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PROPOSAL

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 22 May 2018

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

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Subject: 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

Delegations will find attached document COM(2018) 312 final.

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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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

On 29 March 2017, the Government of the United Kingdom (UK) notified the European Council of the UK's intention to withdraw from the European Union (EU) of which it is currently a Member State. It is anticipated that the UK will cease to be a Member State of the EU as from 30 March 2019.

The UK's withdrawal from the EU has implications beyond the bilateral relationship between the EU and the UK, in particular with regard to their commitments under the Agreement Establishing the World Trade Organization (WTO). Both the EU and the UK are original Members of the WTO. When the European Community accepted the WTO Agreement and the Multilateral Trade Agreements in 1994, the schedule of concessions and commitments that was annexed to the General Agreement on Tariffs and Trade 1994 (GATT 1994) for the European Communities (the EU's WTO schedule) was thereby simultaneously annexed for the UK. The EU's schedule therefore contain commitments applicable also to the UK in its capacity as a WTO Member. As far as the EU is concerned, its concessions for goods will remain applicable to its territory, but the EU's existing quantitative commitments notably the Tariff Rate Quotas (TRQs) will require certain adjustments to reflect the UK's withdrawal from the EU.

The present quantities of the EU's WTO bound TRQs for agricultural, fish and industrial goods have been established on the basis of the UK being a Member State and forming part of that EU market. These TRQs apply to the EU market as a whole including the UK. It is therefore necessary to reflect the fact that the EU's WTO schedule will no longer apply to the UK after its withdrawal from the EU or, at the latest, after 31 December 2020 should the transitional arrangements agreed between the negotiators of the EU and of the UK as part of a Withdrawal Agreement enter into force.

The adjustment of the EU's WTO bound TRQs entails an apportionment of the existing quantities between the UK and the EU to become effective on the date the UK is no longer covered by the EU's WTO schedule.

In the interest of maintaining clarity and predictability in the multilateral trading system, the EU and the UK sent a joint letter to the whole WTO membership on 11 October 2017 setting out the main rationale and principles envisaged for this apportionment. Subsequently the EU and the UK have been actively engaging with their main trading partners in the WTO on this matter in an open and transparent manner.

In line with Article XXVIII of the GATT 1994, the EU will need to conduct negotiations with certain WTO Members affected in order to modify the EU WTO schedule where it contains TRQ volumes, by apportioning these TRQs. To this end the Commission is submitting in parallel to the Council a recommendation, accompanied by draft negotiating directives, to authorise the Commission to initiate negotiations with affected WTO Members. Negotiations will proceed with the relevant WTO Members who have been identified as having relevant market access interests as set out in Article XXVIII of the GATT 1994 (having so-called principal or substantial supplying interest or holding an initial negotiating right) under the

individual TRQs. The UK is expected to undertake the necessary procedures with a view to setting out its own schedule of concessions and commitments annexed to the GATT 1994 including the apportioned quantitative commitments.

Given the time frame in which these negotiations will need to be conducted, it cannot be excluded that some of these negotiations with individual WTO Members under Article XXVIII of the GATT 1994 regarding one or more TRQs will not be concluded by agreement within the necessary time limits before the UK is no longer covered under the EU's WTO schedule. It is therefore necessary to ensure that, in the absence of such agreement, the EU can nevertheless proceed with the apportionment of the TRQs by modifying the WTO tariff concessions and that the Commission is given the necessary powers to consequently amend the relevant EU provisions on the opening and implementation of the relevant TRQs.

In order to ensure compatibility of this exercise with the EU's obligations under the WTO Agreement and in particular Article XXVIII of the GATT 1994, this apportionment should be based on the existing trade flows under each TRQ for a recent representative time period. A consistent approach to all TRQs, inter alia with respect to data and methodology, should be followed. Importantly, the existing overall levels of market access to the EU and UK available to other WTO Members should be maintained in line with paragraph 2 of Article XXVIII of the GATT 1994.

The Commission has used a clear and objective methodology, which was agreed jointly with the UK, in proposing an apportionment of the TRQs concerned. In a first step the UK usage share for each individual TRQ was established. The usage share (%) is the UK share of total EU imports under the TRQ over a recent representative three year period (2013-2015). In a second step this usage share was then applied to the entire scheduled TRQ volume to arrive at the UK share of a given TRQ. The EU share consists of the remainder of the TRQ in question. This means that the total volume of a given TRQ is not changed (i.e. EU27 volume = current EU28 volume – UK volume). The underlying data was extracted from the Quota2 database for TRQs administered by DG TAXUD and from the Agricultural Markets Information System ('AMIS') database for TRQs administered by DG AGRI.

In those cases where no trade was observed for a specific TRQ over the reference period, two alternative approaches were pursued to establish the UK usage share. In those cases where there is another TRQ with the exact same product definition the usage share of that identical TRQ was applied to the TRQ without observed trade over the reference period. In those cases where there is no TRQ with an identical product description the formula to calculate the usage share was applied to the EU imports in the corresponding tariff lines outside of the TRQ.

An agreement between the EU and New Zealand under Article XXIV.6 GATT subsequent to Croatia's accession to the EU was signed on 13 March 2018 and is currently still awaiting the consent of the European Parliament before its conclusion by the Council. This agreement would increase the TRQ for "Meat of sheep or goats, fresh, chilled or frozen" allocated to New Zealand (order number 092013) by 135 t so that the quantity would become 228,389 t and the corresponding future EU-27 quantity would be 114,184 t.

- **Consistency with existing policy provisions in the policy area**

This initiative is in line with the EUs ongoing actions to prepare for the withdrawal of the UK from the EU in an orderly manner, notably the joint EU-UK letter to the WTO Membership of 11 October 2017.

- **Consistency with other Union policies**

As above.

2. **LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

Article 207(2) TFEU.

- **Subsidiarity (for non-exclusive competence)**

The common commercial policy is an exclusive competence of the Union.

- **Proportionality**

The envisaged measure is the only way of ensuring the desired result.

- **Choice of the instrument**

A legislative act is required, as existing legislation does not provide for an empowerment to the Commission to adopt the proposed measures in the event that no agreement is reached in the WTO negotiations with individual WTO Members within the time limit of the actual UK withdrawal.

3. **RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

Not applicable.

- **Collection and use of expertise**

Not applicable.

- **Impact assessment**

Not applicable.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

The proposal has no impact on fundamental rights.

4. **BUDGETARY IMPLICATIONS**

Not applicable.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not applicable.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 provides that TRQs figuring in the EU's WTO schedule of concessions and commitments will be apportioned between the EU and the UK. It refers to the Annex (part A and part B) for a detailed list of the TRQs and the respective EU27 apportioned amount. Article 2 provides that Part B of the Annex shall replace Annex 1 to Regulation (EC) No 32/2000, where these TRQs are currently listed. Article 3 gives the Commission an empowerment to amend the Annex to this proposed Regulation and Annex I to Regulation (EC) No 32/2000, in order to change the apportionment to cover for agreements concluded with trading partners in the meantime, for the case that following negotiations with trading partners it becomes evident that the mathematical application of the method used for the apportionment is not appropriate for a specific TRQ or for the case that other pertinent information relating to a specific TRQ comes to the knowledge of the Commission at a later stage. Article 4 provides for the modalities of use of the empowerment. Finally, Article 5 provides for the application of the Regulation, which should start on the date on which Union law ceases to apply to the UK.

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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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE UNION,

Having regard to the Treaty on the Functioning of the Union, and in particular Article 207(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) On 29 March 2017, the Government of the United Kingdom notified the European Council in accordance with Article 50 of the Treaty on European Union of the United Kingdom's intention to withdraw from the Union. Following this notification, negotiations have started, and are ongoing, between the United Kingdom and the Union in view of the conclusion of an agreement on the withdrawal of the United Kingdom.
- (2) The United Kingdom's withdrawal from the Union will have effects on the relations of the United Kingdom and the Union with third parties, in particular in the context of the World Trade Organization (WTO) of which both are original members.
- (3) By a letter of 11 October 2017 the Union and the United Kingdom informed other WTO Members that it was their intention that, upon leaving the Union, the United Kingdom would replicate to the extent possible its current obligations as a Member State of the Union in its new, separate, schedule of concessions and commitments on trade in goods. However, as in relation to quantitative commitments replication is not an appropriate method, the Union and the United Kingdom informed other WTO Members of their intention to ensure that other WTO Members' current market access levels would be maintained by apportioning the Union's tariff rate quotas between them.
- (4) In line with the WTO rules, such apportionment of tariff rate quotas that are part of the Union's schedule of concessions and commitments will have to occur according to Article XXVIII of the General Agreement on Tariffs and Trade 1994 ('GATT 1994'). The Union will, therefore, following completion of preliminary contacts, engage in negotiations with WTO Members having a principal or substantial supplying interest or holding an initial negotiating right in relation to each of these tariff rate quotas.
- (5) However, given the time limits imposed on this process by the negotiations on the United Kingdom's withdrawal from the Union, it is possible that agreements may not be concluded with all WTO Members concerned in relation to all of the tariff rate

quotas on the date Union's WTO schedule of concessions and commitments on trade in goods cease to apply to the United Kingdom. In view of the need to ensure legal certainty and the continuous smooth operation of imports under the tariff rate quotas to the Union and the United Kingdom it is necessary for the Union to be able to proceed unilaterally to the apportionment of the tariff rate quotas. The methodology used should be in line with the requirements of Article XXVIII of the GATT 1994.

- (6) The following methodology should therefore be used: in a first step the United Kingdom's usage share for each individual tariff rate quota should be established. The usage share, expressed as a percentage, is the United Kingdom's share of total Union imports under the tariff rate quota over a recent representative three year period. This usage share should then be applied to the entire scheduled tariff rate quota volume to arrive at the United Kingdom's share of a given tariff rate quota. The Union's share would then consist of the remainder of the tariff rate quota in question. This means the total volume of a given tariff rate quota is not changed (that is to say EU-27 volume = current EU-28 volume – United Kingdom volume). The underlying data should be extracted from the relevant Commission databases.
- (7) In those cases where no trade is observed for a specific tariff rate quota over the reference period, two alternative approaches should be pursued to establish the United Kingdom's usage share. In those cases where there is another tariff rate quota with the identical product definition, the usage share of that identical tariff rate quota should be applied to the tariff rate quota without observed trade over the reference period. In those cases where there is no tariff rate quota with an identical product definition the formula to calculate the usage share should be applied to Union imports in the corresponding tariff lines outside of the tariff rate quota.
- (8) For the agricultural TRQs concerned, Articles 184-188 of Regulation (EU) No 1308/2013¹ provides the necessary legal basis for administration of the TRQs once apportioned by the present Regulation. For the TRQs covering fisheries, industrial and certain processed agricultural products, administration is carried out pursuant to Regulation (EC) No 32/2000². The TRQ quantities concerned are set out in Annex I to that Regulation, which should therefore be replaced by the quantities set out in Part B of the Annex to the present Regulation.
- (9) Taking into account that negotiations with affected WTO Members will be taking place simultaneously with the ordinary legislative procedure for the adoption of this Regulation the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to amend the Annex to this Regulation and Annex I to Regulation (EC) No 32/2000 with respect to the quantities of the apportioned tariff rate quotas listed therein, in order to take account of any agreements concluded or of pertinent information that it may receive in the context of these negotiations which would indicate that specific factors that were not previously known require an adjustment to the apportionment of the tariff quotas

¹ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671)

² Council Regulation (EC) No 32/2000 of 17 December 1999 opening and providing for the administration of Community tariff quotas bound in GATT and certain other Community tariff quotas and establishing detailed rules for adjusting the quotas, and repealing Council Regulation (EC) No 1808/95 (OJ L 5, 8.1.2000, p. 1).

between the Union and the United Kingdom. The same possibility should also be provided where such information becomes available outside such negotiations.

- (10) This Regulation should apply from the moment that Union's WTO schedule ceases to apply to the United Kingdom given that from that moment both the Union and the United Kingdom need to know what their WTO obligations are. At the present stage of the withdrawal negotiations between the Union and the United Kingdom it is not possible to determine the exact date when this will happen. It should therefore be provided that this Regulation shall apply either from the date provided for in a withdrawal agreement between the Union and the United Kingdom under Article 50 of the Treaty on the European Union or from 30 March 2019, that is two years after the date of the United Kingdom's notification of its intention to withdraw from the Union in accordance with Article 50 of the Treaty on the European Union

HAVE ADOPTED THIS REGULATION:

Article 1

The tariff rate quotas included in the Union's schedule of concessions and commitments annexed to the General Agreement on Tariffs and Trade 1994 shall be apportioned between the Union and the United Kingdom of Great Britain and Northern Ireland ("the United Kingdom") as follows:

- (a) as regards tariff rate quotas for agricultural products, the Union's portion shall be as set out in Part A of the Annex to this Regulation;
- (b) as regards tariff rate quotas for non-agricultural products, the Union's portion shall be as set out in Part B of the Annex to this Regulation.

Article 2

Annex I to Council Regulation (EC) No 32/2000 shall be replaced by the text in Part B of the Annex to this Regulation.

Article 3

The Commission is empowered to adopt delegated acts in accordance with Article 4 to amend the Annex to this Regulation and Annex I to Regulation (EC) No 32/2000 in order to take account of the following:

- (a) any international agreement concluded by the Union under Article XXVIII of the General Agreement on Tariffs and Trade 1994 concerning the tariff rate quotas referred in those Annexes; and
- (b) pertinent information that it may receive either in the context of negotiations under Article XXVIII of the General Agreement on Tariffs and Trade 1994 or through other means.

Article 4

- (1) The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
- (2) The power to adopt delegated acts referred to in Article 3 shall be conferred on the Commission for a period of [4] years from the date of entry into force of this Regulation.

- (3) The delegation of power referred to in Article 3 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
- (4) Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.
- (5) As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
- (6) A delegated act adopted pursuant to Article 3 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of [two months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [one month] at the initiative of the European Parliament or of the Council.

Article 4

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the Union*.

Articles 1 and 2 shall apply from the date on which Union law ceases to apply to the United Kingdom in accordance with an agreement concluded by the Union and the United Kingdom pursuant to Article 50 of the Treaty on European Union or, in the absence of such an agreement, from 30 March 2019.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President