



**Ministerial Conference
Ninth Session
Bali, 3-6 December 2013**

**UNDERSTANDING ON TARIFF RATE QUOTA ADMINISTRATION PROVISIONS
OF AGRICULTURAL PRODUCTS, AS DEFINED IN ARTICLE 2
OF THE AGREEMENT ON AGRICULTURE**

DRAFT MINISTERIAL DECISION

The Ministerial Conference,

Having regard to paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization;

Decides as follows:

Without prejudice to the overall conclusion of the Doha Round negotiations based on the single undertaking and to the continuation of the reform process enshrined in Article 20 of the Agreement on Agriculture and agreed in the Doha Development Agenda for negotiations in agriculture¹, Members hereby agree as follows:

1. Tariff quota administration of scheduled tariff quotas shall be deemed to be an instance of "import licensing" within the meaning of the Uruguay Round Agreement on Import Licensing Procedures and, accordingly, that Agreement shall apply in full, subject to the Agreement on Agriculture and to the following more specific and additional obligations.
2. As regards the matters referred to in paragraph 4(a) of Article 1 of that Agreement, as these agricultural tariff quotas are negotiated and scheduled commitments, publication of the relevant information shall be effected no later than 90 days prior to the opening date of the tariff quota concerned. Where applications are involved, this shall also be the minimum advance date for the opening of applications.
3. As regards paragraph 6 of Article 1 of that Agreement, applicants for scheduled tariff quotas shall apply to one administrative body only.
4. As regards the matters referred to in paragraph 5(f) of Article 3 of that Agreement, the period for processing applications shall be, unqualifiedly, no longer than 30 days for "as and when received" cases and no longer than 60 days for "simultaneous" consideration cases. The issuance of licences shall, therefore, take place no later than the effective opening date of the tariff quota concerned, except where, for the latter category, there has been an extension for applications allowed for under Article 1.6 of that Agreement.
5. As regards Article 3.5(i), licences for scheduled tariff quotas shall be issued in economic quantities.
6. Tariff quota "fill rates" shall be notified.
7. In order to ensure that their administrative procedures are consistent with Article 3.2 of that Agreement, "no more administratively burdensome than absolutely necessary to administer the measure", importing Members shall ensure that unfilled tariff quota access is not attributable to

¹ Paragraph 13 of the Doha Ministerial Declaration (Document WT/MIN(01)/DEC/1).

administrative procedures that are more constraining than an "absolute necessity" test would demand.

8. Where licences held by private operators exhibit a pattern of being less than fully utilized for reasons other than those that would be expected to be followed by a normal commercial operator in the circumstances, the Member allocating the licences shall give this due weight when examining the reasons for under utilization and considering the allocation of new licences as provided for under Article 3.5 (j).

9. Where it is manifest that a tariff quota is under filled but there would appear to be no reasonable commercial reason for this to be the case, an importing Member shall request those private operators holding unused entitlements whether they would be prepared to make them available to other potential users. Where the tariff quota is held by a private operator in a third country, e.g. as a result of country-specific allocation arrangements, the importing Member shall transmit the request to the holder of the allocation concerned.

10. As regards Article 3.5(a)(ii) of that Agreement, Members shall make available the contact details of those importers holding licences for access to scheduled agricultural tariff quotas, where, subject to the terms of Article 1.11, this is possible and/or with their consent.

11. The Committee on Agriculture shall review and monitor the implementation of Members' obligations established under this Understanding.

12. Members shall provide for an effective re-allocation mechanism in accordance with the procedures outlined in the Annex A.

13. A review of the operation of the Decision shall commence no later than four years following the adoption of the Decision, taking into account experience gained up to that time. The objective of this review will be to promote a continuing process of improvement in the utilization of tariff rate quotas. In the context of this review the General Council shall make recommendations to the 12th Ministerial Conference², including on whether, and if so how, paragraph 4 of Annex A should be re-affirmed or modified for future operation.

14. The General Council recommendations in relation to paragraph 4 shall provide for special and differential treatment. Unless the 12th Ministerial Conference decides to extend paragraph 4 of Annex A in its current or a modified form, it shall, subject to paragraph 15, no longer apply.

15. Notwithstanding paragraph 14, Members shall continue to apply the provisions of paragraph 4 of Annex A in the absence of a decision to extend that paragraph, except for those Members who wish to reserve their rights not to continue the application of paragraph 4 of Annex A and who are listed in Annex B.

² In the event the 12th Ministerial Conference does not take place by 31 December 2019, the General Council will take decisions on the recommendations arising from the review no later than 31 December 2019 unless Members agree otherwise.

ANNEX A

1. During the first monitoring year, where an importing Member does not notify the fill rate, or where the fill rate is below 65 per cent, a Member may raise a specific concern regarding a tariff quota commitment in the Committee on Agriculture and place this concern on a tracking register maintained by the Secretariat. The importing Member shall discuss the administration of the tariff quota with all interested Members, with the aim of understanding the concerns raised, improving the membership's understanding of the market circumstances¹ and of the manner in which the tariff quota is administered and whether elements of the administration contribute to underfill. This shall take place on the basis of provision of objective and relevant data bearing on the matter, in particular as regards the market circumstances. The interested Members shall fully consider all documentation submitted by the importing Member.² The importing Member shall provide to the Committee on Agriculture a summary of any documentation submitted to interested Members. The Members involved shall advise the Committee on Agriculture whether the matter has been resolved. The interested Members shall, if the matter remains unresolved, provide to the Committee on Agriculture, a clear statement of the reasons, based on the discussions and documentation provided, why the matter requires further consideration. Such documentation and information may also be provided and considered in the same manner during the second and third stages of the underfill mechanism, as a means of addressing and resolving Members' concerns.

2. Once the underfill mechanism has been initiated, where the fill rate remains below 65 per cent for two consecutive years, or no notification has been submitted for that period, a Member may request, through the Committee on Agriculture, that the importing Member take specific action(s)³ to modify the administration of the tariff quota concerned. The importing Member shall take either the specific action(s) requested or, drawing on the discussions previously held with the interested Members, such other action(s) which it considers will effectively improve the fill rate of the tariff quota. If the action(s) of the importing Member lead to a fill rate above 65 per cent or interested Members are otherwise satisfied that lesser fill rates are indeed attributable to market circumstances based on the data-based discussions that have taken place, this will be noted and the concern marked "resolved" on the Secretariat's tracking register and will be no longer subject to monitoring (unless at some future point the process is restarted but, if so, it will be a new three year cycle). If the fill rate remains below 65 per cent, a Member may continue to request additional modifications to the administration of the tariff quota.

3. During the third and subsequent monitoring years, where:

- a. the fill rate has remained below 65 per cent for three consecutive years or no notification has been submitted for that period; and
- b. the fill rate has not increased, for each of the preceding three years, by annual increments of
 - i. at least 8 percentage points when the fill rate is more than 40 per cent;
 - ii. at least 12 percentage points when the fill rate equals or is less than 40 per cent⁴; and

¹ The market circumstances considered may include, inter alia, elements of prices, production and other factors affecting demand and supply in the domestic and international markets, as well as other relevant factors affecting trade such as the existence of SPS measures taken by an importing Member in accordance with the Agreement on Sanitary and Phytosanitary Measures.

² Such documentation may include information on the administration of the tariff quota, as well as data supporting the Member's explanation of the market circumstances of the tariff quota in question and/or of the existence of any SPS measures for the product in question.

³ The actions and remedies taken by the importing Member pursuant to the underfill mechanism shall not modify or impede the rights of a Member holding a country-specific allocation for that tariff quota with respect to their country-specific allocation.

⁴ If the fill rate in any year increases beyond the level specified in 3(b)(ii) the annual increment shall be the one specified in 3(b)(i) in the following year.

- c. the data-based discussions regarding market circumstances have not led to the conclusion among all interested parties these are in fact the reason for underfill; and
- d. an interested Member makes a statement in the Committee on Agriculture, that it wishes to initiate the final stage of the underfill mechanism.

4. The importing Member shall then promptly provide unencumbered access via one of the following tariff quota administration methods⁵: a first-come, first-served only basis (at the border); or an automatic, unconditional license on demand system within the tariff quota. In taking a decision on which of these two options to implement, the importing Member will consult with interested exporting Members. The method selected shall be maintained by the importing Member for a minimum of two years, after which time – provided that timely notifications for the two years have been submitted – it will be noted on the Secretariat's tracking register and the concern marked "closed". Developing country Members may choose an alternative tariff quota administration method or maintain the current method in place. This choice of an alternative tariff quota administration method shall be notified to the Committee on Agriculture under the provisions of this mechanism. The method selected shall be maintained by the importing Member for a minimum of two years, after which time, if the fill rate has increased by two-thirds of the annual increments described in paragraph 3(b), it will be noted on the Secretariat's tracking register and the concern marked "closed".

5. The availability of this mechanism and resort to it by any Member is without prejudice to Members' rights and obligations under the covered Agreements in respect of any matter dealt with under the mechanism and, in the event of any conflict, the provisions of the covered agreements shall prevail.

⁵ The actions and remedies taken by the importing Member shall not modify or impede the rights of a Member holding a country-specific allocation for that tariff quota with respect to their country-specific allocation.

ANNEX B

Barbados
Dominican Republic
El Salvador
Guatemala
United States of America
