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Official Committee Hansard

JOINT STANDING COMMITTEE ON TREATIES

Korea World Trade Organization rice quotas

MONDAY, 2 DECEMBER 2019

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JOINT STANDING COMMITTEE ON TREATIES

Monday, 2 December 2019

Members in attendance: Senators Ayres, Brockman, Marielle Smith, Mr Broadbent, Mr Josh Wilson, Mr Khalil, Dr McVeigh, Mr Sharma, Ms Thwaites.

Terms of Reference for the Inquiry:

To inquire into and report on:

The Joint Standing Committee on Treaties is appointed under a resolution of appointment which was passed by the House of Representatives on 4 July 2019 and the Senate on 22 July 2019.

WITNESSES

**BEAMISH, Mr Tom, Acting Director, International Law, Advising and Treaties Section,
International Law Branch, Legal Division, Department of Foreign Affairs and Trade 1**

**DAINER, Mr Drew, Acting Director, Agriculture Policy and Negotiations Section,
Department of Foreign Affairs and Trade 1**

**JACENKO, Mr Andrew, Acting Assistant Secretary, Agriculture and Food Trade Branch,
Department of Foreign Affairs and Trade 1**

**MARTIN, Mr Andrew, Acting First Assistant Secretary, Office of Trade Negotiations,
Department of Foreign Affairs and Trade 1**

BEAMISH, Mr Tom, Acting Director, International Law, Advising and Treaties Section, International Law Branch, Legal Division, Department of Foreign Affairs and Trade

DAINER, Mr Drew, Acting Director, Agriculture Policy and Negotiations Section, Department of Foreign Affairs and Trade

JACENKO, Mr Andrew, Acting Assistant Secretary, Agriculture and Food Trade Branch, Department of Foreign Affairs and Trade

MARTIN, Mr Andrew, Acting First Assistant Secretary, Office of Trade Negotiations, Department of Foreign Affairs and Trade

Committee met at 11:02

CHAIR (Mr Sharma): I declare open this public hearing of the Joint Standing Committee on Treaties. We welcome all in the room and anyone listening to the proceedings online. These are public proceedings, although the committee may agree to a request to hear evidence in camera and may determine that certain evidence should be heard in camera. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated as a contempt of parliament. It is also a contempt to give false or misleading evidence to a committee.

In accordance with the committee's resolution of 29 July this year, this hearing is being broadcast on the parliament's website, and the proof and official transcripts of proceedings will be published on the website in due course. Those present today are advised that filming and recording are permitted during the hearing. I remind members of the media who may be listening of the need to fairly and accurately report the proceedings of the committee.

Transcripts of today's proceedings may not be available in time to meet the deadline for questions on notice; therefore, could you please keep track of any questions on notice so that you are able to respond in the time required to ensure the committee can meet its reporting deadlines.

The committee will now take evidence on the agreement between the governments of Australia, China, Thailand, the United States, Vietnam and the Republic of Korea regarding Korea's WTO rice quotas. Although the committee does not require you to give evidence under oath, I should advise you that this hearing is a legal proceeding of the parliament and therefore has the same standing as proceedings of the respective houses.

Committee members would be aware of the letter that, as chair, I received from Senator Birmingham, which was included in the documents. If anyone doesn't have a copy of that I'm happy to share mine. It gives some further background to this item. It was, I think, circulated on Friday. Before we hear from the witnesses, I just want to ensure that committee members are happy for the contents of that letter to be made public so that we can refer to it in hearings; I don't think there is anything sensitive in that. Would you be happy to move that we accept that letter, Senator Brockman?

Senator BROCKMAN: I am happy to move that.

CHAIR: That means the document is accepted and published on the committee's website.

I now welcome our guests from the Department of Foreign Affairs and Trade. I invite you to give an opening statement before we go to questions.

Mr Martin: Thank you to the committee for inviting us here today to provide further detail on the proposed plurilateral agreement between Australia and the Republic of Korea and a number of other countries, as you mentioned, on South Korea's WTO commitments on rice imports. First, I would like to note that the proposed agreement gives effect to negotiations with South Korea pursuant to an existing treaty to which Australia is a party, the WTO agreement, and the rules therein, namely article 13 of the General Agreement on Tariffs and Trade 1994—the GATT 1994. The outcomes of these kinds of market access negotiations are normally reflected in WTO members' goods schedules and are not usually subject to Australia's domestic treaty-making processes. The proposed agreement we are considering today is an additional arrangement to set out how South Korea's new tariff rate quota on rice will be allocated amongst supplying countries.

The negotiations around this arrangement were conducted under unique circumstances. As the committee may be aware, rice is a highly sensitive product for South Korea. When the WTO was established in 1995 South Korea negotiated special treatment for rice, allowing it to maintain a ban on imports for 10 years until 2004 subject to the provision of a fixed quota of 205,228 metric tonnes to provide some form of minimum market access. On the request of South Korea, and following negotiations at the WTO in 2004, WTO members agreed to a further 10-

year extension of this special treatment for rice from 2005 to 2014. As a result the quota was expanded to 408,700 metric tonnes, and Australia was granted a country specific quota of 9,030 metric tonnes.

At the end of this 10-year extension, in 2014, South Korea submitted a proposal to move to a more normalised tariff regime for rice imports, moving away from the strict volume based quota. South Korea's proposal was for a tariff rate quota. This is a two-tiered system under which imports up to a specific volume would be subject to a preferential tariff of five per cent and imports outside the specified volume would be subject to a tariff of 513 per cent. The volume of the preferential tariff rate quota for South Korean rice was to remain at the previous level of 408,700 metric tonnes.

Under WTO rules, upon submission of a proposed modification to a WTO member's goods schedule, other WTO members have an opportunity to object to that proposal. If objections are made, this prevents the proposal from becoming legally binding until the objections are removed. Australia supported South Korea moving its WTO rice imports to a tariff rate quota but objected to the proposal, as we had concerns around the proposed conversion methodology used to establish the 513 per cent tariff and the terms of the tariff rate quota as well as its proposed administration. China, Thailand, the United States and Vietnam also objected. These objections remain in place to this day, meaning that South Korea's rice tariff rate quota remains uncertified at the WTO.

In November 2018, in an effort to resolve the concerns raised by Australia, the US, China, Thailand and Vietnam, South Korea proposed to allocate country specific quotas within the tariff rate quota to those five countries on the condition that each would remove their WTO objections. South Korea proposed volumes for the country specific quotas based on WTO rules and engaged in consultation with each of the five countries, including Australia. In September 2019 agreement was reached on the volumes of those country specific quotas.

South Korea has proposed to implement this arrangement through the plurilateral agreement that we're considering this morning between South Korea and the other five countries. This plurilateral agreement is designed to prevent further delays to the certification of South Korea's proposed tariff rate quota at the WTO and to ensure the new arrangements can be implemented on 1 January 2020, which is the start of South Korea's rice quota administration year.

Under the agreement under consideration, South Korea will grant Australia a country specific quota of 15,595 metric tonnes of rice per annum subject to the preferential five per cent tariff. The only obligation imposed on Australia by the proposed agreement is that we will remove our WTO objection to the proposal. Removing the objection is an action within the remit of the Department of Foreign Affairs and Trade and would be part of the regular administrative work of Australia's permanent mission to the WTO in Geneva. There are no legislative or regulatory changes needed for Australia to implement the proposed agreement, and there are no foreseeable financial costs or other obligations for Australia. In effect, Australia would only gain rights under the proposed agreement.

Should Australia not sign the proposed agreement by the end of the year, the agreement will not be able to enter into force on 1 January 2020 despite South Korea and the United States having already stated publicly their intention for that to happen. If that happens, there is a risk that Australian rice exporters would no longer be guaranteed preferential country specific market access to South Korea for 15,595 tonnes of rice. To receive the preferential five per cent tariff, Australian exporters might instead have to compete with all other WTO members for the remaining global tariff rate quota of 20,000 metric tonnes, failing which they would have to pay the prohibitive 513 per cent tariff.

Throughout our negotiations with South Korea, we have consulted extensively with the Australian rice industry—in particular, with Ricegrowers Limited, which is more commonly known as SunRice. The rice industry is supportive of the proposed agreement due to the benefits which would flow for its exporters given that South Korea excluded market access for rice under the Korea-Australia Free Trade Agreement.

Thank you again, Chair and members of the committee, for the opportunity to attend this hearing today. We would be very happy to answer any questions that you might have.

CHAIR: Thank you so much, Mr Martin. I will start with a couple of questions, and then I'll turn to my colleagues. Can you explain what the previous quota was? We've negotiated a quota of 15,595 metric tonnes. Was it 9,000 in the agreement up until 2014?

Mr Martin: Yes, that's correct. It was 9,030 metric tonnes.

CHAIR: So we've negotiated an increase of about 6½ thousand metric tonnes?

Mr Martin: Yes, that's correct.

CHAIR: Turning to the legal aspects of this: you mentioned at the start of your testimony—and the letter from the trade minister confirmed this—that normally this would be just an adjustment in the country's tariff schedule. Is that right?

Mr Martin: That's correct.

CHAIR: Korea would normally have done that as a unilateral action, submitted in Geneva, and it wouldn't normally go through a treaty-making process?

Mr Martin: Yes, that's correct. That's my understanding.

CHAIR: Why didn't that happen on this occasion? Why haven't they done that? What was the particular sensitivity at work there?

Mr Martin: My colleagues might add to the detail of this, but my understanding is that, as the negotiations were happening between the supplying countries—which are the five that are under question—the expectation all along had been, including from Australia, that it would be included as part of the schedule. South Korea, for its own reasons, decided towards the end that it preferred to do this separate plurilateral agreement including the five countries. That's the basis on which it was proposed and presented to us—that that's how it would be implemented.

Mr Jacenko: Korea had already put forward the proposed global quota back in 2014, to which Australia and the other four parties objected. So, at this point, the global quota exists. It will be in their schedule. It's just a case of the allocation of the shares that have been negotiated; that's in the separate side agreement. So, at this point, to prevent any further delays in implementing going forward, the proposal from Korea, in some form, has been on the table for four to five years. Rice is highly sensitive, as Mr Martin said, in Korea. So there's this legal uncertainty hanging over the heads of the Korean government in a way that this is not yet legally binding in the WTO. To prevent further delays in that legal certification in Geneva and to allow the implementation to occur on 1 January 2020—the start of the marketing year for the rice quota—the Korean government decided to reflect this in this format, which is not necessarily the usual way, but the global quota is reflected in Korea's WTO schedule.

CHAIR: Is it because it takes longer to amend their schedule than it does to negotiate a treaty?

Mr Jacenko: There are possible delays that could happen. Korea would have to effectively retable; it would effectively be like a new proposal. Korea would have to table the proposed splits and shares, and I guess—

CHAIR: Which means every member of the WTO could examine it and object to it?

Mr Jacenko: Correct. So effectively it would be starting another lengthy process, which Korea had already initially started in 2014. So the way they're proposing to do it would allow them to basically implement on 1 January, if all the parties sign and the five parties, including Australia, remove their objection. That would allow the schedule in Geneva to be certified, and it would have legal status.

CHAIR: I want to paraphrase here and make sure I understand it correctly. Korea has sought to proceed down this path because it avoids reopening a can of worms within the WTO—to which every member state can object—about the allocation of quotas within that global quota, and there's a risk that, if we went down the path of amendments to the schedule, it would take longer for this arrangement to enter into force than we are able to achieve under the negotiation of a treaty like this.

Mr Jacenko: That's correct, yes.

CHAIR: Okay, good. My last question is about the industry consultation on this. I take your point that it doesn't ask much of us, as Australia, but there are obviously some significant beneficiaries, including the rice industry. Who are the main stakeholders in this, and what level of consultation have you had with them?

Mr Jacenko: The main stakeholder, as was mentioned in the opening statement, is Ricegrowers Limited, more commonly known in trading as SunRice. They've got the export monopoly under vesting arrangements in New South Wales. They account for about 99 per cent of rice grown in Australia, so effectively they are the dominant, main stakeholder. So we've been engaging with them from the beginning of the discussions, and we're engaging with them, obviously, on a whole range of issues facing the rice industry in terms of trade. On this, they were obviously very interested. They have exported into this market, which is why we've been allocated a share under the new quota. Obviously, as any industry would, they want open, free and fair trade, so they started out wanting a lot more than was potentially going to be deliverable as part of the negotiations. They were also looking at a bunch of other issues relating to packaging and shipping requirements and administration of the quota, so they were interested in us exploring a lot of these issues with Korea, and we did that.

Realistically, given how sensitive rice is in Korea, it wasn't realistic in this form of negotiation to think we were going to basically dismantle Korea's existing import arrangements. They have a state trading import

arrangement where there's one importer that's basically importing on the government's behalf. While SunRice was interested in having access to retail supply chains and changing aspects of the administration, and we attempted to engage in that, SunRice understands that that was going to be a bit beyond the stretch of what was on the table in the negotiations. This was literally about allocating—giving up—the quota share based on historical trade; it wasn't necessarily opening up the whole remit of the import arrangements into Korea, particularly given how sensitive the commodity is in Korea.

There is a provision in the proposed agreement which allows consultations with Korea, with 30 days notice, to engage in concerns that we may have going forward. So we've made clear to SunRice that it's not as though we are putting those issues aside. In our discussions with Korea, we said these are ongoing concerns. We'll use bilateral ongoing dialogues, including through the government's non-tariff barriers program, to continue to address all those. But ultimately SunRice was happy with the arrangement. It's getting a share of guaranteed imports for Australian exporters, so, when the rice is there, we're able to have that guaranteed access, which is in the agreement at 15,595, and we can still compete for the 20,000—that's the global quota. So there's a quantum there of up to 35,000 tonnes in a good year that we can compete for or be able to send. So ultimately, they were our main stakeholder and we were engaged right the way through.

Mr JOSH WILSON: Thank you for all being here today. Just so it's crystal clear, there's a global quota to which a five per cent tariff is applied, that's the best you can get as an exporter into Korea, and under this agreement we essentially get 15,500 tonnes within that. Can we assume that we have in the past taken up the 9,500-tonne quota and we will take up the 15,500-tonne quota? If we don't, does that go back into the pool?

Mr Martin: I think the industry has an interest in utilising this quota, because I think it's seen as being a profitable market. Of course, it depends on global conditions and also supply of rice within Australia, which is not always guaranteed. In the past few years, yes, they have taken up the 9,000 tonnes and in fact gone slightly beyond that. In 2018 it was 10,000, in 2017 it was 10,008 and in 2016 it was 16,113. So it's in that sort of area that they've already been accessing the existing 9,000-tonne quota and some of the global quota that they can still access.

Mr JOSH WILSON: Okay. In the year that you mentioned when there was 16,000 tonnes, presumably that's the 9,000 of our quota plus competitive access to some other part of the quota. I can't imagine that we would export any rice that is subject to a 513 per cent tariff.

Mr Dainer: That's right. Our rice has always gone in under that five per cent quota. Just on your question about what would happen to the quota if we were not to export the full amount: if we fail three bids within the tendering process, Korea can request that we put our quota back into the global quota. However, that's on consultations with Australia, and we get to decide whether we would do that.

Mr Martin: Can I just clarify: the 9,000 tonnes that we had actually lapsed in 2014 after the end of the most recent 10-year period, when we've been undergoing these negotiations, and it's actually only been a 400,000-tonne global quota that we've been competing for. So all those figures that I gave—of 16,000, 10,000 and 10,000 tonnes—have been Australia competing with others for the 400,000 tonnes that's been available.

Mr JOSH WILSON: Okay. My final question is just a process one. This agreement was put to the JSCOT on the basis that it was a minor treaty action, notwithstanding the fact that DFAT's own handbook clearly says that new treaties should never be regarded as a minor treaty action. So I'm just interested in what kind of thought process occurred departmentally. It presumably took stock of the fact that that has never happened before and yet was done in this case.

Mr Martin: The brief answer—my colleague from DFAT's treaties area will answer more fully—is that the view from the trade side is that, because this is intimately part of the existing WTO agreement and it's a normal course of business for tariff schedules to be implemented and updated in the WTO's tariff schedules, this agreement, which was partly reflecting how that would be allocated, was seen to be part of that existing agreement. But I'll let my colleague from the treaties area add to that.

Mr Beamish: As you noted, Mr Wilson, the treaty-making handbook states that entering into a new treaty is never regarded as a minor treaty action. The treaty-making handbook provides a practical tool for public servants working with treaties. This statement in the handbook is intended to ensure that the treaty process captures treaties creating entirely new substantive obligations in a particular field, not technical adjustments within existing treaty regimes. The policy must be applied in context. The proposed agreement being considered today has a fundamental connection to the GATT and, as discussed this morning, a negligible effect in Australia. Those two considerations were compelling justifications for the government to refer the matter to JSCOT as a minor treaty action.

Mr JOSH WILSON: That's an interesting explanation. We're about to separately have an inquiry into the treaty-making process and the JSCOT part in it. I guess I'd observe that it's generally helpful in matters of process that there is clarity and that longstanding matters of process are observed and, where they're departed from, that it's done in a transparent and negotiated way, rather than unilaterally. If it's for the government in respect of the treaty process and the participation of the JSCOT and if it's for the government to make up its mind about how things are going to be regarded from time to time, it does tend to undermine the rigour of the JSCOT's involvement.

I would just say that, as far as the DFAT handbook is concerned, where any of us encounter language in these terms, entering into a new treaty is never regarded as a minor treaty action and there's not a lot of room for interpretation there. So, for the government to decide that what is without question a new treaty action for some reason can be put to us as a minor treaty action without consultation or notice, I would say, isn't desirable.

CHAIR: Can I just echo those comments, Mr Wilson, from my perspective as chair. I think it would be desirable if—again, the treaty's guideline on this is quite emphatic: there's no room for ambiguity or interpretation—these sorts of things were to arise in future that the department communicates to the committee well in advance of its view of why something should be considered a particular treaty action. It's obviously within the committee's prerogative to decide how to treat any particular treaty as well of course. Obviously, we have Australia's interests at heart and we wish to be cooperative, but that's a two-way street. I just urge you the next time something like this arises to be in touch at the earliest opportunity and foreshadow this request. Obviously, if there are compressed timelines, we'll seek to cooperate with them if they service Australia's national interest.

Senator BROCKMAN: Just following up on that issue—and I did miss your questioning, Chair, so if you covered this, close me down. What was different about this? Surely we've had similar circumstances to this before under the WTO and GATT arrangements. So why has this one fallen into a different category in terms of its treatment as a treaty versus previous similar situations? It just seems odd that this is a unique situation. Have we changed our handling? Has something happened at the WTO and GATT level to change the way these things are approached? Why have the unique, or possibly not unique, circumstances—are we going to expect more of this type of approach in the future? What's changed?

Mr Martin: This is actually a relatively unique circumstance in terms of WTO tariff schedules and negotiations. I think, as some of the documents and the opening statement have said, that South Korea has amended its WTO tariff schedule to reflect this global quota of 400,000—roughly—tonnes of Korea in a tariff rate quota and the agreement is unique in that it's a separate agreement between the supplying countries to set out how those 400,000 tonnes would be allocated amongst the supplying countries. Normally, in many cases, that is actually reflected in a WTO tariff schedule of the members. In this case Korea chose to go down the route of a separate agreement, rather than having it in its tariff schedule because it didn't want to go back into reopening the discussions it was going to have with all WTO members about how that allocation was made. It's been trying to do this since 2014, and I think it started in late 2018 to try and really resolve this and get it done. It consulted with the supplying countries and came up with the agreement, and this was the way it thought was the best way to implement it. It is unusual in that, yes, normally we would expect South Korea, or other countries if they did this, to reflect the outcomes of the country's specific quotas in the WTO tariff schedules; but in this case they decided that for the sake of expedience and getting the whole agreement up and running and in place that it was better to do it as a separate agreement.

Senator BROCKMAN: On the philosophical approach of, I would think, successive Australian governments, it would be better to try and keep that within the WTO to keep the multilateral arrangements as robust as possible?

Mr Martin: I think we would agree with that.

Senator BROCKMAN: I assume then we have tried to do that through the negotiation process? Or have we just had to live with this because it's in South Korea's frame of reference?

Mr Martin: When we were having the negotiations when we started these in November 2018, when we really got into the details of the allocations, our expectation was that it would be reflected in South Korea's tariff schedule. It was only in the middle of this year—as they started to finalise the outcomes with the United States, Vietnam, China and the others—that it became more apparent to us that they were proposing to do something different. It's not what we would have wanted ourselves to be the final outcome. But this is what South Korea has proposed as part of the package.

Mr BROADBENT: On the timing of this process, which you outlined in your remarks, can this be done by the end of the month? Is it this year you are talking about?

Mr Martin: Ultimately it depends on the committee's deliberations about what to do with this agreement. But the expectation or the hope from our side is that we will be able to sign the agreement and remove our WTO objection to allow it to enter into force on 1 January next year.

CHAIR: All that is needed is for us to remove that WTO objection is for our ambassador in Geneva to advise the WTO, is that correct?

Mr Martin: And to sign this agreement.

CHAIR: How significant is Korea as a rice export market for Australia?

Mr Jacenko: It hasn't been the dominant market. Again, it's obviously highly protected, and we are competing with some very big players—like even just the shares that have been allocated in the actual proposed agreement that you have, the US and China have historically had the lion's share, which is why they have been allocated 130,000/160,000-odd tonnes amongst the two of them. We have had a sporadic trade pattern. That also made the negotiations difficult. There were periods 10 to 15 years ago where we weren't exporting anything there. On the other hand, back in 2013-14 we had 30,000 to 33,000 tonnes. So it kind of depends on the market conditions globally about who is the most competitive and who has the right rice variety and crop in a particular period. For Australia often, as you would imagine with all the discussion with the drought in Australia, Australia's actual output or production of rice is obviously a key factor.

CHAIR: Obviously it's lower.

Mr Jacenko: So, as an indication, in the last two or three years, Australia globally has exported between 200,000 and 360,000 tonnes of rice. Again, the predominant market's not been Korea. At its peak in the last five years, it would be the 30,000-odd tonnes that was sent. So it is a relatively minor market because it is a fairly protected market. There are a number of factors there, but I wouldn't say it's a significant market for Australia.

CHAIR: Thank you all for your attendance here today. The committee will advise in due course, once we have deliberated in private, on how we handle this particular treaty. I don't believe you have been advised to provide any information in response to questions on notice. You will be sent a copy of the transcript of your evidence when it becomes available and you will have an opportunity to request any corrections to transcription errors at that point. Thank you so much.

Committee adjourned at 11:34