

Modification of Tariff Schedules of WTO members

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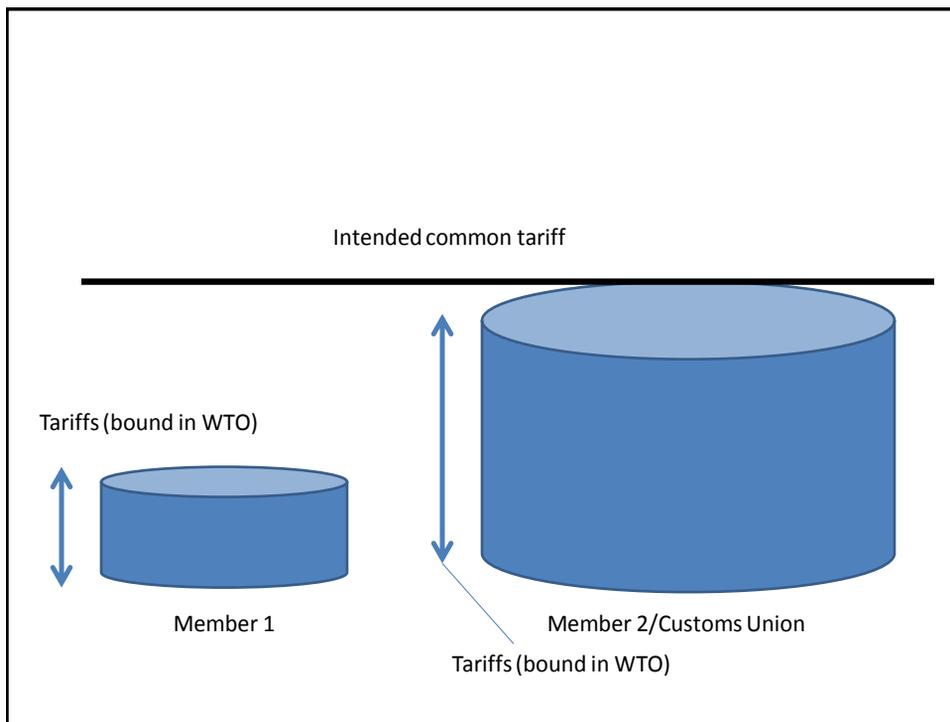
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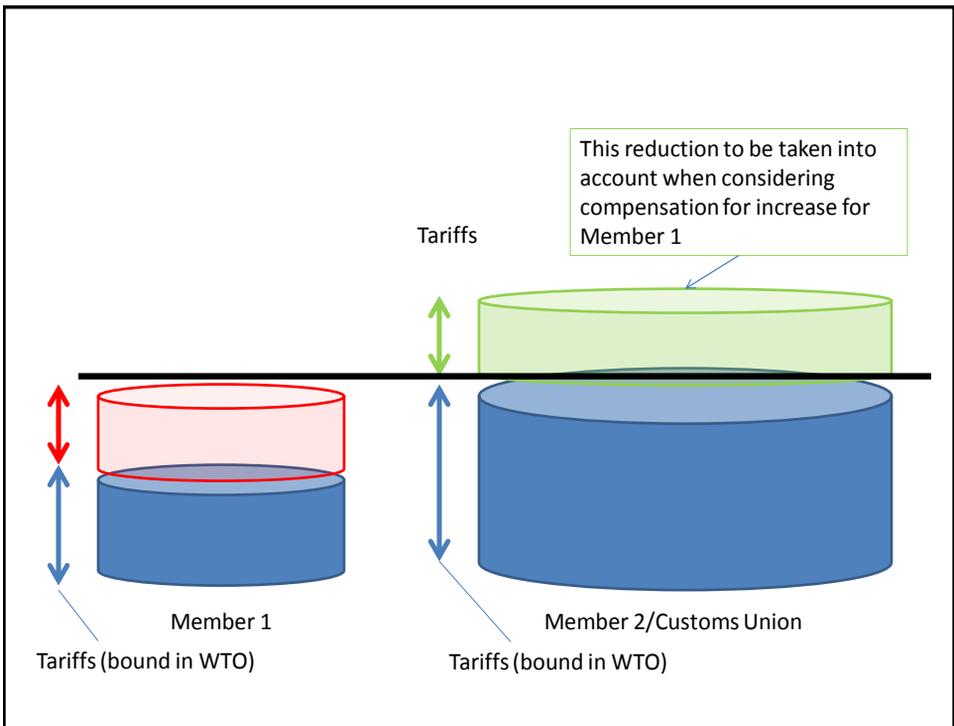
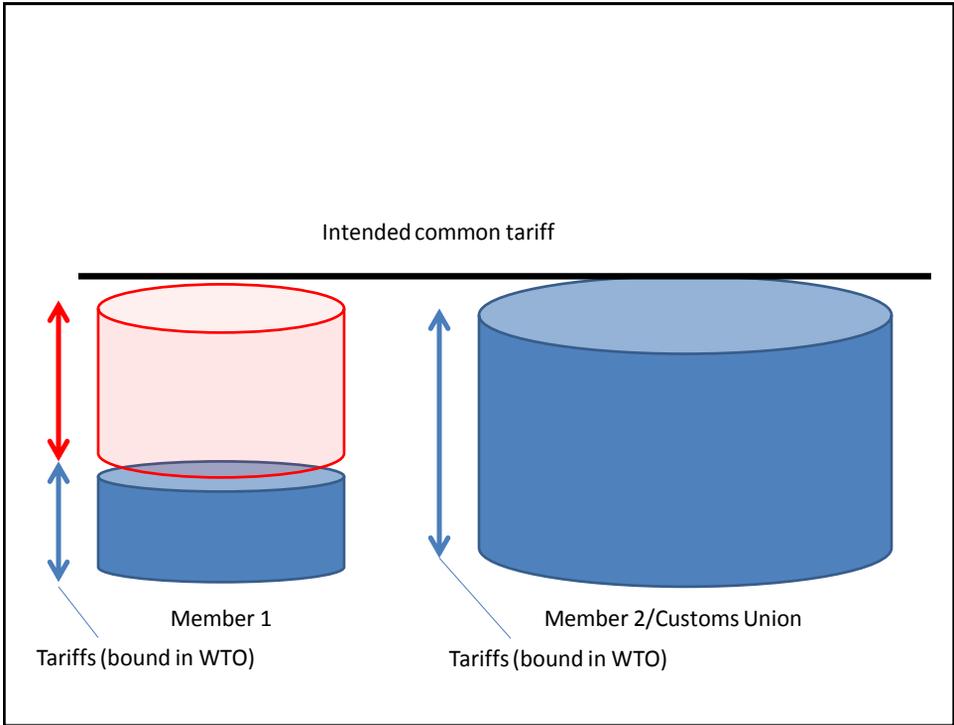
Tariff renegotiations in the WTO (1)

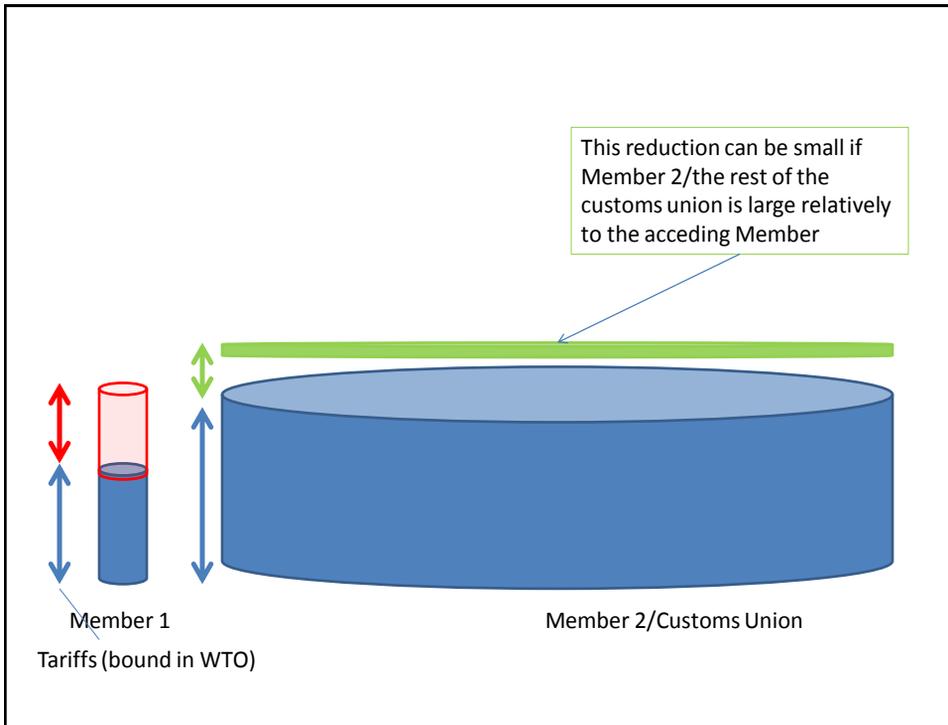
- A WTO tariff binding can be modified or withdrawn (“renegotiated”)
- Renegotiations are governed by Article XXVIII of the GATT 1994
- A WTO Member may wish to renegotiate a tariff binding as a result of a change in policy preferences
- That may be also the occasion of a creation or enlargement of a customs union
 - FTAs and CUs are governed by Article XXIV
- Article XXIV:6 cross-references Article XXVIII for this purpose

Key legal texts

- Article XXVIII & *Ad* (interpretative) Notes
- Understanding on the Interpretation of Article XXVIII of the General Agreement on Tariffs and Trade 1994
- 1980 Decision about Procedures for negotiations under Article XXVIII







Tariff renegotiations in the WTO (2)

- Where the Member acceding to the Customs Union wishes to increase its tariff beyond the level bound in the WTO, it has to negotiate with
 - Members with initial negotiating rights (INRs)
 - Members with a principal supplying interest
- Also, consult with Members with a substantial interest

Tariff renegotiations in the WTO (3)

- INR holders are set out in the Schedule
 - e.g. 10 different INR holders in Armenia's schedule, on a range of products
- Criteria and procedures for determining who has a principal supplying interest:
 - Larger market share than the INR holder
 - Concession affects a major part of exports
 - Highest ratio of affected exports as compared to all exports
 - Recognition of interest by modifying/withdrawing Member or referral to Council
- Only trade on an MFN basis to be taken into account
- Substantial interest
 - "concept not capable of precise definition"
 - In practice, 10 percent of the trade share

Tariff renegotiations in the WTO (4)

- Member proposing to modify should communicate its intention to the Secretariat and should transmit detailed information
 - In the case of CU accession/enlargement, the entire tariff schedule may be withdrawn
- Within 90 days, any contracting party which considers that it has a principal supplying interest or a substantial interest in a concession should communicate its claim to the Member and the Secretariat (with information)
- Recognition of interest or referral to the Council

Tariff renegotiations in the WTO (5)

- The right of a Member to modify its schedule is absolute; does not depend on successful negotiations with affected Members
- However, Member seeking modification or withdrawal of tariff concessions is expected to provide compensatory concessions on other products
 - E.g. tariffs, tariff-rate quotas, also non-tariff barriers
- If agreement is not reached, affected Members get the right to withdraw substantially equivalent concessions initially negotiated

Tariff renegotiations in the WTO (6)

- Two important time limits
 - Retaliatory withdrawal of concessions must take place within 6 months of the withdrawal or modification
 - in practice frequently extended in CU-related Article XXVIII negotiations
 - 30 day period should be allowed after notification by the retaliating Member

Tariff renegotiations in the WTO (7)

- Outside of the customs union context, the “compensation” can occur by lowering tariffs on other products by the modifying Member
 - Or tariff-rate quotas or non-tariff barriers or anything else agreed upon by the Members
- In the CU context, it is tariff lines within the CU’s external tariff that have to be reduced (or other compensatory concessions to be granted)
- However, compensation may already occur (at least partially) when the CU external tariff is lower for some products than the (bound) tariff of the acceding Member
 - This is already suggested by Article XXVI:6
 - See text on next slide

Article XXIV:6

“If, in fulfilling the requirements of subparagraph 5 (a), a contracting party proposes to increase any rate of duty inconsistently with the provisions of Article II, the procedure set forth in Article XXVIII shall apply. In providing for compensatory adjustment, due account shall be taken of the compensation already afforded by the reduction brought about in the corresponding duty of the other constituents of the union.”

Tariff renegotiations in the WTO (8)

- Overall, the procedures can be complex and lengthy
 - Certain past negotiations have taken several years
 - E.g. the EU notified the final report on the 2004 enlargement negotiations in 2013
- May require extensive line-by-line negotiations with numerous trading partners
 - Together with affected WTO Members and Eurasian Economic Union partners and institutions
- Other WTO Members' experience can provide guidance but are not necessarily indicative, in the light of the particular individual circumstances
- Very little publicly available information (e.g. on WTO website); confidential character of renegotiations

State of play and questions (1)

- On January 1, 2010, Russia, Belarus and Kazakhstan launched the Eurasian Customs Union (ECU).
- In January 2012, the three countries agreed to even closer economic ties, by signing the agreement to form a "common economic space"
- This led to the creation of the Eurasian Economic Union (EAEU), which was started in January 2015
- At that time, Armenia became the fourth member
- Kyrgyz Republic joining in May 2015
- With some exceptions, the initial common external tariff schedule of the EAEU has been closely aligned with the tariff schedule of the Russian Federation.

State of play and possible questions (2)

- Possible questions to be asked
 - How does the common external tariff schedule of the EAEU compare to the (new) EAEU Members' WTO tariff bindings?
 - How do the upcoming changes and transition periods affect the analysis?
 - Russia's implementation period for its WTO tariff commitments; resulting impact on EAEU tariff schedule?
 - Average tariff to drop to 7.9% in 2020?
 - How does this compare to individual EAEU Members' (bound) tariffs? Individual tariff lines? Intervening period?