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Committee on Agriculture

REVIEW OF THE OPERATION OF THE BALI DECISION ON TRQ ADMINISTRATION

REPORT BY THE CHAIRPERSON TO THE GENERAL COUNCIL

1.1. At the Ninth Session of the Ministerial Conference in December 2013 at Bali, 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) (hereinafter referred to as the "Decision"). The Decision also required a review of its operation commencing no later than end-2017 with a view to improving the rate of TRQ utilization. The future operation of paragraph 4 of the Underfill Mechanism in Annex A of the Decision was specifically mandated to be taken up under the Review as per paragraphs 13-14 of the Decision.

1.2. The Review was concluded when the General Council, at its meeting on 9-10 December 2019, approved the recommendations by the Committee on Agriculture (CoA) contained in Annex 2 to G/AG/29. However, there was no substantive agreement on the issue of the future operation of paragraph 4 of the Underfill Mechanism during the 2017-19 review exercise. Instead, as per paragraph 1 of the approved recommendations in Annex 2 to G/AG/29, Members agreed to defer the timeline for a decision on paragraph 4 of the Underfill Mechanism by two years, i.e. to end-2021.

1.3. The recommendations also allude to a potential fragmentation of the Decision by offering the right to select Members, listed in Annex B of the Decision, to discontinue the application of paragraph 4, should there be no agreement among Members on the future operation of this paragraph. Avoidance of a carve out for certain Members, which the lack of an agreement on the future operation of paragraph 4 within the agreed deadline could potentially trigger, remained an important motivation for several Members to find an agreeable solution on this paragraph in the post-2019 CoA discussions on this matter.

1.4. In these discussions, Members examined in detail as to how current paragraph 4 would operate in practice during the final stage of the Underfill Mechanism. It was noted that the importing Member in the final stage of the Underfill Mechanism under current paragraph 4 is obliged to change the TRQ administration method to either first-come first-served at customs (FCFS) or an automatic unconditional license on demand system - with the option to be chosen based on consultations with the concerned exporting Member(s). The selected administration method would then be maintained for a minimum of two years after which, and provided timely fill rates were notified for those two years, the matter would be "closed" and marked accordingly on the Secretariat Tracking Register.

1.5. Developing importing Members in the final stage of the Underfill Mechanism, under the latter part of current paragraph 4, may choose an alternative TRQ administration method or maintain the current method. The choice of an alternative TRQ administration method would need to be notified to the CoA within the operation of the Underfill Mechanism. The method selected would be maintained for a minimum of two years and the matter would be "closed" provided the fill rate had increased by two-thirds of the annual increments described in paragraph 3(b) of the Underfill Mechanism.

1.6. Based on these discussions, Members achieved a better appreciation of the main sticking point identified in relation to the future operation of paragraph 4 of the Underfill Mechanism, where a developing importing Member does not achieve the required increase in the fill rate while either retaining the current TRQ administration method or using an alternative administration method.

1.7. Members' efforts in reaching an agreement on paragraph 4 principally focussed on finding possible approaches to address this potential outstanding situation for developing importing Members in order to achieve a 'closure' of the underfill matter raised.

1.8. There was a wide support for an approach along a textual suggestion made informally by Costa Rica according to which an importing developing Member that fails to meet the required fill rate standard (i.e. two-thirds of the annual increments described in paragraph 3 (b) of the Underfill Mechanism) after two years in the final stage of the Underfill Mechanism, having used an alternative administration method or maintained the current method in place, would be subject to the standard requirement in the first sentence of paragraph 4, if so requested by interested exporting Member(s). In the absence of such request, the concern would be marked as 'closed' after two years in the final stage even if the required increase on the fill rate was not achieved. This suggestion seeks to ensure that a matter in the final stage of the Mechanism will eventually reach a 'closure' or 'resolution'.

1.9. One additional issue that was raised more recently in this discussion concerned the relationship between the obligations arising from the Underfill Mechanism and specific provisions on TRQ administration an importing Member may have in its Schedule of Concessions. Members generally acknowledged the primacy of concessions and commitments in the Schedules, and that the role of the Decision and its Underfill Mechanism was to promote an effective implementation of scheduled commitments, rather than to modify them. Here, Members were specifically guided by paragraph 5 of the Underfill Mechanism, which explicitly establishes a hierarchy between the obligations under the covered agreements (which, as per Article II:7 of the GATT 1994, include Members' goods schedules) and the provisions of the Underfill Mechanism, by stating that "in the event of any conflict, the provisions of the covered agreements shall prevail".

1.10. Based on discussions, the proposed draft Decision on the future operation of paragraph 4 of the Underfill Mechanism (as shown in Annex to this report) contains the following elements:

- i. Splitting of current paragraph 4 of the Underfill Mechanism into two sub-paragraphs to offer clarity with regard to the 'standard' requirement as in the proposed sub-paragraph 4a), and the special and differential treatment (S&DT) in sub-paragraph 4b);
- ii. The content of the S&DT element in current paragraph 4 is reproduced, without any alteration, in the proposed sub-paragraph 4b);
- iii. In order to address the outstanding situation where a developing importing Member does not meet the required fill rate standard after two years while either retaining the current TRQ administration method or using an alternative administration method, the draft decision proposes to add an additional option in the latter part of sub-paragraph 4 (b) in order to reach the 'closure' of the matter. This would require the concerned developing importing Member to implement the 'standard' requirement in the first part of the current paragraph 4;
- iv. A new footnote 6 is proposed to address the potential concerns that a few Members expressed on the relationship between the obligations arising from the Underfill Mechanism and those contained in importing Members' schedules of concessions. Paragraph 5 of the Underfill Mechanism already clarifies the relationship between the obligations arising from the Underfill Mechanism and Members' rights and obligations under the 'covered agreements';
- v. As an agreement on the future operation of paragraph 4 of the Underfill Mechanism would also lead to the conclusion of the review of the operation of the Bali TRQ Decision pursuant to paragraphs 13-15 of Decision, the draft decision accordingly proposes that these three paragraphs, along with Annex B of the Decision, are rendered non-operational.

1.11. Paragraph 14 of the Decision requires that the General Council recommendations in relation to paragraph 4 of the Underfill Mechanism shall provide for S&DT. In this regard, the draft Decision containing recommendations for the future operation of paragraph 4 retains the current S&DT provision under the proposed sub-paragraph 4b), as it states that a developing importing Member in the final stage of the Underfill Mechanism may maintain the current TRQ administration method or use an alternative administration method, and achieve a resolution of the matter by showing the required increase in the fill rate. This option, as in current paragraph 4 of the Decision, remains unchanged. When, in the following two years, the importing developing Member does not achieve the required increase in the fill rate under these circumstances, the proposed Decision may require that Member to apply the 'standard' requirement as in the first part of current paragraph 4 (i.e. first-come first-served at the customs or automatic licensing). It should be noted that the requirement to apply that provision is not automatic even after those two years. Instead, the proposed obligation would apply only based on request by the concerned exporting Member(s). In case no request is made, despite the importing developing Member not meeting the required fill rate standard, the underfill matter would be marked as 'closed'.

1.12. The Committee on Agriculture reconvened its 99th regular meeting on 9 November 2021 to take up the suspended agenda item 2 D(i) on the implementation of the Bali Decision on TRQ administration. **At that meeting, the Committee agreed to forward the draft Decision¹ in Annex to this report to the General Council for consideration and for its subsequent submission to the Twelfth Ministerial Conference (MC-12) for a decision by Ministers.**

¹ Some Members indicated that they would need additional time to consult with their capitals.

Annex

The Ministerial Conference,

Having regard to paragraph 1 of Article IX of the Marrakesh Agreement establishing the World Trade Organization (the "WTO Agreement");

Noting the Ministerial Decision of 7 December 2013 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-WT/L/914) dated 11 December 2013 (hereinafter referred to as the "Bali Decision on TRQ Administration");

Recalling the recommendations of the Review of the operation of the Bali Decision on TRQ Administration in Annex 2 to G/AG/29 approved by the General Council at its meeting on 9-10 December 2019;

Recognizing that paragraph 1 of the aforementioned recommendations set the deadline of 31 December 2021 for a decision on the future operation of paragraph 4 of Annex A of the Bali Decision on TRQ Administration;

Decides that:

1. Paragraph 4 of Annex A of the Bali Decision on TRQ Administration shall be read as follows:

4.a. The importing Member shall then promptly provide unencumbered access via one of the following tariff quota administration methods^{5,6}: 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".

4.b. 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". At the request of an interested Member, the provisions under paragraph 4(a) shall apply if after the two years the fill rate has not increased at least by two-thirds of the annual increments described in paragraph 3(b). If no request is made, the concern shall be marked as "closed".

2 Henceforth, paragraphs 13-15 of the Bali Decision on TRQ Administration, along with Annex B, are rendered non-operational.

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.

⁶ In the event of a conflict, the specific provisions on tariff quota import arrangements specified in the importing Member's Schedule of Concessions shall prevail to the extent of the conflict.