

National Interest Analysis [2021] ATNIA 6

with attachment on consultation

Agreement in the form of an exchange of letters between the European Union and Australia pursuant to Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions on all the Tariff-Rate Quotas included in the EU Schedule CLXXV as a consequence of the United Kingdom's withdrawal from the European Union

(Brussels, 4 October 2021)

[2021] ATNIF 9

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

Agreement in the form of an exchange of letters between the European Union and Australia pursuant to Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions on all the Tariff-Rate Quotas included in the EU Schedule CLXXV as a consequence of the United Kingdom's withdrawal from the European Union

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Nature and timing of proposed treaty action

1. The proposed treaty action is an exchange of notes confirming the completion of Australia's internal procedures for the entry into force of the *Agreement in the form of an exchange of letters between the European Union and Australia pursuant to Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions on all the Tariff-Rate Quotas included in the EU Schedule CLXXV as a consequence of the United Kingdom's withdrawal from the European Union* (the proposed Agreement).
2. The proposed Agreement was signed at Brussels on 4 October 2021. The *Letter from the European Union* provides that the European Union (EU) and Australia shall notify each other of the completion of their internal procedures for the entry into force of the proposed Agreement, and that the proposed Agreement will enter into force on the date of the last notification. Australia intends for the proposed Agreement to enter into force in late December 2021 to allow the implementation of the modifications of concessions to commence from 1 January 2022.
3. The proposed Agreement would require the EU to revise its Schedule of Concessions (Goods Schedule) to the GATT, part of the Marrakesh Agreement establishing the World Trade Organization (the WTO Agreement), and implement the changes to tariff-rate quotas (TRQs) in relevant EU legislation. Australia would be required to confirm that it is satisfied with the agreed modifications to the EU's Goods Schedule and that it has amended domestic rules relating to administering the EU's WTO TRQs for Australian beef, sheepmeat and cheese exports, including the issuance of quota certificates.

Overview and national interest summary

4. In July 2018, the EU submitted to the WTO modifications to its Goods Schedule for consideration by WTO members, to account for the United Kingdom's (UK) withdrawal from the EU. A key focus of these modifications was splitting the previous EU28 TRQ volumes between the EU27 and the UK post-Brexit. Australia

subsequently entered into negotiations with the EU on the proposed modifications, pursuant to Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994. The focus of the negotiations was on Australia's country-specific quotas (CSQs) for beef, buffalo, sheepmeat, cheese, sugar and rice. These negotiations concluded in December 2020, on the basis that the EU would make further modifications to Australia's CSQs in its WTO Goods Schedule.

5. The purpose of the proposed Agreement is to memorialise the outcome of negotiations on modifications to the TRQs contained within the EU's WTO Goods Schedule, following the UK's withdrawal from the EU for which Australia had a recognised negotiating right. The EU requires a treaty-level agreement to implement domestically the agreed outcomes. The proposed Agreement would amend the EU's modified TRQs – which it unilaterally implemented on 1 January 2021 – to better reflect the commercial preferences of Australia's affected agricultural exporters and industries (beef, sheepmeat, dairy, sugar and rice).
6. Australia has reached a separate, less-than-treaty understanding with the UK on further modifications to the UK's WTO Goods Schedule for the same CSQs, to better reflect the commercial preferences of Australia's affected agricultural exporters and industries (beef, sheepmeat, dairy, sugar and rice). This less-than-treaty understanding is consistent with Australia's longstanding WTO practice and will become legally binding on the UK in its revised WTO Goods Schedule.

Reasons for Australia to take the proposed treaty action

7. In the circumstances, the proposed Agreement would deliver the best possible outcome available to Australia in the context of negotiations under Article XXVIII of the GATT 1994, the primary objective of which is to ensure a general level of reciprocal and mutually advantageous concessions is maintained when a WTO Member seeks to modify its Goods Schedule. As such, the main purpose of Australia's negotiations with the EU was to ensure that the impact on Australian exporters and industries of the unprecedented withdrawal of the UK from the EU was minimised and, within the context of GATT Article XXVIII, that the EU maintained appropriate market access concessions to Australia following the UK's withdrawal from the EU.
8. The proposed Agreement, and the related understanding with the UK, would better align the EU and the UK's respective WTO TRQs to the commercial preferences of Australia's affected agricultural exporters and industries, and help to restore trading opportunities that were eroded when the EU and the UK unilaterally implemented their proposed TRQ splits on 1 January 2021. The benefits to Australia's affected agricultural exporter and industries include:
 - a. *reapportioning Australia's beef TRQ access between the EU and the UK to reflect the commercial preferences of Australian producers and exporters.* This would be achieved by modifying Australia's country-specific allocation

of the EU's 'Meat of bovine animals/Edible offal of bovine animals' TRQ (from 2,481 tonnes to 3,389 tonnes) and the corresponding UK TRQ (from 4,699 tonnes to 3,761 tonnes);

- b. ***reapportioning Australia's sheepmeat TRQ access between the EU and the UK to reflect the commercial preferences of Australian producers and exporters.*** This would be achieved by modifying Australia's country-specific allocation of the EU's 'Meat of sheep or goats: fresh, chilled or frozen' TRQ (from 3,837 tonnes to 5,851 tonnes) and the corresponding UK TRQ (from 15,349 tonnes to 13,335 tonnes);
- c. ***restoring Australia's sugar TRQ access to the EU market.*** This would be achieved by modifying Australia's country-specific allocation of the EU's 'Raw cane sugar for refining' TRQ from 4,961 tonnes to 9,925 tonnes. This would be a significant improvement to the current, practically equal split of 9,925 tonnes between the EU (4,961 tonnes) and the UK (4,964 tonnes), which is not commercially viable for Australian exporters;
- d. ***restoring Australia's dairy TRQ access to the UK market.*** This would be achieved by modifying Australia's country-specific allocations of the EU's 'Cheese for processing' (500 tonnes to 150 tonnes) and 'Cheddar' (3,711 tonnes to 1,113 tonnes) TRQs and the UK's corresponding 'Cheese for processing' (0 to 350 tonnes) and 'Cheddar' (0 to 2,598 tonnes) TRQs;
- e. ***removing restrictions on Australia's rice TRQ access to the EU market and ensuring no future restrictions in the UK market.*** This would be achieved by removing existing requirements on the timing of delivery of Australian rice under the EU's 'Semi-milled and wholly milled rice' TRQ. The UK has committed not to impose such a requirement in the future for the corresponding UK TRQ. Australia's country-specific allocations of the EU's 'Semi-milled and wholly milled rice' TRQ (240 tonnes) and the corresponding UK TRQ (779 tonnes) would be maintained at current levels, reflecting the commercial preferences of Australian producers and exporters.

- 9. The split of Australia's TRQ access for buffalo meat between the EU (1,405 tonnes) and the UK (845 tonnes) implemented on 1 January 2021 will remain unchanged.

Obligations

- 10. The proposed Agreement would give effect only to modifications to the EU's WTO commitments. It would not bind Australia to any new international obligations in the WTO. While not specifically part of the proposed Agreement, the only action required by Australia to ensure the modifications are legally binding in the WTO would be to accept the EU's modified Goods Schedule when it is formally tabled in the WTO, which procedurally is done by not registering a formal objection to the modified Goods Schedule and is part of regular WTO business.

Implementation

11. Australia will amend the rules under which the Department of Agriculture, Water and the Environment administers the EU's WTO TRQs for Australian beef, sheepmeat and cheese exports, including the issuance of quota certificates. This will include amendments to the *Export Control (Tariff Rate Quotas—General) Rules 2021* and the *Export Control (Tariff Rate Quotas-Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Rules 2021*.

Costs

12. The financial cost and regulation impact is expected to be neutral.

Future treaty action

13. The Agreement does not include any amendment procedures. The need for any future amendments to the concessions covered by the proposed Agreement would likely occur in a new and separate process under Article XXVIII of the GATT 1994 under the auspices of the WTO. Subject to the outcome of that process, the outcome may or may not be subject to Australia's domestic treaty making requirements, including tabling and consideration by JSCOT.

Withdrawal or denunciation

14. There is no termination provision in the Agreement. However, withdrawal or termination of the Agreement may occur if one party withdraws from the WTO Agreement, or with the consent of both parties after consultation between the parties, consistent with Article 54(b) of the Vienna Convention on the Law of Treaties.

Contact details

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ATTACHMENT ON CONSULTATION

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CONSULTATION

15. Peak bodies representing the affected Australian exporters and industries (beef, sheepmeat, sugar, dairy and rice) were consulted prior to, and throughout, negotiations with the EU on the proposed Agreement, as well as the related understanding with the UK. Consultations took the form of face-to-face meetings, phone calls and written correspondence. All relevant peak industry bodies support the outcomes of the proposed Agreement and the related understanding with the UK.
16. In October 2017, the EU and the UK informed WTO Members of their proposed approach to splitting the EU's WTO TRQs to account for the UK's withdrawal from the EU. The Department of Foreign Affairs and Trade (DFAT) informed all relevant peak industry bodies of the proposal and consulted them on Australia's response. The prevailing view of the relevant peak industry bodies was that the EU and the UK's proposed approach to splitting the EU's WTO TRQs would reduce the value of Australia's access to the EU and UK markets.
17. The relevant peak industry bodies expressed to DFAT a united view that Australia should request, as an opening position, for the EU's TRQs to remain unaltered following the withdrawal from the EU of the UK. In parallel, relevant peak bodies indicated to DFAT their expectation that the UK would establish its own import regime, replicating the EU's TRQs, and allow all supplying WTO Members to access TRQs on equivalent terms (that is, without country-specific allocations). This would have effectively doubled Australia's existing TRQ access to the EU and UK markets.
18. DFAT incorporated the recommendations of the relevant peak industry bodies into Australia's opening negotiating positions, and formally requested the replication of EU TRQs in the EU and UK's Goods Schedules. In the absence of the UK replicating the existing EU TRQs, there was also a proposal that the UK 'pool' the country-specific quotas for specific products to create larger and more commercially viable volumes accessible by exporters from any WTO Member (consistent with the WTO's Most-Favoured Nation (MFN) principle).
19. Once it became clear that neither the EU nor the UK were willing to countenance replicating the EU's TRQs in both the EU and UK Goods Schedules or pooling TRQ

volumes, DFAT engaged relevant peak industry bodies to determine preferred alternative outcomes. As part of these consultations, relevant peak industry bodies advised DFAT of their preferred allocation of the EU's TRQs between the EU and the UK, and some requested that Australia seek compensation, including in the form of expanded TRQ volumes and reduced in-quota tariff rates. DFAT incorporated these views into official negotiating positions and held discussions with both the EU and the UK on these proposals.

20. However, in the interests of securing a timely outcome and improving certainty for the affected exporters and industries, particularly in the circumstance of a 'no-deal' Brexit and noting the limitations of GATT Article XXVIII to deal with the unprecedented and unique circumstances of Brexit, the relevant peak industry bodies ultimately agreed to accept the revised modifications to the EU and UK's TRQs, as set out in the proposed Agreement and the related understanding with the UK.
21. In accepting the outcomes of the proposed Agreement and the related understanding with the UK, peak industry bodies expressed their expectation that Australia would seek significant new market access opportunities for the affected agricultural exporters and industries in the context of free trade agreement (FTA) negotiations with the EU and the UK. As part of the final negotiations, DFAT and the former Minister for Trade, Tourism and Investment, Senator the Hon Simon Birmingham, made clear that Australia was taking a realistic and pragmatic approach on the basis that our respective FTA negotiations delivered for the affected industries. DFAT notes that Australia has reached an Agreement In-Principle with the UK on the Australia-UK FTA, which would deliver significant new market access opportunities for the affected industries. Australia is similarly advancing FTA negotiations with the EU.
22. Peak industry bodies representing Australian beef and sheepmeat producers and exporters have requested that the proposed Agreement and the related understanding with the UK be implemented on 1 January 2022. Relevant peak industry bodies have explained that this would enable a smooth transition for quota holders, as it would coincide with the start of the quota administration year for the EU's 'Meat of sheep or goats: fresh, chilled or frozen' TRQ and the corresponding UK TRQ, and the mid-point of the quota administration year for the EU's 'Meat of bovine animals/Edible offal of bovine animals' TRQ and the corresponding UK TRQ. While implementation would be possible after 1 January 2022, it could create additional adjustment costs for Australia's beef and sheepmeat producers and exporters.
23. Following discussions with the EU and the UK, it was proposed that the implementation for each product would occur at the start of the respective quota administration year. This approach simplifies implementation for authorities in Australia, the EU and the UK, and provides greater certainty for Australian exporters since it avoids reconciliation of quota-usage and the reissuance of quota certificates, which would have been required if the changes were implemented mid-quota year. For sheepmeat, cheese, and rice, implementation would occur on 1 January 2022; for beef, 1 July 2022; and for sugar, 1 October 2022. The peak industry bodies

representing beef and sugar have indicated that they could accept the proposed approach to ensure the proposed Agreement can commence implementation on 1 January 2022.

24. Stakeholder consultation list:

- a. Australian Meat Industry Council
- b. Meat and Livestock Australia
- c. Red Meat Advisory Council
- d. Queensland Cane Growers Organisation Ltd (CANEGROWERS)
- e. Australian Sugar Milling Council (ASMC)
- f. Dairy Australia
- g. Ricegrowers Limited (SunRice)