherlands Antilles into the FTAA

- The Netherlands Antilles are responsible for their own:
  - exchange arrangement and exchange control, and trade policy,
  - fiscal and structural policies,
  - the regulation of foreign investment, and competition,
  - the regulation of property (including intellectual property rights),
  - nature conservation and environment, and technical trade barriers,
  - sanitary and phyto-sanitary measures etc.

# Fitting the Netherlands Antilles into the FTAA

*The local authorities of the Netherlands Antilles possess the exclusive competence to engage the responsibility of their territory internationally in all the areas covered by the FTAA*

- No constitutional objection to the participation of subdivisions of a State in international transactions.
- The three countries, may partake in international relations in the areas of their exclusive jurisdiction.
- The international legal personality of the Kingdom is only formally involved but actual negotiations and implementation are taken care of by the Netherlands Antilles.

# Fitting the Netherlands Antilles into the FTAA

The Netherlands Antilles assumed formal control of their foreign economic and monetary relations as a corollary of their internal economic self governance (*in foro interno, in foro externo*):

- although foreign relations is listed as a within the competence of the Kingdom, the Charter of the Kingdom, stipulates that the organs of the constituent countries ought to be involved as much as possible in the conduct of such Kingdom affair.
- the constituent countries are required to take the interests of the Kingdom into account when taking care of their own competencies.

# Fitting the Netherlands Antilles into the FTAA

- Pursuant to article 27 of the Kingdom Charter, the non-European countries are responsible for the implementation of treaties that have been contracted by the Kingdom and which are binding for their territories.
- Articles 25 and 26 stipulate that the consent of the non-European countries is a *conditio sine qua non* for the conclusion or termination international economic and

# Fitting the Netherlands Antilles into the FTAA

financial agreements in respect of the Netherlands Antilles. Such agreements can be concluded applying solely to one of them[

- Pursuant to Article 28, the Netherlands Antilles can become separate members of international organizations in their own right.
- The case law of the European Court of Justice confirms that the external competences of the European Union in respect of the Netherlands, does not comprise the Netherlands Antilles (*Euratom Opinion*, Opinion 1/78; *WTO Opinion*, Opinion 1/94). Hence, the Netherlands Antilles retain their external commercial policy competencies.

# Fitting the Netherlands Antilles into the FTAA

- Based on their full measure of economic self-government, the countries of the Kingdom are bound by separate Schedules of Concessions and Commitments annexed to the GATT and to the GATS.
- *The Netherlands Antilles are not part of the internal market of the European Union*
- The Netherlands Antilles are overseas countries and territories (the OCT) which are separately subject of the special arrangements for association set out in part four of the EC Treaty.

# Fitting the Netherlands Antilles into the FTAA

- The OCTs are not part of the internal market of the European Union. (See *Leplat* case, C-260/90, the *Antillean Rice Mills* cases, Joined cases T-480/93 and T-483/93, the *Road Air* case, C-310/95, and the *Dutch Antillean Dairy* case (C-106/97).

# **Fitting the Netherlands Antilles into the FTAA**

## **II Compatibility of the relationship between the EU and Netherlands Antilles with FTAA membership.**

- The association arrangement with the European Union does not require the OCTs to eliminate customs duties and other restrictions on products originating from the European Union.

# Fitting the Netherlands Antilles into the FTAA

- The OCTs may, levy customs duties which meet the needs of their development and industrialization or produce revenue for their budgets. These duties may not exceed the level of those imposed on imports of products from the Netherlands (See *Leplat* case, C-260/90).
- *The Netherlands Antilles cannot become a back door to allow the EU to get access to Western Hemisphere markets*

# Fitting the Netherlands Antilles into the FTAA

- Hence, goods and services originating from the Netherlands and the rest of the European Union are treated in the Netherlands Antilles on the most-favored-nations-treatment principle pursuant to the GATT and the GATS.
- As the FTAA will constitute a regional arrangement within the meaning of the WTO law, the concessions to the FTAA participants will be exempted from the most-favored-nations-treatment principle.

# Fitting the Netherlands Antilles into the FTAA

- Consequently, the Netherlands cannot become a back door for the European Union. Their insertion into the FTAA will not allow the EU to get access to Western Hemisphere markets.
- However, if the Netherlands Antilles decide to seek a new, closer status with the EU after they join the FTAA, that status will have to be FTAA-compatible. Otherwise, they will have to withdraw from the FTAA.

# Fitting the Netherlands Antilles into the FTAA

- **III. Limited need for special considerations/exceptions.**
- 
- The Netherlands Antilles constitute an open community, which strives at attracting direct foreign investments, trade in services, particularly tourism.
- The major special considerations that may be required relate to:
  - (a) levying of customs duties which meet the needs of their development and industrialization or produce revenue for their budgets, and
  - (b) to the free movement of workers.

# Fitting the Netherlands Antilles into the FTAA

- **IV Enabling clause in order to avoid complications or difficulties into a process that's already complicated and difficult**
- What will the other 33 nations in the FTAA negotiations think about allowing new parties into the negotiations?
- One should not risk introducing any new complications or difficulties into a process that's already complicated and difficult enough.

# **Fitting the Netherlands Antilles into the FTAA**

- It must be conceded that associating the Netherlands Antilles with the ongoing negotiations, would entail a significant effort and research from offices that are already heavily burdened.
- Therefore, at this stage, the least that should be achieved is a clause which ensures that the Netherlands Antilles can accede to the FTAA at a later stage.

# Fitting the Netherlands Antilles into the FTAA

- A clause drafted along the same lines as Article XII, paragraph 2 of the *WTO Agreement*, would suffice at this stage:

**“Any Western Hemisphere State or separate customs territory possessing full autonomy in the conduct of the matters provided for in the FTAA may accede to the FTAA, on terms to be agreed between it and the Contracting Parties”.**

# FITTING INTO THE WTO

## Current Status:

- Shared Membership with the Netherlands and Aruba
- The Netherlands have surrendered its economic autonomy to the EU
- The Kingdom can no longer represent the trade interests of the Netherlands in the WTO; that is done by the EU.
- The Kingdom is only authorized to represent the trade interests of the Netherlands Antilles and Aruba in the WTO

# FITTING INTO THE WTO

- Since 1947 the Netherlands Antilles has entered a separated tariff schedule for goods under the GATT.
- Schedule was re-entered in 1994.
- Since 1996: agreement *ad referendum* negotiations for a modification of schedule.
- Since 1994 a schedule of commitments for services (GATS)

# FITTING INTO THE WTO

## Towards separate membership

- Legal bases: - Article 12 WTO Agreement
- - Articles 26 and 28 Charter of the Kingdom
- Examples: - Hong Kong SAR, Macao SAR, Taipei SAR
- Prerequisites: - Bring the applied rates into line with the 1947 Schedule

or

- Formally modify the 1947 Schedule under GATT Article XXVIII

# Final Message

- The Netherlands Antilles are already part of various international trade regimes:
  - Bilateral (FCN Treaty with the USA)
  - Transregional (OCT status)
  - Universal (GATT/WTO)

# Final Message

Further work is needed with regard to:

- Regional arrangements (FTAA)
- Sub-regional arrangements (CARICOM)
- Explore the possibilities for improving the FCN Treaty with the USA.