

# **Renegotiation of concessions under the procedures of Article XXVIII of the GATT 1994**

Darlan F. MARTÍ

Market Access Division, WTO Secretariat

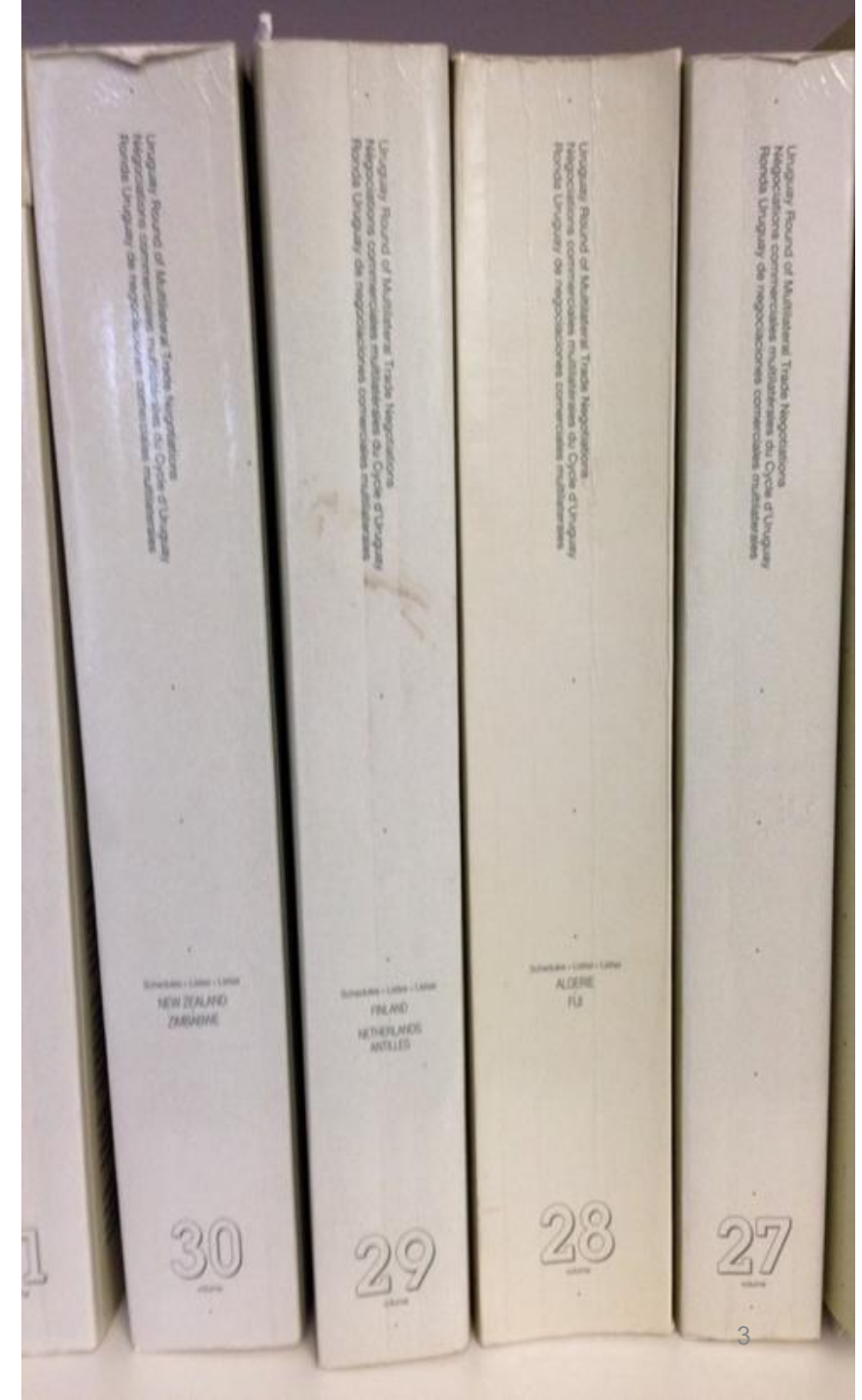
## Outline:

- 1. The basics: importance of predictability in the multilateral trading system and the role of “bound” tariffs**
- 2. GATT Article XXVIII rules and procedures**
- 3. The case of Kazakhstan’s specific commitments in the context of its WTO accession**

# 1. Importance of tariff bindings

# WTO Schedules of concessions

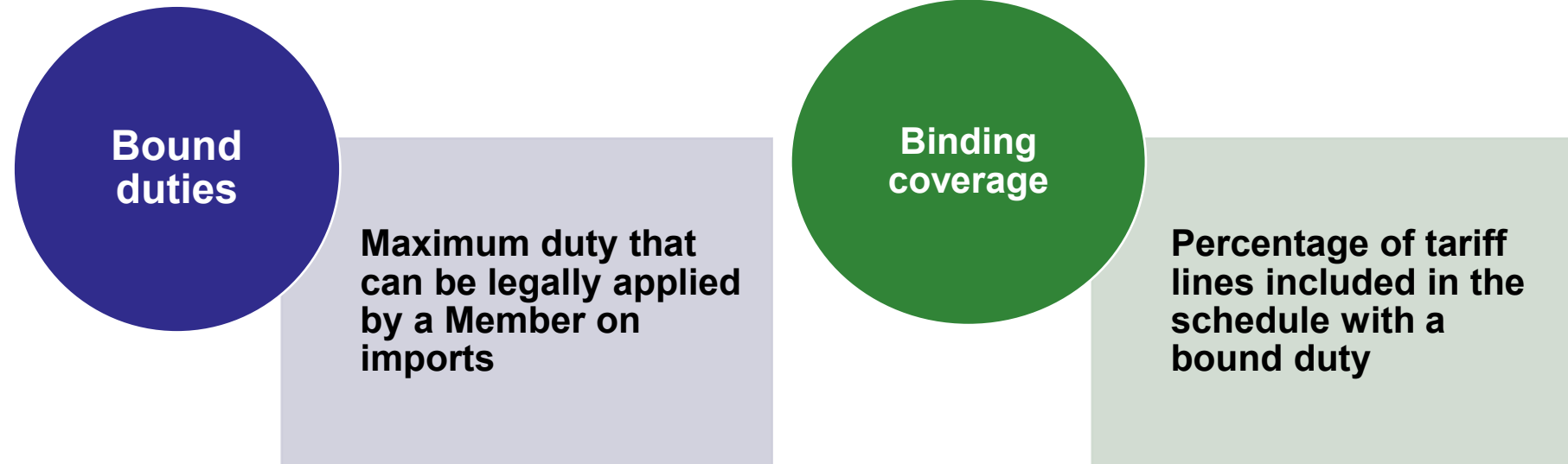
- WTO schedules are legal instruments that describe the treatment a WTO Member must provide to the trade of other Members.
- Each WTO Member has its own Schedule, identified by a roman numeral → *exception of customs union (EU; Switzerland/Liechtenstein)*
- Schedules only exist in one of the three official languages and are never translated.
- Schedules of concessions are international agreements! They can be modified only through specific procedures



# What do we mean by a WTO concession?



1. **Bindings**: each Member agrees **which** and **how many** tariff lines to **bind** in the Schedule (result of negotiations)



2. **Reduction of customs duties and/or**
3. **Elimination of customs duties**
4. **Other concessions?**

*All concessions agreed by a Member are recorded in its WTO Schedule*

# Kazakhstan - tariff profile

Members | Goods Schedules  
eLibrary

<https://goods-schedules.wto.org>

## Kazakhstan

### Part A.1 Tariffs and imports: Summary and duty ranges

Summary		Total	Ag	Non-Ag	WTO member since	2015
Simple average final bound		6.4	9.6	5.9	Binding coverage:	Total 100
MFN applied						Non-Ag 100
Simple average	2024	5.6	8.7	5.1	Ag: Tariff quotas (in %)	2.3
Trade weighted average	2024	5.3	10.8	4.7	Ag: Special safeguards (in %)	0
Imports in billion US\$	2023	61.0	5.9	55.1		

Frequency distribution		Duty-free	0 <= 5	5 <= 10	10 <= 15	15 <= 25	25 <= 50	50 <= 100	> 100	NAV in %
		Tariff lines and import values (in %)								
Agricultural products										
	Final bound	6.0	43.3	23.8	20.6	3.3	2.6	0.1	0.4	18.2
	MFN applied	2024	11.7	40.6	22.8	20.3	2.4	1.8	0.1	0.3
	Imports	2023	9.4	30.2	28.4	22.0	0.9	7.5	1.4	0.1
Non-agricultural products										
	Final bound	16.3	45.4	28.6	9.6	0.0	0	0	0	6.2
	MFN applied	2024	27.4	39.6	25.5	7.5	0.0	0	0	5.6
	Imports	2023	30.0	35.3	23.8	10.6	0.1	0	0	7.5

# Article II of the GATT 1994: Schedules of Concessions



“1.a. Each contracting party shall accord to the commerce of the other contracting parties treatment no less favourable than that provided for in the appropriate Part of the appropriate Schedule annexed to this agreement.”



“1.b The products (...) shall, on their importation into the territory to which the schedules relates, and subject to the terms, conditions or qualifications set forth in that Schedule, be exempt from ordinary customs duties in excess of those set forth and provided therein.”



Treatment can be more favourable:  
**bound tariffs vs.  
applied tariffs**

# However, there are many reasons why Schedules may need to change



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**Transposition of Schedules:** adjustments to the bound tariff codes or tariff descriptions needed to match more recent versions of the Harmonized System Nomenclature (the tariff rates, hence the concessions, remain identical)

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**Tariff reductions and tariff elimination:** plurilateral negotiations may require to bind existing tariffs at a lower rate (e.g. Pharma Agreement, Information Technology Agreement)

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**Tariff increase:** several possible reasons, including the implementation of a Common External Tariff in the context of Customs Unions which require the application of rates that are higher than those that have been bound (see reference in GATT Article XXVI:6)

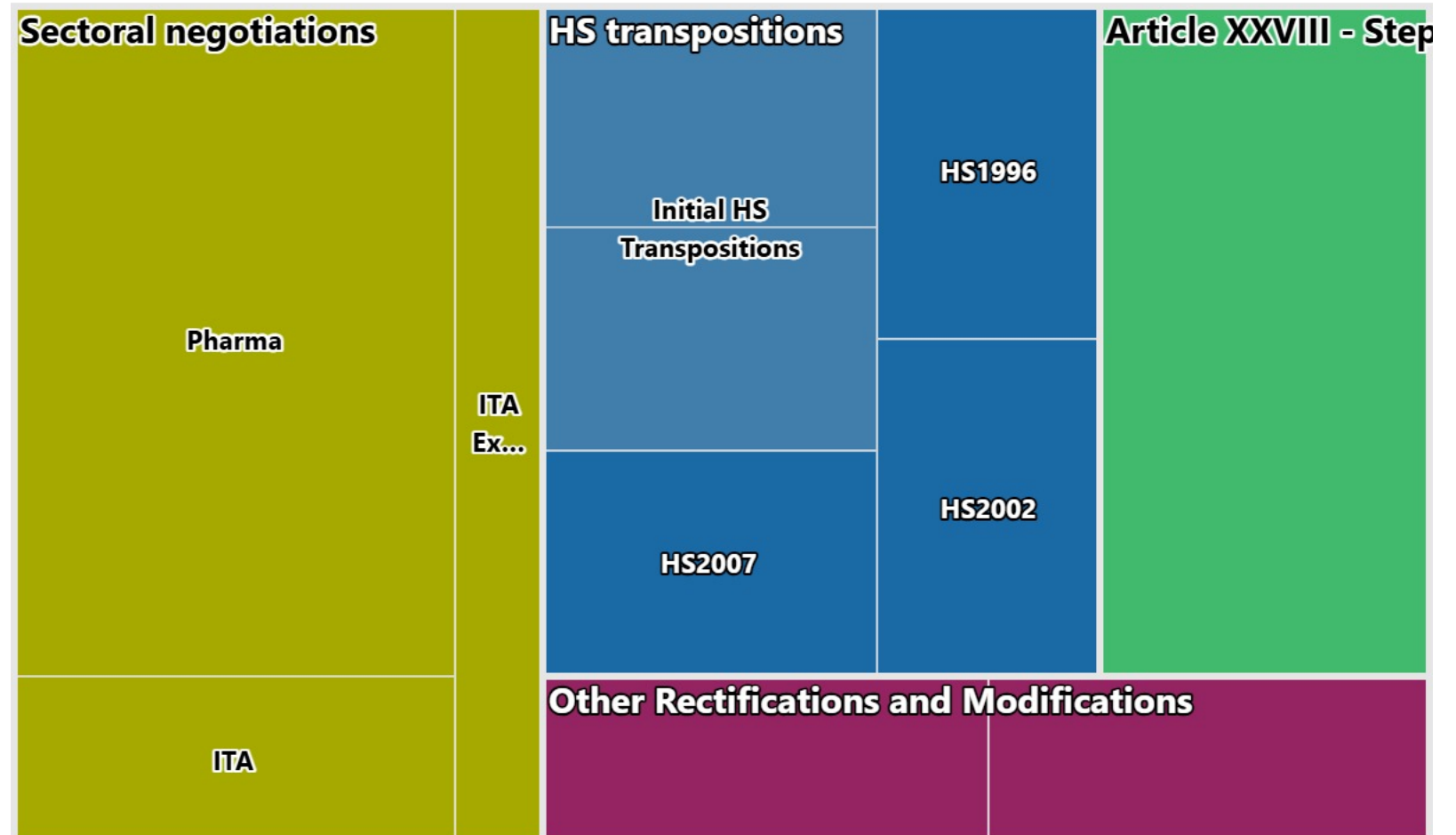
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NB: these are *permanent* changes to the Schedules and tariff concessions, different from temporary tariff increases or the application of any surcharges.

Schedules are dynamic instruments for example:

Switzerland

[Switzerland | Goods Schedules eLibrary](#)



## 2. GATT Article XXVIII: rules and procedures

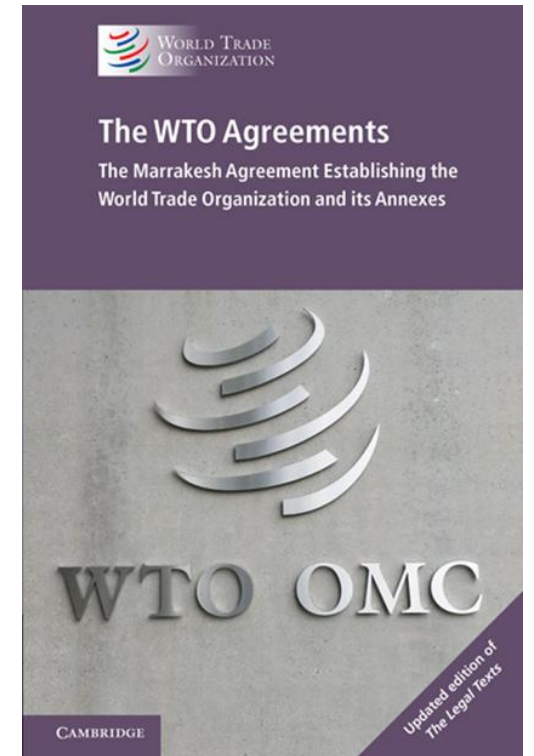
# Renegotiations under GATT Article XXVIII

## Relevant rules and procedures



1. [Article XXVIII of the GATT 1994](#)
2. Interpretative Notes (*Ad Note*) to Article XXVIII
3. [UR Understanding on Article XXVIII of the GATT 1994](#)
4. 1980 Procedures for Negotiations under Article XXVIII  
(See [BISD 27S/26-28](#))
5. 1980 Procedures for Modification and Rectification of Schedules (See BISD 27S/25-26)

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# Modification of Schedules: Article XXVIII of the GATT 1994



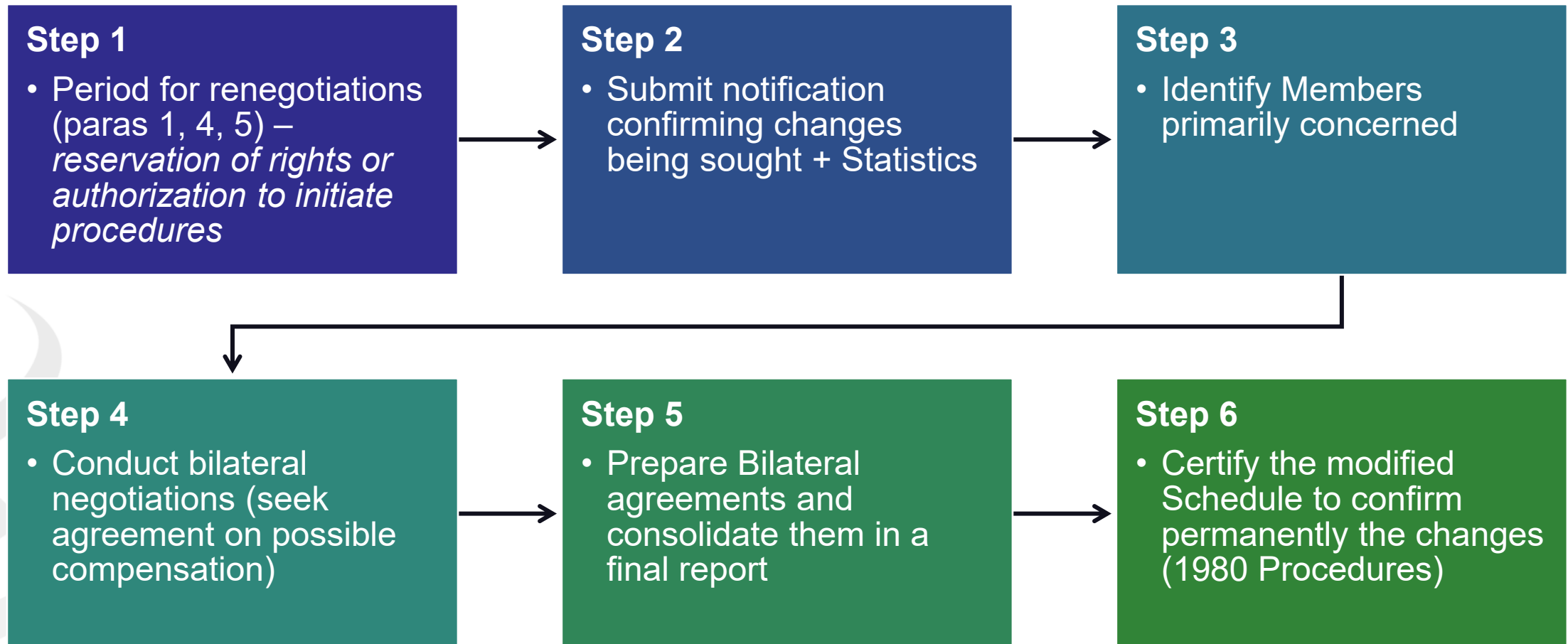
## Paragraph 1:

- A contracting party **may**,
- by **negotiation and agreement** with the **contracting parties primarily concerned**, and
- subject to **consultation** with any other contracting party having a **substantial interest** in such concession,
- **modify or withdraw** a concession
- included in the appropriate schedule annexed to this Agreement.

## Paragraph 2:

- In such negotiations and agreement,
- which **may include provision for compensatory adjustment** with respect to other products,
- the contracting parties concerned shall endeavour to maintain
- a general level of **reciprocal and mutually advantageous concessions**
- **not less favourable** to trade than that provided for in this Agreement prior to such negotiations.

# Steps of renegotiations under GATT Article XXVIII



# Step 1: Time-period for renegotiations



- **Para. 1 + Ad Note:** between 6 and 3 months before the conclusion of the triennial period, the first period beginning on 1 January 1958 (Current: 01.01.2024 – 31.12.2026)
- **Para. 4:** At any time, in special circumstances, if authorized by the other Members
- **Para. 5:** At any time during a triennial period, in case the Member reserved this right *before* the conclusion of the corresponding three-year period  
(KSA reservation: G/MA/434, circulated after the deadline)

## Step 2: Notifying the start of the modification procedures

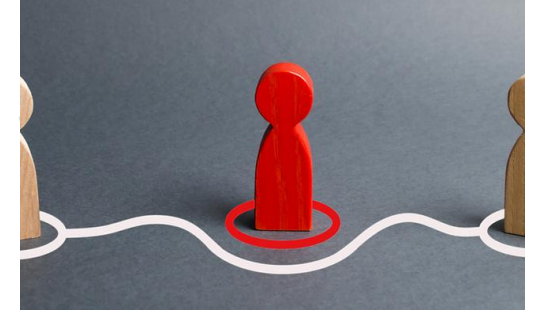


*“A CP intending to negotiate for the modification/withdrawal of concessions should transmit a **notification** to that effect to the secretariat which will distribute it to all other contracting parties in a **secret document**” (para 1. 1980 Guidelines)*

1. List of tariff lines to renegotiate (at the national tariff line level)
2. Indicate all Members with INRs
3. Indicate if intention is to “modify” or “withdraw” the concession (partially or in full). If modify, indicate how.
4. Import statistics: by value, country of origin, for the last three years available.
5. If the concession involves specific, mixed or compound duties, must also submit data on volume.
6. Indicate compensatory adjustments (in the notification or as soon as possible)

# Step 3: With whom to renegotiate?

Para 4, 1980 Guidelines + Para 5, UR Understanding



- “Any Contracting Party which considers that it has a
- Principal or a Substantial Supplying Interest in a concession which is to be the subject of negotiation and consultation under Article XXVIII
- should communicate its claim in writing to the CP (intending to modify the concession)
- with supporting evidence,
- and at the same time inform the secretariat.
- Claims of interest should be made within ninety days following the circulation of the import statistics
- If a claim of interest is not recognized, the CP making the claim may refer the matter to the Council

# Step 3: With whom to renegotiate?

Members “**primarily concerned**”:



**90 days**  
claim of interest

- 1. Initial Negotiating Rights (INRs)**
- 2. Principal supplying interest (PSI)** Import and export criteria  
+ *consult with Member(s) with a “**Substantial interest**”*

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**Para 3 Understanding:  
Only MFN trade!**

# Initial Negotiating Rights (INRs)



- No formal definition. Reference in the GATT: with whom the “*concession was originally negotiated*”
- GATT 1947 bilateral agreements/informal working documents
- WTO: in principle, appear in the Schedule of concessions.
- In practice, it could be difficult to determine whether there is any Member holding INRs for a specific concession
- Gives right to “negotiate” and “to seek compensation”, Art. XXVIII:3(a)

# INRs: example

SCHEDULE CLVIII - KINGDOM OF SAUDI ARABIA

This schedule is authentic only in the English language

PART I - MOST-FAVOURLED-NATION TARIFF  
SECTION I - AGRICULTURAL PRODUCTS  
SECTION I-A - TARIFFS

HEADNOTES:

10. Carrageenan is included in HS 13023900

Tariff item no. (HS 2017)	Ex	Description of products	Base rate of duty		Bound rate of duty		Implementation period		Special safeguard	Initial negotiating right	Other duties and charges (%)	Earlier legal instruments	Other terms and conditions
			Ad val. (%)	Other	Ad val. (%)	Other	From	To					
1		2	3.A	3.B	4.A	4.B	5.A	5.B	6	7	8	9	10
0805		Citrus fruit, fresh or dried.											
0805.10.00		- Oranges			10					DO, HN, UY	0	SAU/05	
0805.2		- Mandarins (including tangerines and satsumas); clementines, wilkings and similar citrus hybrids :											
0805.21.00		- - Mandarins (including tangerines and satsumas)			13					DO, HN, UY	0	SAU/05	
0805.22.00		- - Clementines			13					DO, HN, UY	0	SAU/05	
0805.29.00		- - Other			13					DO, HN, UY	0	SAU/05	
0805.40.00		- Grapefruit, including pomelos			10					DO, HN	0	SAU/05	
0805.50		- Lemons (Citrus limon, Citrus limonum) and limes (Citrus aurantifolia, Citrus latifolia)											
0805.50.10		- - Fresh lemons			10					DO, HN, MX, UY	0	SAU/05	
0805.50.20		- - Dried lemons			15					DO, HN, UY	0	SAU/05	
0805.90.00		- Other			12					DO, HN, MX	0	SAU/05	

# Principal Supplying Interest

(based on import statistics)



WORLD TRADE  
ORGANIZATION

- The CP that has had, over a **reasonable period of time** prior to the negotiations,
- a **larger share in the market** of the applicant CP than a CP with which the concession was initially negotiated
- or would have had such a share in the absence of **discriminatory quantitative restrictions** maintained by the applicant CP
- Not appropriate to determine that more than one CP, or in exceptional cases (near equality) more than two CPs, had a principal supplying interest.

*AD Note, para 4*



# Principal Supplying Interest

(based on export statistics)



AD Note, para 5 +  
Understanding, para 1

- “CONTRACTING PARTIES may exceptionally determine that a contracting party has a principal supplying interest if the concession in question affects trade which constitutes a major part of the total exports of such contracting party.”
- ... the Member which has the highest ratio of exports affected by the concession (i.e. exports of the product to the market of the Member modifying or withdrawing the concession) to its total exports shall be deemed to have a principal supplying interest..”

# Substantial Interest

- Not capable of a precise definition
- The Members with a “significant share” in the market of the CP seeking to modify or withdraw the concession
- or would expect it to have in the absence of discriminatory quantitative restrictions AD Note, para 7 affecting their exports
- *How much is “significant”?*

WTO Practice: > 10% of import share



# Step 4: Conducting the negotiations



- Circulation of the G/SECRET (3 languages at the same time)
- 90 days from date of circulation of the G/SECRET, Members claiming INR, PSI, SI send a communication (official letter) to the Member proposing the changes (via the mission + copy Secretariat)
- Claim of interest to specify: 1) type of right(s); 2) for which tariff line(s)
- The renegotiating Member acknowledges in writing (bilaterally) whether or not the claims are recognized (response letter, copy the Secretariat)
- These communications are not circulated to Members (Secretariat keeps record)

# Step 5: Notification of conclusion of negotiations



## 1. **Bilateral report** (para 5 + Annex B, 1980 Guidelines)

- Upon completion of each bilateral negotiation
- Joint letter signed by the parties
- Changes in the schedule
- Circulated by the Secretariat (G/Secret)

## 2. **Final report** (Para 6 + Annex C, 1980 Guidelines)

- Upon completion of all negotiations
- Agreement/no-agreement
- Consultations
- Circulated by the Secretariat (G/Secret)

## ANNEX B

## MODEL

SECRET<sup>1</sup>

Results of Negotiations Under Article XXVIII for  
the Modification or Withdrawal of Concessions in the  
Schedule of .....

Initially Negotiated with .....

CHANGES IN SCHEDULE .....<sup>2</sup>A. Concessions to be withdrawn

Tariff item number	Description of products	Rates of duty bound in existing schedules

B. Bound rates to be increased<sup>3</sup>

Tariff item number	Description of products	Rates of duty bound in existing schedules	Rates of duty to be bound

C. Reduction in rates of bound in existing schedules<sup>3</sup>

Tariff item number	Description of products	Rates of duty bound in existing schedules	Rates of duty to be bound

D. New concessions on items not in existing schedules

Tariff item number	Description of products	Rates of duty at present in force	Rates of duty to be bound

## ANNEX C

## MODEL

SECRET

## NEGOTIATIONS UNDER ARTICLE XXVIII

Report by the delegation of \_\_\_\_\_ relating to negotiations  
under Article XXVIII with respect to Schedule \_\_\_\_\_

1. Negotiations resulted in agreement with:

Country ..... (SECRET/-/Add.-)

" ..... (SECRET/-/Add.-)

etc.

2. Agreement was not reached with:

.....

3. Consultations have been held with:

.....

## Step 6: Introduce the modification

### 1980 Procedures for the Modification and Rectification of Schedules



### Notification

The initiating Member submits the draft change(s) to its Schedule (G/MA/TAR/RS)



### Review

All WTO Members have 3 months to review the proposed change(s)



### Certification

The DG certifies the changes at the end of the 3-month period and in the absence of objections by Members (WT/Let)

### 3. Specific commitments made by Kazakhstan

# Membership to the EurAsian Economic Union (EAEU) and accession to the WTO



- EAEU CET may be higher than WTO concessions ➔ Kazakhstan cannot apply CET rates without violating tariff concessions made at the WTO
  - Seek authorization of the EAEU to apply exceptions to the CET; or
  - Either permanently modify the rates bound at the WTO
- Procedures under Article XXVIII are foreseen in Article XXIV:6 of the GATT
  - European Union: e.g. Croatia
  - CARICOM: Haiti; Surinam
  - ECCAS: Gabon
  - ECOWAS: Benin; Burkina Faso; Cabo Verde; Côte d'Ivoire; Guinea; Mali; Niger; Senegal; Sierra Leone
  - EAEU: Kyrgyz Republic; Armenia

# Specific accession commitments



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Report Of The Working Party On The Accession Of The Republic Of Kazakhstan  
(WT/ACC/KAZ/93)

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Fully implement all tariff concessions made in the context of Kazakhstan's accession and apply them for at least 3.5 years (until May 2024)

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Initiative negotiations to modify concessions that need to be aligned with the EAEU CET under specific procedures foreseen in the Report: similar but not identical to those of Art. XXVIII

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Only increase tariffs after an agreement, including possible compensation, has been found with each and all “affected Members”

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If no agreement is found, the matter should be deferred to the General Council

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# Resources on Schedules of concessions & Article XXVIII negotiations

## Goods Schedules e-Library

- <https://goods-schedules.wto.org/member/saudi-arabia-kingdom-of>

## Secretariat annual report on the situation of Schedules:

- [G/MA/W/23/ and its revisions](#)

## WTO Analytical Index (GATT Article II; GATT Article XXVIII):

- [https://www.wto.org/english/res\\_e/publications\\_e/ai17\\_e/gatt1994\\_art2\\_oth.pdf](https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art2_oth.pdf)
- [https://www.wto.org/english/res\\_e/publications\\_e/ai17\\_e/gatt1994\\_art28\\_oth.pdf](https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art28_oth.pdf)

## Secretariat report on status of Article XXVIII negotiations

- [G/MA/W/123 and its revisions](#)



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