

NON-CONFIDENTIAL EXECUTIVE SUMMARY

As Brexit has shown us, lot of legal issues arise when a country leaves Customs Union. Among others, it includes redefining the country's relationship with the World Trade Organisation ("**WTO**"). According to Article XI:1 of the Marrakesh Agreement, the European Communities as well as its individual Members are Members in their own right. Under the WTO arrangement, the Customs Unions submits a combined Schedule of Concession for its Members. Therefore, after leaving, the country will need to separate its schedule from that of the union. In the context of agriculture, it raises issues within the Agreement on Agriculture ("**AoA**"). The common schedule submitted under the AoA will have to be apportioned between the country and the union. This report seeks to analyse the agricultural trade implications of a country leaving its Customs Union. It focuses on two aspects – (1) Bound Total AMS and (2) TRQs.

The first chapter assesses the rights and obligations of exiting country within the scheme of WTO. If the country chooses to adopt the union's schedules, it has the support of UK's precedent since after Brexit, UK adopted the draft schedules of EU with certain modifications. The way in which the country extracts its schedules from the union will depend on its trade policy.

The second chapter deals with apportionment of Bound Total AMS commitments. The country has the three options - having an empty schedule, applying *de minimis* level of AMS, dividing the Bound total AMS of the Customs Union on pro rata basis. We consider a case where the country decides to reapportion the AMS from union's schedule. In that situation, the allocation key and appropriate amount against which the AMS is calculated will have to be determined. The allocation key can be on the basis of (1) contribution to base schedules (2) receipts from common agricultural policy (3) value of output in agriculture. They can determine the appropriate amount depending on current permitted level of domestic support in the Customs Union or identifying the country's original share. Third country challenges in this case are unlikely if the AMS commitment was calculated in accordance with Annex 3 of the Agreement. The reapportionment of the Schedule would have to be consistent with the Procedures for Modification and Rectification of Schedules, 1980 which provides that a Schedule can only be certified if no Member State of the WTO objects to the

draft Schedule. This opens the reapportioning country to a risk that its method of apportionment is objected to, and thus its Schedule remains uncertified. However, according to state practice, the challenges faced by a country for the reapportionment of its Schedule are not legally significant to affect the implementation of its reapportioned Schedule.

The third chapter of the report focuses on the question of the appropriate currency to be used for the apportionment of an exiting country's AMS. The Schedule under the AoA can be specified using any currency. Therefore, the country has a choice to either apportion its Schedule in its national currency or another currency. State practice suggests that Raman would prefer apportioning its Schedule in its national currency. The use of the national currency would necessitate specifying a conversion rate between the national currency and the other currency. According to state practice, there are two methods of choosing a base period for calculating the conversion rate – *first*, choosing the base period as 1986-1988, which is the base period chosen by most states to calculate the relative value of their national currencies; and *second*, choosing a recent period before the exit of the country from the Customs Union, Both choices have their problems. However, the report suggests that the second alternative should still be preferred.

The fourth chapter provides an overview of TRQs and how are they allocated. Primarily, TRQ is a quota for a volume of imports at a particular tariff rate. Once the quota is filled, a higher tariff is then imposed on the additional imports. It then dwells upon why there is a requirement of the apportionment of TRQs, where there can be two possibilities. *First*, in the highly unlikely event of the state, withdrawing from the Customs Union, wanting to liberalize their agricultural imports allowing them without limits at the tariff rate currently limited to the quota, no apportionment would be needed. *Second*, Negotiations with interested Members under Article XXVIII of GATT 1994 to modify or withdraw its certified schedule. Both the Customs Union and the withdrawing state may want to accept as few TRQs as possible. Customs Union would not want to retain the same TRQs after losing withdrawing state's market share. The withdrawing state would not want to get a high share of TRQs since high TRQs will overwhelm its domestic agricultural market.

The fourth chapter also enters into detail of the administration of TRQs post apportionment and, lays down the advantages and disadvantages of all such

methods. It discusses the EU and UK's method of apportionment of their tariff schedules post the Brexit which was done as per Market Share. In a circumstance where an exiting Member employs this method of apportionment, the same would be done based on the market share of exiting Member and the Customs Union as for specific products in a manner where the total TRQs would be divided as per the ratio of market share of every product.