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ANNEX

ANNEX

to the

Proposal for a

COUNCIL DECISION

**on the position to be taken on behalf of the European Union in the General Council of
the World Trade Organisation**

ANNEX

REVIEW OF THE OPERATION OF THE BALI DECISION ON TRQ ADMINISTRATION REPORT TO THE GENERAL COUNCIL

- (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
- (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 paper⁵ 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.
- (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 elements⁶ 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;

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.

⁵ G/AG/W/183.

⁶ There is no agreement among Members on these elements or their treatment in the recommendations.

- ii. Reallocation processes, including regarding country-specific allocations⁷;
- iii. Sharing of experiences and best practices on improving TRQ fill, including reallocation of TRQs under RTAs.

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 (Burdenomeness 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.
- (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.
- (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

⁷ 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.

negotiations. Some others referred to the possibility of taking up the TRQ-related issues in the market access negotiations.

- (6) Some Members considered that based on Members' submissions, the Committee should examine the reasons why the underfill mechanism has not yet been invoked.
- (7) Pursuant to paragraphs 13-15 of the Bali TRQ Decision (WT/MIN(13)/39), the Committee at its meeting on 30 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 ⁸ . 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..." ⁹ . 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

⁸ Document G/AG/W/171 of 9 February 2018.

⁹ 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 or MC13, whichever comes first. [For greater certainty, if neither Ministerial Conference nor the General Council decides, prior to the end of 2021, to extend paragraph 4 of Annex A of the Bali TRQ Decision in its current or a modified form, paragraph 4 of Annex A shall, subject to paragraph 15 of that Decision, no longer apply as of January 1, 2022 [in respect of those Members listed in Annex B, as well as any Member which requests before the end of 2021 to be added to Annex B].]
- (2) In the interim, the Committee on Agriculture ("the Committee") will continue subject to discussions on the application of paragraph 4 of Annex A. [For greater certainty, while this discussion is underway, the Bali TRQ Decision, along with its Annexes, shall be maintained.]
- (3) The Committee will provide recommendations to the General Council with regard to the application of paragraph 4 [of Annex A and in accordance with paragraph 14] before the end of 2021.]
- (4) 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/183¹⁰ as well the updated information on which Members have notified fill rates and on questions raised in the Committee concerning fill rates.
 - (e) The Committee will examine based on submissions by Members the reasons why the Underfill Mechanism has not yet been invoked.
- (5) The Committee agrees to undertake regular reviews of the operation of the Bali TRQ Decision every 3 years after the conclusion of this review. These regular reviews will include, *inter alia*, an examination of the utilization of the Underfill Mechanism by Members based on submissions by Members.

¹⁰ 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%.