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NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF TARIFF RATE QUOTAS

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020. Until that date, EU law in its entirety applies to and in the United Kingdom.³

During the transition period, the EU and the United Kingdom will negotiate an agreement on a new partnership, providing notably for a free trade area. However, it is not certain whether such an agreement will be concluded and will enter into force at the end of the transition period. In any event, such an agreement would create a relationship which in terms of market access conditions will be very different from the United Kingdom’s participation in the internal market,⁴ in the EU Customs Union, and in the VAT and excise duty area.

Therefore, all interested parties, and especially economic operators, are reminded of the legal situation applicable after the end of the transition period (Part A below). This notice also explains certain relevant separation provisions of the Withdrawal Agreement (Part B below), as well as the rules applicable in Northern Ireland after the end of the transition period (Part C below).

Advice to stakeholders:

¹ A third country is a country not member of the EU.

² Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 29, 31.1.2020, p. 7 (“Withdrawal Agreement”).

³ Subject to certain exceptions provided for in Article 127 of the Withdrawal Agreement, none of which is relevant in the context of this notice.

⁴ In particular, a free trade agreement does not provide for internal market concepts (in the area of goods and services) such as mutual recognition, the “country of origin principle”, and harmonisation. Nor does a free trade agreement remove customs formalities and controls, including those concerning the origin of goods and their input, as well as prohibitions and restrictions for imports and exports.

To address the consequences set out in this notice, stakeholders importing on the basis of tariff rate quota are in particular advised the following:

- Stakeholders should be aware that licences issued by the United Kingdom or for operators in the United Kingdom will be valid only until the end of the transition period, and should take this account in their business decisions; and
- Where stakeholders have lodged securities with the United Kingdom authorities, they should seek confirmation that securities paid will be released by the United Kingdom after the end of the transition period.

Please note:

This notice does not address:

- EU customs procedures;
- EU rules on customs debt;
- rules of origin.

For these aspects, other notices are in preparation or have been published.⁵

A. LEGAL SITUATION AFTER THE END OF THE TRANSITION PERIOD

After the end of the transition period, the EU rules on tariff rate quotas no longer apply in the United Kingdom.⁶ This has in particular the following consequences:⁷

Please note: As part of the preparation for the withdrawal of the United Kingdom, the EU has taken measures to ensure the apportionment of tariff rate quotas included in the WTO schedule of the EU through the procedure under Article XXVIII of the General Agreement on Tariffs and Trade (GATT) in the WTO and EU legal acts.⁸

⁵ https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/preparing-end-transition-period_en

⁶ Regarding the applicability of EU tariff rate quotas to Northern Ireland, see Part C of this notice.

⁷ Where relevant, this notice also addresses **origin derogation quotas** for imports into the EU and exports under several EU FTAs, managed under the “first come first served” principle.

⁸ Regulation (EU) 2019/216 of the European Parliament and of the Council of 30 January 2019 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, OJ L 38, 8.2.2019, p.1; Commission Implementing Regulation (EU) 2019/386 of 11 March 2019 laying down rules with regard to the apportionment of tariff rate quotas for certain agricultural products included in the WTO schedule of the Union following the withdrawal of the United Kingdom from the Union and with regard to import licences issued and import rights allocated under those tariff rate quotas, OJ L 70, 12.3.2019, p. 4; Commission Implementing Regulation (EU) 2019/653 of 24 April 2019 amending Regulation (EC) No 847/2006 as regards the Union tariff quotas for certain prepared or preserved fish, OJ L 110, 25.4.2019, p. 34.

1. TARIFF RATE QUOTAS

Certain agricultural products, processed agricultural products, industrial products and fishery products are eligible for reduced rates of duty under EU tariff rate quotas, on the basis of

- the WTO schedules of the EU (WTO tariff rate quotas);⁹
- bilateral agreements of the EU with third countries (bilateral tariff rate quotas);¹⁰
¹¹ or
- autonomous tariff rate quotas.^{12 13}

There are two different management approaches of EU tariff rate quotas: the “first come first served” management (see below, section 2), and the management with import licences and import rights (see below, section 3).¹⁴ The latter is currently exclusively used for tariff rate quotas of certain agricultural products.

Moreover, for the export of certain products, in some cases the EU manages tariff rate quotas granted to the EU by third countries by way of export licences (see below, section 4).

2. “FIRST COME FIRST SERVED” MANAGEMENT OF EU TARIFF RATE QUOTAS¹⁵

According to Article 50 of Commission Implementing Regulation (EU) 2015/2447,¹⁶ customs authorities shall examine whether a request to benefit from a

⁹ 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, OJ L 5, 8.1.2000, p. 1.

¹⁰ For example, with regard to Canada, Commission Implementing Regulation (EU) 2017/1586 of 19 September 2017 amending Regulation (EC) No 1067/2008 opening and providing for the administration of Community tariff quotas for common wheat of a quality other than high quality from third countries and derogating from Council Regulation (EC) No 1234/2007, OJ L 241, 20.9.2017, p. 12.

¹¹ Origin derogation quotas (see above) are always bilaterally agreed.

¹² Council Regulation (EU) No 1388/2013 of 17 December 2013 opening and providing for the management of autonomous tariff quotas of the Union for certain agricultural and industrial products, OJ L 354, 28.12.2013, p. 319 and Council Regulation (EU) 2018/1977 of 11 December 2018 opening and providing for the management of autonomous tariff quotas of the Union for certain fishery products for the period 2019–2020, OJ L 317, 14.12.2018, p. 2.

¹³ Tariff rate quotas set under the Union’s trade defence regimes are always autonomous tariff rate quotas.

¹⁴ See also the „Guidance note – Withdrawal of the United Kingdom and customs related matters in case of no deal” (https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notice_en#tradetaxud).

¹⁵ This section is also relevant for **origin derogation quotas** for imports into the EU and exports under several EU FTAs, managed under the “first come first served” principle.

tariff rate quota made by the declarant in a customs declaration for release for free circulation is valid in accordance with the EU legislation opening the tariff rate quota. Where the request is accepted, customs authorities transmit it to the Commission, which allocates the quantity in accordance with Article 51 of that Regulation.

After the end of the transition period, requests by operators to benefit from EU tariff rate quotas can no longer be accepted by the UK customs authorities. Declarations accepted by the UK customs authorities after the end of the transition period are not eligible to benefit from EU tariff rate quotas.

3. MANAGEMENT OF EU TARIFF RATE QUOTAS WITH IMPORT LICENCES AND IMPORT RIGHTS¹⁷

Some EU tariff rate quotas for agricultural products¹⁸ are administered on the basis of a licence issued by a Member State¹⁹ in accordance with the rules laid down in the relevant Commission acts.

3.1. Import licences

Applicants have to submit their import licence application to the competent authorities of the Member State where they are established and where they are registered for VAT purposes.²⁰ According to Article 176(3) of Regulation (EU) No 1308/2013, a licence issued by a particular Member State is valid for the importation of the products anywhere within the EU customs territory.

For licence-managed EU tariff rate quotas, the rights and obligations that arise from UK licences allocated by the licensing issuing authorities of the United Kingdom will cease to be valid in the EU at the end of the transition period.²¹

¹⁶ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code, OJ L 343, 29.12.2015, p. 558.

¹⁷ See also https://ec.europa.eu/info/food-farming-fisheries/farming/eu-agriculture-and-brexite_en.

¹⁸ For example, as regards bilateral tariff rate quotas, see Commission Implementing Regulation (EU) 2015/2079 of 18 November 2015 opening and providing for the administration of a Union import tariff quota for fresh and frozen beef and veal originating in Ukraine, OJ L 302, 19.11.2015, p. 71.

¹⁹ See Article 184(2) of 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 (OJ L 347, 20.12.2013, p. 671) and Article 2 of Commission Delegated Regulation (EU) 2016/1237 of 18 May 2016 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the rules for applying the system of import and export licences and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the rules on the release and forfeit of securities lodged for such licences, OJ L 206, 30.7.2016, p. 1.

²⁰ Article 5 of Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences, OJ L 238, 1.9.2006, p.13.

²¹ This also applies where the issuing of a licence is preceded by the attribution of “import rights” (cf. Article 6(3) of Regulation (EC) No 1301/2006). See, for example, Commission Implementing Regulation (EU) No 1223/2012 of 18 December 2012 laying down detailed rules for the application of

²² After the end of the transition period, EU customs administrations shall no longer accept those licences.

Licences held by UK operators are no longer valid after the end of the transition period. This also applies in the case of transfers²³ of a licence, before the end of the transition period, to an operator established in the United Kingdom.²⁴

Licences issued by EU licensing authorities and held by EU operators will remain valid within the EU.²⁵

3.2. Securities

According to Article 4 of Delegated Regulation (EU) 2016/1237, some licenses are subject to a security to be lodged with the Member State authority that issued the licence. This security is released upon importation, subject to the rules set out in Article 7 of Delegated Regulation (EU) 2016/1237.

After the end of the transition period, EU law on the release of the security no longer applies to the United Kingdom.

4. EXPORT LICENCES

In order to administer certain tariff rate quotas available for EU exporters to third countries, EU law, based on international agreements, provides for a system of EU licenses (“export licence”) that may be delivered by national administrations to exporters wishing to benefit from the tariff rate quota in question.^{26 27}

an import tariff quota for live bovine animals of a weight exceeding 160 kg and originating in Switzerland provided for in the Agreement between the European Community and the Swiss Confederation on trade in agricultural products, OJ L 349, 19.12.2012, p. 39.

²² Cf. also, with regard to certain tariff rate quotas, Article 2(1) of Commission Implementing Regulation (EU) 2019/386 of 11 March 2019 laying down rules with regard to the apportionment of tariff rate quotas for certain agricultural products included in the WTO schedule of the Union following the withdrawal of the United Kingdom from the Union and with regard to import licences issued and import rights allocated under those tariff rate quotas, OJ L 70, 12.3.2019, p. 4.

²³ According to Article 6 of Delegated Regulation (EU) 2016/1237 it is possible, under certain circumstances, to transfer the rights deriving from a licence to a transferee. This is done by virtue of a request by the titular holder to the licence issuing authority which issued the original licence.

²⁴ Cf. also, with regard to certain tariff rate quotas, the second subparagraph of Article 2(2) of Commission Implementing Regulation (EU) 2019/386.

²⁵ Cf. also, with regard to certain tariff rate quotas, the first subparagraph of Article 2(2) of Commission Implementing Regulation (EU) 2019/386.

²⁶ For example, Commission Regulation (EC) No 1187/2009 of 27 November 2009 laying down special detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards export licences and export refunds for milk and milk products, OJ L 318, 4.12.2009, p. 1; Commission Regulation (EC) No 2307/98 of 26 October 1998 on the issue of export licences for dog and cat food falling within CN code 2309 10 90 qualifying for special import treatment in Switzerland, OJ L 288, 27.10.1998, p. 8.

An export licence issued by the United Kingdom will cease to be valid where the export of the consignment is effected or ensured after the end of the transition period.

Moreover, export licences may be subject to a security to be paid. In this case, section 3.2. of this notice applies, i.e. after the end of the transition period, EU law on the release of the security no longer applies to the United Kingdom.

B. RELEVANT SEPARATION PROVISIONS OF THE WITHDRAWAL AGREEMENT

Article 49(3) of the Withdrawal Agreement provides that the EU rules on management of tariff rate quotas²⁸ (incl. cancellation of a request and return of unused allocated quota) of tariff rate quotas under the “first come first served” method, continue to apply where cumulatively

- the request was accepted by the UK authorities before the end of the transition period; and
- the supporting documents have been provided to the UK customs authorities²⁹ before the end of the transition period.

1. REQUESTS TO BENEFIT FROM TARIFF RATE QUOTAS

Where the conditions set out in Article 49(3) of the Withdrawal Agreement (see above) are fulfilled, the Commission will allocate quantities on the basis of the requests transmitted by the UK according to Article 51(2) of Regulation (EU) 2015/2447 and will communicate the amounts allocated to the UK thereafter.

2. CANCELLATION OF REQUESTS AND RETURNS OF UNUSED ALLOCATED QUANTITIES UNDER TARIFF RATE QUOTAS

Where the conditions set out in Article 49(3) of the Withdrawal Agreement (see above) are fulfilled, the UK customs authorities will

- immediately return any quantities erroneously allocated under tariff quotas according to the provisions of Article 52 of Regulation (EU) 2015/2447; and
- cancel the request or return the allocated quantity respectively where the UK customs authorities invalidate a customs declaration (prior to or after to the

²⁷ Export licences for milk and milk products are not transferable, see for example Article 32(5) of Regulation (EC) No 1187/2009.

²⁸ Section 1 of Chapter 1 of Title II of Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code, OJ L 343, 29.12.2015, p. 558.

²⁹ According to Article 50(2) of Regulation (EU) 2015/2447, the supporting documents are submitted by the declarant to the customs authorities, while the customs authorities only submit the request to the Commission.

quota's allocation) in respect of goods which are the subject of a request for the benefit of a tariff rate quota.

C. APPLICABLE RULES IN NORTHERN IRELAND AFTER THE END OF THE TRANSITION PERIOD

After the end of the transition period, the Protocol on Ireland/Northern Ireland (“IE/NI Protocol”) applies.³⁰ The IE/NI Protocol is subject to periodic consent of the Northern Ireland Legislative Assembly, the initial period of application extending to 4 years after the end of the transition period.³¹

The IE/NI Protocol makes certain provisions of EU law applicable also to and in the United Kingdom in respect of Northern Ireland. In the IE/NI Protocol, the EU and the United Kingdom have furthermore agreed that insofar as EU rules apply to and in the United Kingdom in respect of Northern Ireland, Northern Ireland is treated as if it were a Member State.³²

The provisions of EU law made applicable to and in the United Kingdom in respect of Northern Ireland include the EU customs legislation and obligations stemming from the international agreements concluded by the Union, or by Member States acting on its behalf, or by the Union and its Member States acting jointly, insofar as they relate to trade in goods between the Union and third countries.³³

The IE/NI Protocol also explicitly provides that any references to the customs territory of the Union in the applicable provisions of the Withdrawal Agreement and of the IE/NI Protocol, as well as in the provisions of Union law made applicable to and in the UK in respect of Northern Ireland by the IE/NI Protocol, shall be read as including Northern Ireland.³⁴ This means that insofar as EU customs rules apply to and in the UK in respect of Northern Ireland, the EU and the UK agree to treat Northern Ireland, for the purpose of the application of those rules, as if it were part of the customs territory of the Union.

At the same time, seeing that Northern Ireland is part of the customs territory of the United Kingdom, in respect of the rights and obligations of third countries (including the Union’s preferential partner countries), Northern Ireland is not to be treated as part of the Union customs territory³⁵.

More specifically, after the end of the transition period, this means *inter alia* the following:

³⁰ Article 185 of the Withdrawal Agreement.

³¹ Article 18 of the IE/NI Protocol.

³² Article 7(1) of the Withdrawal Agreement in conjunction with Article 13(1) of the IE/NI Protocol.

³³ Articles 5(3), 5(4) and sections 1 and 4 of annex 2 of the IE/NI Protocol.

³⁴ Article 13(1) of the IE/NI Protocol. This irrespective of Article 4 of the IE/NI Protocol, as Article 13(1) operates “[n]otwithstanding any other provisions of this Protocol”.

³⁵ Article 4 of the IE/NI Protocol.

1. TARIFF RATE QUOTAS GRANTED BY THIRD COUNTRIES TO THE EU

The United Kingdom in respect of Northern Ireland does not benefit from tariff rate quotas granted by third countries to the EU in the framework of preferences.

This means that goods originating in Northern Ireland do not benefit from such quotas.

2. TARIFF RATE QUOTAS GRANTED BY THE EU TO THIRD COUNTRIES

According to the Protocol, Union customs legislation applies to and in the United Kingdom in respect of Northern Ireland. These provisions mean that Union tariff measures, including tariff rate quotas under the Common Customs Tariff or relevant international agreements, would in principle be applicable to such goods entering Northern Ireland that are considered to be at risk of subsequently being moved into the Union.

At the same time, the bilateral arrangements between the Union and the United Kingdom under the Protocol do not give rise to rights and obligations for third countries. In consequence, any imports pursuant to Union import tariff rate quotas or other import quotas applying to goods originating in a third country brought into Northern Ireland could not be counted towards that third country's rights vis-à-vis the Union, unless agreed by the third country. That situation poses a risk to the proper functioning of the Union's Single Market and the integrity of the Common Commercial Policy through the possible circumvention of the Union's tariff rate quotas or other import quotas.

To address that risk, the EU's tariff rate quotas and other import quotas should be available only for goods imported and released into free circulation in the Union and not in Northern Ireland. The Commission put forward a legislative proposal to this effect.³⁶

3. MANAGEMENT OF IMPORT LICENCES

The IE/NI Protocol provides that EU rules on import and export licences apply to and in the United Kingdom in respect of Northern Ireland.³⁷

However, the IE/NI Protocol excludes the possibility for the United Kingdom in respect of Northern Ireland to

- participate in the decision-making and decision-shaping of the Union;³⁸

³⁶ Proposal for a Regulation of the European Parliament and of the Council on the application of Union tariff rate quotas and other import quotas, 14.8.2020, COM(2020)375.

³⁷ Article 5(4) of the IE/NI Protocol and section 47 of annex 2 to that Protocol.

³⁸ Where an information exchange or mutual consultation is necessary, this will take place in the joint consultative working group established by Article 15 of the IE/NI Protocol.

- initiate objections, safeguard or arbitration procedures to the extent that they concern regulations, standards, assessments, registrations, certificates, approvals and authorisations issued or carried out by EU Member States;³⁹
- act as leading authority for assessments, examinations and authorisations;⁴⁰
- invoke mutual recognition of assessments and authorisations by the United Kingdom in respect of Northern Ireland.⁴¹

More specifically, this means *inter alia* the following:

- an import licence issued by the United Kingdom in respect of Northern Ireland under Regulation (EU) No 1308/2013 cannot be invoked for imports in an EU Member State.

The websites of the Commission on tariff rate quotas (https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/market-measures/trqs_en, https://ec.europa.eu/info/food-farming-fisheries/farming/eu-agriculture-and-brexiteu_en and https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/what-is-common-customs-tariff/tariff-quotas_en) provide general information concerning EU legislation on tariff rate quotas. These pages will be updated with further information, where necessary.

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³⁹ Fifth subparagraph of Article 7(3) of the IE/Ni Protocol.

⁴⁰ Article 13(6) of the IE/Ni Protocol.

⁴¹ First subparagraph of Article 7(3) of the IE/Ni Protocol.