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COMMISSION

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2020/0176 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the application of Union tariff rate quotas and other import quotas

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 as of 1 February 2020. The Protocol on Ireland/Northern Ireland attached to the Withdrawal Agreement ('the Protocol') will apply from the end of the transition period, i.e. as of 1 January 2021.

The Protocol states that Northern Ireland is part of the customs territory of the United Kingdom, and that the United Kingdom can include Northern Ireland in the territorial scope of its World Trade Organization schedules. At the same time, the Protocol provides that any reference to the customs territory of the Union in the applicable provisions of the Protocol, as well as in the provisions of Union law made applicable to and in the United Kingdom in respect of Northern Ireland by the Protocol, must be read as including the land territory of Northern Ireland. This means that despite Northern Ireland being formally in the United Kingdom's customs territory, the United Kingdom, in respect of Northern Ireland, is obliged to apply the Union's customs legislation as if Northern Ireland were still in the Union's customs territory.

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 export 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.

To address that risk, the Union'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.

By virtue of the Protocol, this Regulation would also applies 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 ongoing actions of the Union to address the consequences of the withdrawal of the United Kingdom from the Union and to prepare for the end of the transition period in an orderly manner, notably to prepare for the 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 provides that the Union's tariff rate quotas and other import quotas should be available only for goods imported from outside of the Union and released into free circulation in the Union. Article 1 lists the relevant customs territories, which make up the Union customs territory. This list does not include Northern Ireland, which has the effect that the Union's tariff rate quotas and other import quotas would not be available for imports into Northern Ireland. Article 2 provides for the application of the Regulation, which should start the day following the end of transition period, on 1 January 2021.

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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) 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') was concluded on behalf of the Union by Council Decision (EU) 2020/135[1] of 30 January 2020 and entered into force on 1 February 2020.

(2) Article 4 of the Protocol on Ireland/Northern Ireland annexed to the Withdrawal Agreement ('the Protocol') reiterates that Northern Ireland is part of the customs territory of the United Kingdom, and that nothing in the Protocol prevents the United Kingdom from including Northern Ireland in the territorial scope of its Schedules of Concessions annexed to the General Agreement on Tariffs and Trade 1994 ('GATT 1994').

(3) At the same time, Article 13(1) of the Protocol provides that notwithstanding any other provisions of the Protocol, any reference to the customs territory of the Union in the applicable provisions of the Protocol, as well as in the provisions of Union law made applicable to and in the United Kingdom in respect of Northern Ireland by the Protocol, shall be read as including the land territory of Northern Ireland.

(4) According to Article 5(3) of the Protocol, Union customs legislation as defined in Article 5, point (2) of Regulation (EU) No 952/2013 of the European Parliament and of the Council[2] applies to and in the United Kingdom in respect of Northern Ireland. These provisions, in conjunction with Article 5(1) , first and second subparagraph of the Protocol as regards goods brought into Northern Ireland from outside the Union, mean that Union tariff measures including tariff rate quotas under the Common Customs Tariff or relevant international agreements, would be applicable to such

[1] Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion of 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 (OJ L 29, 31.1.2020, p. 1).

[2] Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

goods that are considered to be at risk of subsequently being moved into the Union. Those tariff rate quotas include in particular import tariff rate quotas in the Union's schedules of commitments under GATT 1994, agreed in the Union's bilateral international agreements, including origin derogation quotas, import tariff rate quotas under the Union's trade defence regimes and other autonomous import tariff rate quotas, as well as export tariff rate quotas provided for in agreements with third countries.

(5) According to Article 5(4) of the Protocol, Union law listed in Annex 2 to the Protocol also applies, under the conditions set out in that Annex, to and in the United Kingdom in respect of Northern Ireland. This includes Union legislation that provides for certain import quotas.

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

(7) 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. 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.

(8) To address that risk, the Union's import 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.

(9) Any agreement of the Union with a third country providing for export tariff rate quotas applies only to goods imported within the Union. Therefore, that third country could refuse to issue export licenses for direct imports into Northern Ireland.

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

HAVE ADOPTED THIS REGULATION:

Article 1

Goods imported from outside the Union shall be eligible for treatment pursuant to Union import tariff rate quotas or other import quotas or pursuant to export tariff rate quotas applied by third countries only if released into free circulation in the following territories:

– the territory of the Kingdom of Belgium,

– the territory of the Republic of Bulgaria,

– the territory of the Czech Republic,

– the territory of the Kingdom of Denmark, except the Faroe Islands and Greenland,

– the territory of the Federal Republic of Germany, except the Island of Heligoland and the territory of Büsingen (Treaty of 23 November 1964 between the Federal Republic of Germany and the Swiss Confederation),

– the territory of the Republic of Estonia,

– the territory of Ireland,

– the territory of the Hellenic Republic,

– the territory of the Kingdom of Spain, except Ceuta and Melilla,

– the territory of the French Republic, except the French overseas countries and territories to which the provisions of Part Four of the TFEU apply, but including the territory of Monaco as defined in the Customs Convention signed in Paris on 18 May 1963 (Journal officiel de la République française of 27 September 1963, p. 8679),

– the territory of the Republic of Croatia,

– the territory of the Italian Republic, except the municipality of Livigno,

– the territory of the Republic of Cyprus, in accordance with the provisions of the 2003 Act of Accession,

– the territory of the Republic of Latvia,

– the territory of the Republic of Lithuania,

– the territory of the Grand Duchy of Luxembourg,

– the territory of Hungary,

– the territory of Malta,

– the territory of the Kingdom of the Netherlands in Europe,

– the territory of the Republic of Austria,

– the territory of the Republic of Poland,

– the territory of the Portuguese Republic,

– the territory of Romania,

– the territory of the Republic of Slovenia,

– the territory of the Slovak Republic,

– the territory of the Republic of Finland

– the territory of the Kingdom of Sweden, and

– the territory of the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia as defined in the Treaty concerning the Establishment of the Republic of Cyprus, signed in Nicosia on 16 August 1960.

Article 2

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

It shall apply from 1 January 2021.

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*