Council of the European Union

Brussels, 19 November 2019
(OR. en)

13662/19

Interinstitutional File:
2019/0245 (NLE)

WTO 296

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	COUNCIL DECISION on the position to be taken on behalf of the European Union within the General Council of the World Trade Organization as regards the adoption of a decision on the review of the Understanding on Tariff Rate Quota Administration Provisions of Agricultural Products ('TRQ Understanding')

COUNCIL DECISION (EU) 2019/…

of …

on the position to be taken on behalf of the European Union within the General Council of the World Trade Organization as regards the adoption of a decision on the review of the Understanding on Tariff Rate Quota Administration Provisions of Agricultural Products ('TRQ Understanding')

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(4) in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) On 22 December 1994, the Marrakesh Agreement Establishing the World Trade Organization (the 'WTO Agreement') was concluded by the Union by Council Decision 94/800/EC[1] and entered into force on 1 January 1995.

(2) Pursuant to paragraph 1 of Article IV of the WTO Agreement, the Ministerial Conference of the World Trade Organization ('WTO') has the authority to take decisions on all matters under any of the Multilateral Trade Agreements.

(3) Pursuant to paragraph 2 of Article IV of the WTO Agreement, in the intervals between meetings of the Ministerial Conference the functions of the Ministerial Conference are to be conducted by the General Council of the WTO.

(4) Pursuant to paragraph 1 of Article IX of the WTO Agreement, WTO bodies usually take decisions by consensus.

[1] Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ L 336, 23.12.1994, p. 1).

(5) In December 2013, the Ninth Session of the WTO Ministerial Conference adopted a Ministerial Decision on Understanding on Tariff Rate Quota Administration Provisions of Agricultural Products, as defined in Article 2 of the Agreement on Agriculture (WT/MIN(13)/39) (the 'TRQ Understanding') that governs the management of tariff rate quotas of agricultural products.

(6) Pursuant to paragraph 13 of the TRQ Understanding, a review of the operation of the TRQ Understanding is to commence no later than four years following its adoption, taking into account experience gained up to that time. The objective of this review is to promote a continuing process of improvement in the utilisation of tariff rate quotas.

(7) In accordance with paragraph 13 of the TRQ Understanding, the Committee on Agriculture proceeded with the review of that Understanding in 2018. The review findings will be presented to the December 2019 meeting of the General Council of the WTO in the form of a report issued by the Committee on Agriculture (Report No G/AG/29 'Review of the Operation of the Bali Decision on TRQ Administration' of 31 October 2019).

(8) Given the lack of consensus among WTO members on the substantive amendments to the TRQ Understanding, the report recommends prolonging the review period until the end of 2021, so that a consensus on substantive amendments may be reached. The report further includes recommendations intended to increase the transparency of TRQ administration.

(9) In its December 2019 meeting, the General Council of the WTO should be invited to consider the adoption of the recommendations laid down in Annex 2 of Report No G/AG/29 in the form of a decision on the review of the TRQ Understanding.

(10) It is appropriate to establish the position to be taken on the Union's behalf in the General Council of the WTO, as the decision to be adopted will be binding on the Union.

(11) In the General Council of the WTO, the Union is to be represented by the Commission, in accordance with Article 17(1) of the Treaty on European Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf within the General Council of the World Trade Organization (the 'General Council of the WTO') in its December 2019 meeting shall be based on the draft decision by the General Council of the WTO adopting the recommendations made to the General Council of the WTO by the Committee on Agriculture in Annex 2 of its Report No G/AG/29 of 31 October 2019 attached to this Decision.

Minor changes to that draft decision may be agreed to by the representatives of the Union in the General Council of the WTO without further decision of the Council.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at …,

For the Council
The President

Committee on Agriculture

G/AG/29

31 October 2019

REVIEW OF THE OPERATION OF THE BALI DECISION ON TRQ ADMINISTRATION

REPORT TO THE GENERAL COUNCIL

1.1. At the Ninth Session of the Ministerial Conference, Ministers adopted the Decision on "Understanding of Tariff Rate Quota Administration Provisions of Agricultural Products, as defined in Article 2 of the Agreement on Agriculture" (WT/MIN(13)/39) ("Bali TRQ Decision"). Ministers instructed the Committee to review and monitor the implementation of Members' obligations established under the Bali TRQ Decision with the objective that the review will promote a continuing process of improvement in the utilization of tariff rate quotas, commencing no later than 2017, taking into account experience gained up to that time.[1] The Review discussions commenced at the October 2017 meeting of the Committee.[2] At the February 2018 meeting, the Committee agreed to the process and timelines to conduct the Review in document G/AG/W/171.[3] As per the agreed procedure, the review has been conducted through open-ended informal meetings of the Committee scheduled back-to-back with the regular meetings of the Committee.[4]

1 Paragraph 13 of WT/MIN(13)/39. No experience with regard to recourse to the Underfill Mechanism has yet been reported.
2 Section 2.2.1 of G/AG/R/86 refers.
3 Section 2.5.1 of G/AG/R/87 refers.
4 At the June 2019 meeting, the Committee agreed to extend the timeline to the October 2019 meeting of the Committee to finalize the report of the Review.

1.2. Members discussed the Review in four informal meetings of the Committee in 2018 on 20 February, 11 June, 25 September and 26 November. A thematic session on tariff quota administration and underfill was held during the November informal meeting involving the participation of industry representatives. The review discussions also benefitted from a number of written contributions by Members. Similarly, in response to requests from Members and as per the agreed process and timelines to conduct the review, the Secretariat prepared a background paper[1] on tariff quota administration and fill rates to facilitate the Review. **Annex 1** includes a list of all written documents considered thus far in the review.

1.3. Members have identified the following themes in the review discussions: 1) Effective implementation and follow-up of the substantive obligations arising out of the Bali TRQ Decision; 2) TRQ transparency requirements; 3) Underfill Mechanism. Some elements[2] raised under each of the three themes, including during the thematic discussions in November, are indicated below.

EFFECTIVE IMPLEMENTATION AND FOLLOW-UP

i. Reallocation of unused-licenses within a TRQ;

ii. Reallocation processes, including regarding country-specific allocations[3];

iii. Sharing of experiences and best practices on improving TRQ fill, including reallocation of TRQs under RTAs.

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1 G/AG/W/183.

2 There is no agreement among Members on these elements or their treatment in the recommendations.

3 Paragraph 9 of the Bali Ministerial Decision on TRQ refers to the reallocation process. Additionally, footnotes 3 and 5 of Annex A of the Bali Decision refer to the rights of Members holding a country-specific allocation specifically in the context of the underfill mechanism.

TRQ TRANSPARENCY REQUIREMENTS

i. Timely and complete TRQ notifications;

ii. Prompt reporting of changes in TRQ administration;

iii. Consistent reporting of fill-rates by all Members with TRQ commitments;

iv. Harmonized notifications practices (e.g. for TRQs not opened or scheduled TRQs with no tariff advantage);

v. Reporting of reasons of underfill;

vi. Sharing of national experiences and best practices of TRQ administration;

vii. Special and differential treatment (Burdensomeness of notification requirements);

viii. Linkage with notification requirements in the area of import licensing procedures;

ix. Technical assistance by the Secretariat towards improved notification compliance of Members.

UNDERFILL MECHANISM

i. Differing obligations of Members (paragraph 4 of Annex A);

ii. Special and differential treatment;

iii. Potential less-than-universal applicability in future;

iv. Linkage between Annex B and paragraph 4 of Annex A;

v. Exploration of the causes of underfill;

vi. Targeted examination of TRQ underfill in some specific sectors;

vii. Practical applicability of the Underfill Mechanism (exploration of reasons including potential complexity, as to why it has not yet been invoked, sharing of experiences, simplification of procedural requirements);

viii. Maintenance of list of underfilled TRQs by the Secretariat.

1.4. On the issue of future operation of paragraph 4 of the Underfill Mechanism and the associated S&D provision, Members' positions were divergent. Some developing Members maintained that S&D provisions in the Bali TRQ Decision should not be diluted; some other Members argued that the S&D treatment for developing countries should not lead to a carve out and that the beneficiary developing countries should rather assume commitments with regard to the management of TRQs taking into account their development status.

1.5. Several Members considered the scope of this review to be limited to seeking improvement in TRQ administration to distinguish it from the market access negotiations. Some others referred to the possibility of taking up the TRQ-related issues in the market access negotiations.

Pursuant to paragraphs 13-15 of the Bali TRQ Decision (WT/MIN(13)/39), the Committee at its meeting on 31 October 2019 agrees to the following recommendations as included in **Annex 2** to this report for consideration by the General Council.

ANNEX 1

List of documents	
G/AG/W/169 10 October 2017	Monitoring and review of Members' obligations established under the Bali Decision on TRQ administration. Note by the Secretariat
G/AG/W/171 9 February 2018	Proposed process for the Review of the Operation of the Bali Decision on TRQ Administration. Note by the Secretariat
G/AG/W/175 18 May 2018 and G/AG/W/175/Add.1 7 May 2019	– European Union submission to Committee on Agriculture on the Process for the Review of the Operation of the Bali Decision on Tariff Rate Quota Administration[1]. Communications from the European Union
G/AG/W/179 6 June 2018	– Review of the Operation of the Bali Ministerial Decision on "Understanding on Tariff Rate Quota Administration provisions of Agricultural Products …"[2]. Submission from the Cairns Group
G/AG/W/183 31 July 2018	Tariff quota administration methods and fill rates 2007-2016. Background Paper by the Secretariat
G/AG/W/186 19 September 2018	Review of Bali Decision on TRQ administration. Submission from Australia
G/AG/W/197 24 May 2019	The Underfill Mechanism of the Bali TRQ Administration Decision Submission on behalf of the Cairns Group

[1] Document G/AG/W/171 of 9 February 2018.
[2] WT/MIN (13)/39 AND WT/L/914 dated 11 December 2013.

ANNEX 2

1. The timeframe specified in Paragraph 14 and footnote 2 of the Bali TRQ Decision for a decision on Paragraph 4 of Annex A shall be extended to the end of 2021. All references to "12th Ministerial Conference" and "31 December 2019" in paragraphs 13-14 and footnote 2 of the Bali TRQ Decision shall be understood to read "13th Ministerial Conference" and "31 December 2021" respectively. In all other respects, the terms of the Bali TRQ Decision remain unchanged. For greater certainty, Members listed in Annex B of the Bali TRQ Decision retain the right to discontinue application of paragraph 4 of Annex A on or after 31 December 2021 if neither a Ministerial Conference nor the General Council has decided to extend paragraph 4 of Annex A by that date.

2. Recognizing the importance of enhanced transparency of TRQ administration and fill rates as well as a timely submission of notifications by Members, and acknowledging that the on-line agriculture notification system should lead to improved harmonization, the Committee agrees on the following:

   a) The Secretariat will prepare a list of the existing TRQ notification practices of Members including in cases where a scheduled TRQ was not opened.

   b) The Committee will initiate discussions on harmonization of Members' TRQ notification practices, including for the TRQ fill rates.

c) The Committee encourages Members to include an explanation in their Table MA:2 notifications in cases where scheduled TRQs are not opened.

d) The Secretariat will regularly update the information on TRQ administration and fill rates as included in G/AG/W/183[1] as well the updated information on which Members have notified fill rates and on questions raised in the Committee concerning fill rates.

3. The Committee agrees to undertake regular reviews of the operation of the Bali TRQ Decision every three years after the conclusion of this review. These regular reviews will include, *inter alia*, an examination of the utilization of the Underfill Mechanism based on submissions by Members.

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[1] The Secretariat background note may specifically include a list of TRQs where no Table MA:2 notification has been submitted or where the fill rate is below 65%.