

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION AND DOCUMENTS

Recommendation for a COUNCIL DECISION authorising the opening of negotiations with a view to apportioning the Union's WTO concessions on Tariff Rate Quotas annexed to the General Agreement on Tariffs and Trade 1994 in view of the withdrawal of the United Kingdom from the Union

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the apportionment of tariff rate quotas included in the WTO schedule of the Union following the withdrawal of the United Kingdom from the Union and amending Council Regulation (EC) No 32/2000

Submitted by Department for International Trade on 29 May 2018

SUBJECT MATTER

1. This draft package, comprised of two parts, is being proposed as part of the Commission's preparation for the UK's departure from the EU in relation to their schedule of concessions on goods at the World Trade Organization (WTO).
2. First, the draft Council Decision authorising the opening of negotiations under Article 28 GATT will allow the Commission to open formal negotiations under Article XXVIII of the General Agreement on Tariffs and Trade (GATT) on behalf of the EU with a view to modifying their existing quantitative restrictions known as Tariff Rate Quotas (TRQs) to reflect the withdrawal of UK from the Union. Article 4 of this Council Decision includes reference to the UK being 'authorised to undertake the necessary procedures', as the UK sees fit, to establish its own independent schedule of concessions on goods at the WTO. Second, the draft Regulation will give the Commission the power to unilaterally amend TRQs in their schedule in the event that its Article XXVIII negotiations are not concluded by the time the EU needs to submit a goods schedule that would cover the EU27 without the UK.
3. Each member of the WTO has a set of legally binding tariffs and market access commitments for trade in goods which are set out in that member's goods schedule. These schedules consist of maximum 'bound' import tariffs, as well as other commitments and concessions on, for example, export subsidies and domestic support for agriculture. Some members' schedules also include TRQs. These are commitments to allow limited quantities of specific goods to enter that member's market at a lower than normal tariff. Anything exceeding this threshold is subjected to the Most Favoured Nation (MFN) tariff which cannot exceed the

bound tariff. TRQs can be limited to a specific trading partner or open to imports from all countries. The EU currently notifies more than 140 TRQs, of which 88% are for agricultural products. The remainder are mostly for fish, and there is a handful for manufactured goods. The TRQs in the WTO goods schedule are distinct from those negotiated in bilateral Free Trade Agreements or created unilaterally.

4. Currently, the EU's goods schedule reflects obligations for all 28 member states, including the UK. Consequently, its scheduled TRQs are currently shared between the EU28. In anticipation of the UK's withdrawal from the European Union, the EU is preparing to modify its TRQ quantities by formally opening Article XXVIII negotiations with TRQ holders. In parallel, in leaving the EU, the UK will need to establish its own independent goods schedule which includes setting appropriate UK-specific TRQ figures. The authorisation in Article 4 recognises this. In addition, the UK will need to establish bound tariffs for all products covered by the goods schedule, commitments on domestic support for agriculture and limits on the use of export subsidies, as well as various annexes containing more specific commitments.

SCRUTINY HISTORY

5. Not applicable. This is a new proposal and there is no previous scrutiny history.

MINISTERIAL RESPONSIBILITY

6. The Secretary of State for International Trade has primary responsibility for UK policy on trade. The Secretary of State for Environment, Food and Rural Affairs is responsible for UK policy on agriculture and fisheries. Other Secretaries of State with an interest include the Secretary of State for Exiting the European Union, the Chancellor of the Exchequer and the Secretary of State for Business, Energy and Industrial Strategy.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

7. Regulation of international trade is a reserved matter under the UK's devolution settlements. However, as the regulation touches on devolved matters and is therefore of interest across the UK, the Devolved Administrations have been consulted in the preparation of this EM.

LEGAL AND PROCEDURAL ISSUES

Legal basis

8. The legal base for the proposed Council Decision is Article 218(3) and (4) of the Treaty on the Functioning of the European Union.
9. The legal base for the proposed Regulation is Article 207 of the Treaty on the Functioning of the European Union.

10. The proposals as outlined in the draft Council Decision and draft [Regulation] do not currently impact on Justice and Home Affairs (JHA) considerations. As such, no issues arise under the UK's JHA opt-in.

European Parliament Procedure

11. The European Parliament does not have a role in the adoption of Council Decisions to open negotiations with third countries under Article 218(3) and 218(4) TFEU. However, the provisions of Article 207 TFEU with regard to reporting to the European Parliament on the progress of negotiations will apply if the Council Decision is adopted and negotiations opened.
12. The Regulation will go to European Parliament under the Ordinary Legislative Procedure.

Voting procedure

13. The Council Decision on the Negotiating Directives is intended to be adopted by consensus.
14. The Regulation will be subject to the Ordinary Legislative Procedure under Qualified Majority Vote.

Impact on United Kingdom Law

15. The Government intends to introduce secondary legislation under the Taxation (Cross-Border Trade) Bill which will set out the MFN tariffs and arrangements for the management of UK specific TRQs, including their size and in-quota tariffs, at a national level. The MFN tariffs and TRQs will need to be consistent with the UK's goods schedule at the WTO.

Application to Gibraltar

16. This proposal is not applicable to Gibraltar.

Fundamental rights analysis

17. No fundamental human rights issues arise.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

18. The proposed Council Decision and legislation is not applicable to the European Economic Area (Norway, Iceland and Liechtenstein).

SUBSIDIARITY

19. The proposal doesn't raise subsidiarity issues.

POLICY IMPLICATIONS

20. On 23 June 2016, the EU referendum was held and the people of the United Kingdom voted to leave the European Union. The Government respected the result and triggered Article 50 of the Treaty on European Union on 29th March 2017 to begin the process of exit. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will also continue to negotiate, implement and apply EU legislation.
21. The EU intends to modify its existing TRQ commitments, as set out in its goods schedule to reflect the departure of the UK. To this end, the EU plan to open formal negotiations under Article XXVIII of the GATT. The UK view is that the EU have the right to modify its goods schedule via Article XXVIII negotiations.
22. With respect to their GATT schedules, the EU and the UK have different tasks ahead of them at the WTO. The EU intends to modify its existing TRQs on 120 agricultural products to reflect the departure of the UK. The UK needs to establish its own independent goods schedule of over 10,000 tariff lines by the point of exit. Although the UK will continue to trade on the same terms as now during the Implementation Period, establishing our WTO goods schedule is an essential part of our leaving the EU. It will secure stability and predictability in our baseline terms of trade with the rest of the world, give necessary transparency to UK businesses and WTO members, and will form the baseline for future bilateral negotiations. The UK government has been clear that in establishing our independent goods schedule we are committed to minimising disruption to trade, as well as working fairly and transparently with our international partners. As such, we will seek to replicate as far as possible our existing commitments as set out in the EU's schedule.
23. The UK has been working with the EU on our transition at the WTO, focusing on areas where the EU will wish to amend its commitments to reflect the UK's exit. As set out in a joint letter to all WTO Ambassadors in Geneva in on 11 October last year, it is our shared intention to apportion the current EU28 quotas based on the UK's share of imports under each TRQ during the most recent representative three-year period (2013-4 to 2015-6). The annex to the draft Regulation contains the EU's proposed apportioned TRQ figures. A group of the biggest agricultural exporters (including US, Australia, Argentina, Brazil, Canada, Thailand, Uruguay and New Zealand) have raised concerns with our approach to apportioning the 4% of tariff lines within our goods schedule that are TRQs. We are in discussion with our WTO partners on these issues.
24. Article 4 of the Council Decision includes reference to the UK being authorised to undertake the necessary procedures to set out its WTO goods schedule, including negotiating with other WTO members on TRQ levels.
25. The Regulation will allow the EU to unilaterally amend TRQs in their schedule in the event that negotiations are not concluded by the time the UK leaves the EU. For the UK, secondary legislation under the Taxation (Cross-Border Trade) Bill, will set out the applied MFN tariffs and the size and management of UK TRQs.

26. The processes referred to in this EM relate exclusively to the modification of the EU's goods schedule and the establishment of the UK's independent goods schedule. It is separate from services (GATS) and the Government Procurement Agreement (GPA), for both of which we are also preparing UK only schedules.

CONSULTATION

27. For the past year, Whitehall officials have been working with the Devolved Administrations on the detail of our departure from the EU. This has focused on our overall approach and methodology. We have held a specific session on planning for WTO schedules in February 2017 and have further formal meetings planned in July 2018.
28. Similar conversations on data have been held with industry representatives, including testing the accuracy of our trade data.
29. Several rounds of informal discussions have been held with government representatives from the WTO members with the most interest in the market access afforded by the TRQs in the WTO goods schedule.

IMPACT ASSESSMENT

30. The purpose is to make technical changes to EU and UK WTO obligations with no impact on UK businesses or other stakeholders.

FINANCIAL IMPLICATIONS

31. The purpose is to make technical changes to EU and UK WTO obligations with no impact on UK businesses or other stakeholders.

TIMETABLE

32. The Commission intentions are as follows:
- a. To have the Council Decision on the Negotiating Directives agreed by the end of June 2019.
 - b. To have finalised the Regulation by January 2019.



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