



**REVIEW OF THE OPERATION OF THE BALI MINISTERIAL DECISION ON
"UNDERSTANDING ON TARIFF RATE QUOTA ADMINISTRATION
PROVISIONS OF AGRICULTURAL PRODUCTS..."¹**

SUBMISSION FROM THE CAIRNS GROUP TO THE 87TH MEETING
OF THE COMMITTEE ON AGRICULTURE IN JUNE 2018

1 BACKGROUND

1.1. The Understanding on tariff rate quota administration provisions of agricultural products, as defined in article 2 of the Agreement on Agriculture, (WT/MIN (13)/39) (hereinafter known as the Bali Decision on TRQs) establishes in paragraph 13 that the review of the operation of the Decision shall have as objective "to promote a continuing process of improvement in the utilization of tariff rate quotas".

1.2. As stated in document RD/AG/28 of 2014, the Cairns Group has already highlighted the need to comply with three requirements under the Bali Decision on TRQs:

- **Notification of administration changes:** paragraphs 1-5 of the Decision establish procedures that may require changes to a Member's TRQ administration regime. Such changes must be notified to the Committee as part of the existing obligations to update MA:1 notifications.
- **Timeliness of notifications:** Members must comply with their notification commitments, a requirement that is even more important in the context of discussions regarding the current filling rates of TRQs.
- **Completeness of notifications:** The completeness of notifications is important to assess the effectiveness of the "underfill mechanism". This is reflected in Paragraph 6 of the Bali Decision on TRQs which requires that tariff quota "fill rates" be notified. Therefore, Members must include fill rates in their MA:2 notifications.

1.3. In addition to the previous requirements, and in the context of paragraph 13 of the Bali Decision on TRQs and its review process², the Cairns Group would like to provide additional elements to guide discussions on the causes of the underfilling of TRQs and the current practices regarding notification.

2 CAUSES OF THE UNDERFILLING OF TRQS

2.1. There are multiple reasons for the underfilling of TRQs. Some situations are likely related to the specific interaction between bound tariffs, in-quota tariffs, and applied tariffs. Members could also be taking advantage of better market access conditions through preferential agreements. The underfilling could also be explained by changes in the market, the evolution of consumers' tastes and preferences, measures of general application, and the functioning of the TRQ administration system. Even though it is difficult to assess the prevalence of each situation at an aggregate level, for analytical purposes they could be divided into two broad categories: tariff related; and non-tariff related causes.

¹ WT/MIN (13)/39 AND WT/L/914 dated 11 December 2013.

² Document G/AG/W/171 of 9 February 2018.

2.1 Tariff related causes

2.2. Tariffs may be the most significant reason for low fill rates, but fortunately these cases are the easiest to identify (see Annex 1) and quantify. There are at least, three types of situations that fall under this category:

- a. **The applied out-of-quota MFN tariff is the same, or lower than the bound or applied In-quota tariff.** In this case, the applied out-of-quota MFN tariff offers equal or better market access conditions than the one offered under the TRQ. There are also instances where the TRQ was advantageous during the implementation period established in the Members' Schedule but lost its purpose once the bound tariff reached its final level³. Members administer TRQs in these situations in different ways: sometimes they don't open their TRQs at all, while others open their TRQs, but the fill rate is zero.
- b. **The applied In-quota tariff is higher than the applied tariff under preferential arrangements.** This is a more difficult case to assess, as it requires an analysis of market shares and trade under preferential agreements. However, several Members have already identified this case as one of the main reasons for the underfilling of their own TRQs in the Q&A of the Committee on Agriculture (see Annex 2-Answer of Norway).
- c. **The applied In-quota tariff is close to the out-of-quota tariff.** Interested importers might find that the difference between the In-quota tariff and the out-of-quota tariff does not warrant an application for a TRQ. This case is highly sensitive to the product in question, its pricing structure and the perceived costs of applying to the TRQ. It is also the most difficult case to identify.

2.2 Non-Tariff related causes

2.3. These causes are particularly difficult to identify, as they often require a certain knowledge of the domestic market; and the reasoning behind the decisions of importers regarding the use, or not, of a TRQ. This category includes changes in domestic or international markets regarding consumer behaviour and preferences; or even in the industrial organization that may affect competition and trade patterns. It may also include measures that are not specific to TRQ arrangements in agriculture, such as sanitary and phytosanitary requirements and technical regulations.

2.4. The manner in which the TRQ itself is administered may also be a cause. While the Bali Decision on TRQs attempts to address some of the most distortive practices, there are still others that reduce a trader's appetite (or ability) to use a TRQ; for example, convoluted application procedures, inefficient allocation arrangements, restrictive licensing practices, strict eligibility requirements and seasonal restrictions; to name a few.

2.5. Currently, the review of the notifications in the Committee on Agriculture and its Q&A is the main source of information in the assessment of these situations; however, it remains mostly a qualitative tool (See Annex 2). In the case of the TRQ administration systems, the latest document from the Secretariat (TN/AG/S/26/Rev1) dates from March 2013 and should be updated to reflect recent changes in legislation following paragraphs 1-5 of the Bali Decision on TRQs.

3 BRIDGING THE INFORMATION GAP

3.1. According to the last Secretariat's report (G/AG/GEN/86/Rev.31), by May 2018, there were still pending 71 MA:2 notifications for the period 1995-2016; and only 17 of 40 Members with notification commitments were up to date. Tables MA:2 must include the fill rates of all TRQs, as established in paragraph 6 of the Bali Decision; however, document G/AG/W/169 of October 2017 shows that 28 out of 40 Members with TRQ commitments are reporting fill rates using the format circulated by the Secretariat. Also, out of the 12 Members that have not notified fill rates, eight have either not made a single Table MA:2 notification or their latest notified implementation year is earlier than the date of adoption of the Bali Ministerial Decision. There are also cases where Members did not include fill rates in the notification as the concerned TRQs were not opened.

³ Some recently acceded Members have included "extinction clauses" for some TRQs in their Schedules, replacing them with a bound tariff after a previously defined timeframe (see TRQ RUSQ003 for a concrete example).

3.2. The issue of transparency in notifications, the domestic process for the attribution of TRQs, and the issue of the underfilling have been brought to the attention of the Committee on Agriculture on several occasions; and through multiple questions in the context of the review of notifications. Some Members have tried to solve this information gap by including footnotes or additional comments in their notifications. However, this practice is far from being uniform in its format, or universal in its scope; leaving several unresolved questions that are - sometimes - addressed through questions (see Annex 3). In this area, there seems to be a broad space for further improvements.

4 QUESTIONS FOR REFLECTION AND FUTURE WORK

4.1. In order to have a well-informed review of the operation of the Decision (including the "underfill mechanism") the Cairns Group once again underscores the need to fully respect and implement the basic requirements for transparency and monitoring of notifications. In addition, compliance with the Bali Decision on TRQs will be a positive contribution towards fully utilizing the Members' TRQs. This may also help to clearly identify those underfilled/unfilled TRQ that are not attributable to burdensome administrative procedures that may be constraining imports.

4.2. Finally, as the main objectives are to facilitate trade, ensure access to Members' current TRQ commitments, and avoid unnecessary import restrictions, the Cairns Group would like to present several questions for further reflection, and encourages all Members to participate proactively in the discussions regarding the "underfill mechanism".

Regarding the causes of the underfilling of TRQs:

- Could Members that administer TRQs share their experience regarding the most common cause of underfilling of TRQs?
- Could Members share their national experience regarding the most common challenges faced by their firms regarding access and use of TRQs?
- Which causes, among those identified in this document, should be considered for further reflection and analysis in the context of the review process under the Committee on Agriculture?

Regarding the information gap:

- Could Members share their experience regarding the most common problems in the presentation and interpretation of notifications?
- How could Members increase clarity in their notifications regarding the underfilling of TRQs?
- Can Members identify best practices that could be replicated in future notifications?

Regarding future work

- The main objective of this process is to assess and improve the utilization of tariff rate quotas in accordance with paragraph 13 of the Bali Decision on TRQs. From an analytical point of view, this requires having at least a general idea of the most common causes for the underfilling of TRQs. As a first step, the Secretariat could provide a proper estimate of the frequency of tariff related causes (particularly those related to MFN applied versus bound tariffs) for the non-opening/underfilling of TRQs.
 - The latest document from the Secretariat (TN/AG/S/26/Rev1) on TRQ administration systems dates from March 2013. The Secretariat could update it to reflect recent changes in legislation following paragraphs 1-5 of the Bali Decision on TRQs.
 - The Secretariat is putting in place a digital platform for Members to upload their notifications. This could open an opportunity for reviewing the digitalization process and find possible ways to enhance the transparency of the notifications without creating new administrative procedures. We would like to know more about these new tools and a presentation by the Secretariat at the next Committee on Agriculture would be very helpful in guiding future discussions.
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ANNEX 1

EXAMPLES OF UNFILLED TRQS BASED ON TARIFF RELATED CAUSES

Member	TRQ	Implementation period	Implementation		Implementation		MFN Applied Tariff ¹	Fill rate	Notification
			In-Quota Initial Duty	In-Quota Final Duty	Out-of-Quota Initial Duty	Out-of-Quota Final Duty			
Australia	AUSQ002	1995-2000	\$0.47/kg	\$0.47/kg	-	25	0	-	G/AG/N/AUS/107
Brazil	BRAQ001	1995-2004	15	13.5	-	28.8	10	-	G/AG/N/BRA/44
Costa Rica	CRIQ001	1995-2004	55	45	-	45	45	-	G/AG/N/CRI/66
El Salvador	SLVQ001	1995-2004	40	40	0	79	30	-	Not notified*
European Union	EECQ092	2016	-	13	-	15.2	15.2	0	G/AG/N/EU/41
Malaysia	MYSQ001	1995-2004	15	15	-	21	0	-	G/AG/N/MYS/39
New Zealand	NZLQ001	1995-2000	0	0	0	5	0	-	G/AG/N/NZL/103
Norway	NORQ001	1995-2000	344% or 37.61 NOK/kg whichever is highest	344% or 37.61 NOK /kg whichever is highest	405% or 44.25 NOK /kg whichever is highest	344% or 37.61 NOK/kg whichever is highest	5000 NOK/item	-	Not notified**
Norway	NORQ227	1995-2000	94% or 10.33 NOK /kg whichever is highest	94% or 10.33 NOK /kg whichever is highest	295% or 32.29 NOK /kg whichever is highest	251% or 27.45 NOK /kg whichever is highest	27.45 NOK/kg	0	G/AG/N/NOR/97

* El Salvador registered 11 TRQs in Section I-B of their Schedule. However, their latest notification for 2015 only includes 1 TRQ.

** Norway registered 232 TRQs in Section I-B of their Schedule. However, their latest notification for 2017 only includes 22 TRQs.

¹ MFN applied tariff extracted from the latest year available in MACMAP of the ITC; TRQ information was extracted from TAO, WTO.

ANNEX 2

**EXAMPLES OF ANSWERS REGARDING UNFILLED/UNDERFILLED TRQS
BASED ON NON-TARIFF RELATED CAUSES**

Id	Question by	Notification	Answer by	Answer (partial transcript)
85014	United States of America	G/AG/N/NOR/92	Norway	"In general, the quota fill rates depend on fluctuations in consumer demand, domestic prices and production, as well as imports under bilateral tariff quotas or preferential tariffs. Although imports under these arrangements varies due to variations in demand as well, it seems that for certain products, such as poultry and pork, importers have had somewhat higher interest in the bilateral EU quotas than in the WTO quotas (...)"
85040	United States of America	G/AG/N/KAZ/3	Kazakhstan	"(...) a rather high volume of domestic production coupled with the local consumer preferences explain low level of beef imports from third countries."
85082	Thailand	G/AG/N/MYS/39	Malaysia	"The in-quota quantities reflect the domestic demand for the respective products. Note that decision to import remains entirely a business decision. In some cases, despite the fact that tariff quota for the questioned products were made available to the private sector, the quota was not filled due to the lack of demand for imports. In addition, under-utilization of tariff quotas is also due to a number of market related factors, including the devaluation of the Malaysian Ringgit (RM) during the review period."
84052	European Union	G/AG/N/JPN/210	Japan	"(...). Underutilization of some TRQs is mainly related to a decrease in domestic demand for those TRQs (...)."
59007	Canada	G/AG/N/CHE/51	Switzerland	"TRQ No. 28 covers several products, namely barley, oats and maize, all for human consumption. The TRQ is not allocated to specific partners, nor is it subject to special access arrangements. This TRQ is not administered and the quantity is thus not restricted (cf. G/LIC/N/3/CHE/5). The reason for the TRQ underfill is therefore lack of demand."
79068	Canada	G/AG/N/CHN/30	China	"a. After a TRQ is allocated and issued to the applicants, enterprises with TRQ will decide by themselves when and how much they should import based on market conditions. Since Chinese consumers have their unique preferences and consumption habits, demand for imported wheat is mainly concentrated on two specialties: high-gluten wheat for making breads and low-gluten wheat for making cakes. As for the wheat for making steamed bread or noodles, the demand is generally satisfied by domestic supply. The demand for imports is limited and is often stable in quantity."
61012	European Union	G/AG/N/IND/5	India	As per the information available, during the period 2003/2004 to 2009/2010 the domestic price of skimmed milk powder had been generally lower than the international price (Oceania origin) even on FOB basis. Therefore, it would not have been viable to import at a higher cost from the international markets under the TRQ mechanism, since the import of milk powder under TRQ is entirely based on commercial viability.

ANNEX 3

EXAMPLES OF ADDITIONAL INFORMATION PROVIDED BY MEMBERS IN THEIR NOTIFICATIONS AND THE REVIEW PROCESS UNDER THE Q&A

Member	Notification	Position	Text
Australia	G/AG/N/AUS/107	Cover and footnote	AUSQ002 – Unmanufactured tobacco is not included. Australia does not administer tariff quota access for unmanufactured tobacco because the applied rate of duty for all imports is zero. The Australian Border Force does collect the excise equivalent duty on imports of unmanufactured tobacco at the border to ensure consistency in treatment for both imported and domestic goods in the Australian market. Please refer to Australian Customs and Border Protection Notice 2012/42.
Brazil	G/AG/N/BRA/44	Cover	Brazil informs the Committee on Agriculture that the tariff rate quota for apples and pears was not implemented, given that the applied tariffs (10%) were below the in-quota rate (13.5%) for both products. Regarding the tariff rate quota for wheat, Brazil notified to the WTO, in April 1996, its intention to eliminate it. Negotiations with the United States (initial negotiating rights) and Canada (substantial supplier) are not concluded.
Costa Rica	G/AG/N/CRI/66	Additional column and footnote	The tariff quota on this column was not opened, given that the applied tariff is equal or lower than the in-quota bound tariff.
India	G/AG/N/IND/5	Footnotes	¹ No applications were received for the allocation of the tariff quota. Note: The tariff quota for 'sunflower-seed oil or safflower oil and fractions thereof, crude oil' is not included as the government reduced the out-of-quota tariff to a level equal to the bound in-quota tariff of 50 per cent, and therefore decided not to open the tariff quota for 2007/2008.
Japan	G/AG/N/JPN/217	Table and Footnote	JPNQ003 and JPNQ005: listed in the Schedule, are included at the end of the table, because tariff quota systems are not applied to them. These products can be introduced into Japan under the Hozei area (area where collection of customs duties on imports is temporarily reserved) system, without imposed customs duties and required quota certifications, provided that they are used for consumption in the cruise of international maritime vessels and international airlines as described in the Notes to Section I-B of Part I of the Schedule. The statistics of imports for these products under the Hozei area system are not available.
Malaysia	G/AG/N/MYS/39	Answer to Question AG-IMS ID 85083 to the notification G/AG/N/MYS/39	a. TRQs for the identified products were not opened due to that fact that Malaysia's existing MFN applied duty (during the review period) was lower than in-quota tariff, as contained in Malaysia's Schedule of Commitments at the WTO.
Norway	G/AG/N/NOR/97	Cover	The import data in this document provides the Table MA:2 notification for 2017. Both minimum access quotas and current access quotas for cheese, sheep meat, meat to promotional fairs, meat of game, apples, pears, hay and turkey roll are included in the notification. For other current access quotas included in Norway's Schedule, as of 2000 the bound MFN tariff has been at the level of the in-quota tariff. A tariff-only regime applies to these TRQs from 2000 and onwards. Since Norway has fulfilled its commitments, for the current access quotas with a tariff-only regime, these will not be a part of the notification."
New Zealand	G/AG/N/NZL/103	Footnote	New Zealand does not administer tariff quota access for the products listed in Section I-B of its Schedule because the applied rate of duty for all imports of these products is zero. The quantity recorded in column 4 is the total volume of product imported in the calendar year 2017.

Member	Notification	Position	Text
Ukraine	G/AG/N/UKR/21	Answer to Question AG-IMS ID 79049 to the notification G/AG/N/UKR/21	In 2015 the Ministry of Economic Development and Trade of Ukraine did not get any application for obtaining a license on raw cane sugar import. Among the reasons for importers not applying for import licenses in 2015 could be: the unfavorable economic situation in Ukraine (devaluation of national currency about three times in comparison with 2013 and about two times in comparison with 2014 resulting in deterioration of the purchasing power of the population) Consumption of sugar per capita declined steadily in recent years. Import of sugar also is decreasing annually. At the same time, in 2012–2015, domestic sugar producers fully satisfied the domestic needs and created its sugar export potential. In this regard, during 2012–2015 Ukraine had no need for import of raw sugar from cane within the tariff quota.
