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2023/0063 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) 2020/2170 as regards the application of Union tariff rate quotas and other import quotas to certain products transferred to Northern Ireland

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The United Kingdom of Great Britain and Northern Ireland (United Kingdom) withdrew from the Union on 1 February 2020. The Protocol on Ireland/Northern Ireland attached to the Withdrawal Agreement ('the Protocol') applies from the end of the transition period, i.e. as of 1 January 2021.

In accordance with the Protocol, legislation as defined in point (2) of Article 5 of Regulation (EU) No 952/2013 applies to and in the United Kingdom in respect of Northern Ireland.

The bilateral arrangements between the Union and the United Kingdom under the Protocol do not give rise to rights and obligations for third countries.

Consequently, 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. This 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. Furthermore, any agreement with a third country providing for the management of Union tariff rate quotas require that the goods be imported within the Union. Therefore, that third country could refuse to issue export licenses for direct imports into Northern Ireland.

On the basis of the above considerations, on 16 December 2020, the European Parliament and the Council adopted Regulation (EU) 2020/2170 on the application of Union tariff rate quotas and other import quotas[1]. Article 1 of that Regulation provides in substance that goods imported from outside the Union are eligible for treatment pursuant to Union import tariff rate quotas or other import quotas only if they are released for free circulation in the Union' customs territory.

However, as indicated above, whilst the bilateral arrangements between the Union and the United Kingdom under the Protocol do not give rise to rights and obligations for any other third countries, they do give rise to specific rights and obligations for the United Kingdom. This creates a unique situation in respect of the United Kingdom, which is different in substance from the situation of other countries when exporting to the EU. The current drafting of Regulation 2020/2170, however, does not make it possible for United Kingdom originating goods to make use of the relating EU tariff rate quotas when transferred from Great Britain to Northern Ireland.

The United Kingdom has shown the need that certain steel products, namely Non Alloy and Other Alloy Quarto Plates[2] and Angles, Shapes and Sections of Iron or Non Alloy Steel[3] (currently falling under categories 7 and 17 respectively in the EU steel safeguard measures) originating in the United Kingdom and currently subject to safeguard measures under Commission implementing Regulation (EU) 2019/159 be released into free circulation in

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1 OJ L432 of 21.12.2020, p.1

2 CN codes: 7208 51 20, 7208 51 91, 7208 51 98, 7208 52 91, 7208 90 20, 7208 90 80, 7210 90 30, 7225 40 12, 7225 40 40, 7225 40 60, 7225 99 00

3 CN codes: 7216 31 10, 7216 31 90, 7216 32 11, 7216 39 19, 7216 32 91, 7216 32 99, 7216 33 10, 7216 33 90

Northern Ireland. The United Kingdom has provided evidence that a substantial transfer of these steel products has taken place between other parts of the United Kingdom and Northern Ireland, and has expressed the wish that it be allowed to use the EU tariff rate quotas applicable to these steel goods originating in the United Kingdom currently subject to safeguard measures, when such goods are released for free circulation in Northern Ireland. In order to limit the risk of circumvention, these products should be consigned directly from other parts of the United Kingdom.

Since the need for importation under tariff rate quotas of steel of UK origin subject to safeguard measures into Northern Ireland may also vary over time, an appropriate mechanism should be put in place to allow for the rapid adjustment of the list of such steel products. The Commission should be authorised to proceed to such adjustments, under certain conditions, by way of delegated acts, on the basis of the procedures currently in place.

It is therefore appropriate to amend Regulation 2020/2170 so as to allow that certain steel products (Non Alloy and Other Alloy Quarto Plates, and Angles, Shapes and Sections of Iron or Non Alloy Steel) originating in the United Kingdom and currently subject to EU safeguard measures be eligible for treatment pursuant to Union import tariff rate quotas also if they are released for free circulation in Northern Ireland.

By virtue of Article 5(3) and (4) of the Protocol in conjunction with Article 13(3) thereof, this Regulation would also apply to and in the United Kingdom in respect of Northern Ireland.

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

This initiative is in line with the need to ensure the proper implementation of the Withdrawal Agreement and the Protocol on Ireland/Northern Ireland.

- **Consistency with other Union policies**

The initiative is also consistent with the Union's common commercial policy.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 207(2) of the Treaty on the Functioning of the European Union (TFEU).

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

The common commercial policy is an exclusive competence of the Union. The subsidiarity principle therefore does not apply.

- **Proportionality**

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

- **Choice of the instrument**

A legislative act, a Regulation of the European Parliament and of the Council, is required, as existing legislation does not provide for an empowerment to the Commission to adopt the proposed measures.

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 of this Regulation amends Article 1 of Regulation 2020/2170 so as to allow that the Union's tariff rate quotas be available for certain steel products (Non Alloy and Other Alloy Quarto Plates, and Angles, Shapes and Sections of Iron or Non Alloy Steel, currently falling under categories 7 and 17 respectively in the EU steel safeguard measure) originating in the United Kingdom and subject to safeguard measures under Commission implementing Regulation (EU) 2019/159, when these products are transferred directly from other parts of the United Kingdom to Northern Ireland and released for free circulation in Northern Ireland.

Article 1 also provides for the possibility for the Commission to adjust, by way of delegated acts, the list of steel products subject to safeguards for which Union's tariff rate quotas will be made available, where appropriate.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European 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) Article 1 of Regulation (EU) 2020/2170 of the European Parliament and of the Council[4] provides that goods imported from outside the Union are eligible for treatment pursuant to Union import tariff rate quotas or other import quotas only if they are released for free circulation in the territories listed therein. That provision addresses the risks to the proper functioning of the Union's internal market and the integrity of the Common Commercial Policy that would result from the possible circumvention of the Union's tariff rate quotas or other import quotas. The territories set out in that provision do not include Northern Ireland.

(2) The Trade and Cooperation Agreement[5] ('TCA') between the United Kingdom and the European Union provides for the opening by the Union of quotas with regard to imports into the Union of certain products originating in the United Kingdom. In addition, the TCA confers upon the Union the right to introduce other tariff rate quotas or import quotas with regard to imports of goods originating in the United Kingdom under certain circumstances, including as part of the application of multilateral safeguard measures in accordance with the WTO Agreement. It is necessary, therefore, to clarify whether goods originating in the United Kingdom and released for free circulation in Northern Ireland are eligible for treatment under those tariff rate quotas or other import quotas.

(3) The United Kingdom is bound by the arrangements laid down in the Protocol on Ireland/Northern Ireland (the 'Protocol') to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ('the Withdrawal Agreement'). Therefore, the legal relationship between the Union and the United Kingdom in respect of goods originating in the United Kingdom and released for free circulation in Northern Ireland is fundamentally different from that between the Union and any other third country in

4 Regulation (EU) 2020/2170 of the European Parliament and of the Council of 16 December 2020 on the application of Union tariff rate quotas and other import quotas **(**OJ L 432, 21.12.2020, p. 1).

5 OJ L 444, 31.12.2020, p.14.

respect of goods originating in that third country and released for free circulation in Northern Ireland.

(4) The United Kingdom has provided evidence showing that certain steel products originating in the United Kingdom that are currently subject to safeguard measures under Commission Implementing Regulation (EU) 2019/159[6] ('the products concerned') have been transferred in significant quantities to Northern Ireland from other parts of the United Kingdom. In order to ensure the economic viability of these transfers and in view of the specific circumstances in Northern Ireland, it is appropriate to allow for the products concerned to benefit from the respective Union's tariff rate quotas when they are released for free circulation in Northern Ireland.

(5) In order to limit the risk of circumvention of the Union's tariff rate quotas applicable to the products concerned by imports of the same products originating in other countries, the products concerned should be consigned directly from other parts of the United Kingdom.

(6) Moreover, the United Kingdom has undertaken to take the necessary measures, in accordance with the Protocol, to ensure that the transfers of the products concerned using Union's tariff rate quotas are timely counted against those quotas, in the same way as if those goods were imported into the Union.

(7) Regulation (EU) 2020/2170 should therefore be amended accordingly.

(8) Since the need for importation in Northern Ireland of the products concerned may vary over time, in order to adjust the list of products concerned 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 in respect of the products concerned. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(9) By virtue of Article 5(3) and (4) of the Protocol in conjunction with Article 13(3) thereof, this Regulation also applies to and in the United Kingdom in respect of Northern Ireland.

(10) In order to avoid any potential disruption in the transfers of the products concerned from other parts of the United Kingdom to Northern Ireland, this Regulation should enter into force as soon as possible,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) 2020/2170 is amended as follows:

(1) In Article 1 the following second paragraph is added:

[6] Commission Implementing Regulation (EU) 2019/159 of 31 January 2019 imposing definitive safeguard measures against imports of certain steel products (OJ L 31, 1.2.2019, p. 27).

"Goods listed in the Annex originating in the United Kingdom that are subject to safeguard measures under Commission Implementing Regulation (EU) 2019/159* and that are brought into Northern Ireland by direct transport from other parts of the United Kingdom shall also be eligible for treatment pursuant to Union import tariff rate quotas if those goods are released for free circulation in the territory of Northern Ireland.

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*Commission Implementing Regulation (EU) 2019/159 of 31 January 2019 imposing definitive safeguard measures against imports of certain steel products (OJ L 31, 1.2.2019, p. 27).";

(2) the following Articles are inserted:

"Article 1a

The Commission is empowered to adopt delegated acts, in accordance with Article 1b, amending this Regulation in order to add to the list set out in the Annex certain categories of goods originating in the United Kingdom that are subject to safeguard measures under Implementing Regulation (EU) 2019/159, that are brought into Northern Ireland by direct transport from other parts of the United Kingdom provided that the United Kingdom has demonstrated to the satisfaction of the Union a need for these goods to be released into free circulation in Northern Ireland.

Article 1b

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 shall be conferred on the Commission for a period of five years from [OP:please insert the date of entry into force of this Regulation]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 1a 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 European Union or at a later date specified therein. It shall not affect the validity on 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 1a 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 [two months] at the initiative of the European Parliament or of the Council."

(3) The text set out in the Annex to this Regulation is added as Annex.

Article 2

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

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

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*