

National Interest Analysis [2016] ATNIA 9

with attachment on consultation

Amendment of Australia's Schedule of Concessions under the General Agreement on Tariffs and Trade 1994 (GATT) and the Marrakesh Agreement establishing the World Trade Organization for Implementation of:

Ministerial Declaration on the Expansion of Trade in Information Technology Products

(Nairobi, 16 December 2015)

and

Ministerial Decision - Export Competition

(Nairobi, 19 December 2015)

[2016] ATNIF 34

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

Amendment of Australia's Schedule of Concessions under the General Agreement on Tariffs and Trade 1994 (GATT) and the Marrakesh Agreement establishing the World Trade Organization for implementation of:

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Nature and timing of proposed treaty action

1. It is proposed that Australia amend its Schedule of Concessions in the *General Agreement on Tariffs and Trade 1994 (GATT)* to give legal effect to commitments made under the World Trade Organization (WTO) Ministerial Declaration on the Expansion of Trade in Information Technology Products¹ (Expanded ITA) and Ministerial Decision on Export Competition² as it relates to export subsidies (Export Subsidy Decision) which were announced at the 10th WTO Ministerial Conference held in Nairobi, in December 2015.

2. Australia's implementation of these commitments requires treaty amendments to Australia's Schedule of Concessions made under the GATT, incorporated into Annex 1A of the *Marrakesh Agreement Establishing the World Trade Organization* (Marrakesh Agreement), the foundation document for the WTO.³ Specifically, giving effect to the commitments under:

- (a) the Expanded ITA will require an amendment to Schedule I, Part I – Most Favoured Nation Tariff, Section II – Other Products; and
- (b) the Export Subsidy Decision will require an amendment to Part IV – Agricultural Products: Commitments Limiting Subsidization, Section II – Export Subsidies: Budgetary Outlay and Quantity Reduction Commitments.

¹ Ministerial Declaration on the Expansion of Trade in Information Technology Products, Nairobi, 16 December 2015, available at

https://www.wto.org/english/thewto_e/minist_e/mc10_e/mc10_docs_e.htm

² Ministerial Decision – Export Competition, Nairobi, 19 December 2015, available at

https://www.wto.org/english/thewto_e/minist_e/mc10_e/1980_e.htm

³ WTO General Agreement on Tariffs and Trade (GATT), available at,

https://www.wto.org/english/docs_e/gattdocs_e.htm

3. It is proposed that Australia amend its Schedule of Concessions pursuant to our GATT and Marrakesh Agreement treaty obligations as soon as possible in order to implement the tariff reductions in the Expanded ITA by 1 January 2017, and to accord with the Export Subsidy Decision.

4. The amendment process will require Australia to notify the WTO Director-General of its intention to modify its current GATT Schedule of Concessions.

Overview and national interest summary

5. The Expanded ITA was adopted on 16 December 2015 in Nairobi, and extends the original WTO Information Technology Agreement (original Agreement) which came into effect on 1 July 1997. Of the 81 WTO Members who are participants to the original Agreement, the Expanded ITA commits 54 Members to eliminate tariffs and other customs duties on 201 technology products. Members agreed to remove tariffs on the majority of products in the Expanded ITA within three years, with reductions for Australia beginning in 2017. Australia's proposed amendment to its Schedule of Concessions (Part I) to implement the Expanded ITA, including the list of products, is at **Attachment A**.

6. The Export Subsidy Decision, adopted on 19 December 2015 in Nairobi, provides for the elimination of agricultural export subsidies, new rules for export credits, and decisions on international food aid and exporting state trading enterprises. The commitment contained in the Export Subsidy Decision is for all WTO Members to eliminate agricultural export subsidy entitlements and is intended to permanently remove a long-standing source of distortion in global agricultural markets.

7. Developed countries (including Australia) agreed to immediately remove scheduled export subsidy entitlements, with developing countries following suit by 2018. Longer elimination time-frames will apply in a limited number of defined cases, such as for least-developed countries, or where developing countries use export subsidies to cover marketing and transport costs. As Australia does not currently use export subsidies, the commitment involves the elimination of the entitlement to use them in the future.

8. The implementation of these commitments through amendments to Australia's Schedule of Concessions is in Australia's national interest. It will benefit Australian industry and consumers by removing barriers to trade in technology products, and support Australian farmers by eliminating the distortions created by agricultural export subsidy entitlements in Australia's export markets. Australia's proposed amendment to its Schedule of Concession (Part IV) to implement the Export Subsidy Decision, including the list of products, is at **Attachment B**.

Reasons for Australia to take the proposed treaty action

The Ministerial Declaration on the Expansion of Trade in Information Technology Products

9. Once implemented, the Expanded ITA will reduce costs and barriers to trade in technology products, which will promote growth of jobs and innovation in the Australian economy. The WTO has estimated that annual trade in the 201 products covered is valued at over AUD1.3 trillion per year, accounting for approximately 10 per cent of total global trade today.⁴ Participants to the Expanded ITA account for approximately 90 per cent of world trade in these products. Some of the products in the Expanded ITA currently face very high tariffs, for example, the tariff for magnetic cards is 30 per cent in some markets.

10. The Expanded ITA will eliminate tariffs on these products, including new-generation semi-conductors, machine tools and instruments, telecommunications satellites, consumer electronics, including GPS navigation systems and video game consoles, and a range of medical devices. Eliminating tariffs on these goods in Australia and globally will benefit Australian consumers by putting downward pressure on end prices. Upstream technology industries such as software design, and downstream industries such as IT service providers, will also benefit from cost reductions. This has the potential to improve the competitiveness of both export and import industries. It is estimated that Australia imports around AUD19 billion worth of goods covered under the Expanded ITA, and exports around AUD3.6 billion.

11. The implementation of the Expanded ITA will have significant benefits for the Australian economy. Information technologies are highly integrated within global value chains meaning barriers to trade can have significant flow on effects for innovation and productivity in other industries. By removing these barriers, implementation of the Expanded ITA will help to create jobs and boost GDP growth. It will also enhance predictability for traders and investors by providing permanent commitments for the included goods.

The Ministerial Decision on Export Competition

12. Achieving the global elimination of agricultural export subsidies has been a longstanding objective of Australian trade policy. The elimination of agricultural export subsidies in global trade was identified as a central goal in the WTO mandate developed at the time of the launch of the WTO Doha Round of negotiations in 2001, and successive Australian governments have worked with agricultural industry groups to achieve this through the WTO since then.

13. The removal of agricultural export subsidies by other WTO Members will significantly benefit Australian farmers by levelling the playing field in many of Australia's agricultural export markets. The Export Subsidy Decision will phase out scheduled export subsidy entitlements worth around AUD15 billion for agricultural commodities across many key Australian sectors including sugar, beef, pork, lamb, dairy, wheat, rice, wine, fruit, vegetables, processed foods and cotton.

14. The Export Subsidy Decision commits Australia to removing its remaining export subsidy WTO entitlements to the value of AUD88 million from Australia's GATT Schedule of Concessions. The practical impact is minimal as Australia has not

⁴ WTO Information Technology Agreement, Remarks by Director-General Roberto Azevêdo, Media Release, 16 December 2016, available at: https://www.wto.org/english/news_e/spra_e/spra104_e.htm

used export subsidies since 1999-2000 when AUD3.7 million was used to subsidise dairy exports. The elimination of Australia's entitlements is a balanced response in view of the benefits Australia will gain through the elimination of other countries' agricultural export subsidy entitlements.

Obligations

15. The Expanded ITA commits Australia (and the other 52 participants) to permanently eliminate all customs duties and other duties and charges, within the meaning of Article II:1(b) of the GATT, on 201 technology related products.

16. The amendment to the Schedule of Concessions to reflect the Expanded ITA would permanently bind Australia to apply zero customs duties and other duties and charges to these products for imports from all countries. Australia currently applies a zero rate of customs duty to the majority (146) of the products. In return, the 52 other participants to the Expanded ITA will also bind their duties on the same products to zero. Participants may apply staging in limited circumstances as per the negotiated schedules. For Australia, the first such rate reduction is effective no later than 1 January 2017, and the elimination of customs duties shall be completed no later than 1 July 2019.

17. The Export Subsidy Decision commits Australia, and other WTO Members, to immediately eliminate its agricultural export subsidy entitlements. The proposed amendment to Australia's Schedule of Concessions removes the export subsidy entitlements for the small number of products where export subsidy entitlements remain. This includes eliminating remaining export subsidy entitlements for pears and certain dairy products (butter, butter oil, skim milk powder, cheese, other milk products), to the value of AUD88 million from Australia's Schedule of Concessions, noting that these subsidies have not been used for over 15 years.

18. As the amended Schedule of Concessions does not list subsidy entitlements for any products, Australia will be prohibited from using export subsidies in any sector in the future.

Implementation

19. The domestic implementation of the amendments to the Schedule of Concessions to reflect the Expanded ITA requires an amendment to the *Customs Tariff Act 1901* by 31 December 2016 in order for the agreement to be implemented by 1 January 2017. The proposed amendment to the Act will revise the tariff rates set out in 'Schedule 3 – Listing of Goods, their classification and duty rates' of the Act in accordance with the Expanded ITA.

20. No changes to legislation or policy are required for domestic implementation of the proposed amendments to the Schedule of Concessions to reflect the Export Subsidy Decision. Australia has not used export subsidies since 1999-2000.

Costs

21. The financial cost of implementing the amendment to the Schedule of Concessions in relation to the Expanded ITA is estimated to be approximately AUD20 million in 2018-19, and AUD60 million in 2019-20. The costs are associated with tariff revenue forgone and the estimates are based on current trade values. The implementation of the proposed amendments to the Schedule of Concessions to implement the Expanded ITA will reduce the regulatory burden for businesses trading in these products. Businesses previously trading under preferential agreements or concession schemes will no longer have the administrative burden previously associated with accessing lower duty rates, for example under an applicable free trade agreement.

22. The financial cost of the amendments to the Schedule of Concessions to reflect the Decision on Export Subsidies is expected to be neutral; the elimination of Australia's remaining agricultural export subsidy entitlements does not change expenditure or revenue. The Export Subsidy Decision will also have a neutral regulatory impact, as its implementation does not require a change to domestic regulation or policy.

Future treaty action

23. Any future change to Australia's Schedule of Concessions, including giving effect to further commitments on information technology or export subsidies, could be made in accordance with the relevant WTO provisions. Any such amendments to Australia's obligations would also be subject to domestic treaty-making requirements, including tabling in Parliament and consideration by the Joint Standing Committee on Treaties.

24. A WTO provision for dealing with the renegotiation of concessions is Article XXVIII of the GATT 1994 entitled "Modification of Schedules". Any increase in tariffs or other trade barriers would need to be negotiated with interested WTO members, who would likely seek compensatory adjustments.

25. Alternatively, Australia could seek to amend its obligations under the procedures in Article X of the Marrakesh Agreement (which requires acceptance by two thirds of WTO members), or in accordance with the *Decision of 26 March 1980 on Procedures for Modification and Rectification of Schedules of Tariff Concessions*⁵ (which provides a simplified procedure for changes, provided no Member objects within a three month period).

Withdrawal or denunciation

26. The proposed amendments to Australia's Schedule of Concessions to implement the Expanded ITA and Export Subsidy Decision may be reversed in the future, but would need to follow a procedure for modification of schedules as outlined

⁵ Available on the WTO website (Reference: L/4962) at https://www.wto.org/gatt_docs/English/SULPDF/90970413.pdf

in the previous section. However, once the amendments have been made to Australia's GATT Schedule of Concessions, it is unlikely that Australia would be able to reverse the amendments that implement the Expanded ITA or Export Subsidy Decision without negotiating compensatory adjustments to other commitments with all WTO Members.

27. Article XV of the Marrakesh Agreement provides for the withdrawal of Members from the WTO, including the GATT, and therefore from Australia's Schedule of Concessions that contains the commitments in the Expanded ITA and the Export Subsidy Decision. Article XV provides that such withdrawal shall apply to all of the multilateral trade agreements annexed to the Marrakesh Agreement. That is, Australia may only withdraw from the WTO as a whole.

28. Any decision by Australia to withdraw from the Marrakesh Agreement would result in Australia losing its Most Favoured Nation status and a range of other rights that its Membership of the WTO provides. Any withdrawal from the WTO would take effect upon the expiration of six months from the date on which written notice of withdrawal is received by the Director-General of the WTO.

Contact details

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Office of Trade Negotiations
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ATTACHMENT ON CONSULTATION

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CONSULTATION

Ministerial Declaration on the Expanded ITA

29. Consultation was undertaken by the Department of Foreign Affairs and Trade (DFAT) and the Department of Industry, Innovation and Science prior to commencement of negotiations. There was strong support for participation in the Expanded ITA by a range of Australian industry groups, including the Australian Industry Group (Ai Group), the Australian Information Industry Association, the Interactive Games and Entertainment Association, the Consumer Electronics Society of Australia, and various companies.

30. The aforementioned industry groups were consulted on the Expanded ITA product list throughout the negotiations (2012 to 2015). During these consultations, the industry groups outlined their priority products for inclusion in the agreement, as well as priority products for staged duty reductions. Consultation with the industry groups primarily took the form of face-to-face meetings, teleconferences and emails.

31. The industry groups were asked to notify their members and seek feedback, and there was a call for submissions process via the DFAT website. Public submissions and enquires were open throughout the negotiation process.

32. States and Territories were notified of the matter through the biannual Commonwealth-State and Territories Standing Committee on Treaties (SCOT) meetings. No issues were raised in this process.

Ministerial Decision on Export Competition

33. The National Farmers' Federation (NFF) and other agricultural industry groups have worked with successive Australian governments to achieve the elimination of export subsidies in global agricultural trade since the launch of the

WTO Doha Round of negotiations in 2001. A draft negotiating text developed in 2008 incorporated a range of global trade reforms, including a specific proposal to eliminate export subsidies. This proposal and the 2008 negotiating text have since become publicly available and were discussed extensively between the Government and Australian stakeholder groups at the time and in subsequent years.

34. DFAT and the Department of Agriculture and Water Resources consulted agriculture and related industry groups in the lead-up to the 10th WTO Ministerial Conference, to discuss the full range of potential agriculture outcomes at that Conference. This included a formal consultation meeting on 6 November 2015.

Views were sought from the following stakeholder groups:

- (a) Australian Dairy Industry Council
- (b) Australian Dairy Farmers
- (c) Australian Food and Grocery Council
- (d) Australian Grain Exporters Association
- (e) Australian Horticultural Exporters' Association
- (f) Australian Livestock Exporters' Council
- (g) Australian Meat Industry Council
- (h) Australian Nut Industry Council
- (i) Australian Oilseeds Federation
- (j) Australian Pork Limited
- (k) Australian Wool Innovation Limited
- (l) Canegrowers
- (m) Cattle Council of Australia
- (n) Dairy Australia
- (o) Grain Growers
- (p) Grains Industry Market Access Forum
- (q) Grain Producers Australia
- (r) Meat and Livestock Australia
- (s) National Farmers' Federation
- (t) Northern Territory Cattlemen's Association
- (u) Office of Horticultural Market Access
- (v) Ricegrowers' Association of Australia
- (w) Sheepmeat Council of Australia
- (x) SunRice
- (y) Wine Australia
- (z) Winemakers' Federation of Australia

35. The outcomes of this consultation were taken fully into account in the development of the Government's negotiating mandate. All responses from stakeholders were supportive of the proposal to remove export subsidies.

