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dated 15 September 2020<sup>1</sup>

## **NOTICE TO STAKEHOLDERS**

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

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<sup>1</sup> REV2 introduces a new section A.1, and amends section C of the version REV1.

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## INTRODUCTION

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.<sup>2</sup> The Withdrawal Agreement<sup>3</sup> provided for a transition period which ended on 31 December 2020. The Withdrawal Agreement provided also, in some cases, for separation provisions at the end of the transition period.

During the transition period, the European Union and the United Kingdom negotiated a Trade and Cooperation Agreement, which was signed on 30 December 2020<sup>4</sup> and applies provisionally since 1 January 2021.<sup>5</sup>

All interested parties, and especially economic operators, are reminded of the legal situation applicable since the end of the transition period, taking account of the Trade and Cooperation Agreement (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:

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 were 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 lodged will be released by the United Kingdom after the end of the transition period.

### Please note:

<sup>2</sup> A third country is a country not member of the European Union.

<sup>3</sup> 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”).

<sup>4</sup> Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, OJ L444, 31.12.2020, p.14.

<sup>5</sup> OJ L 1, 1.1.2021, p.1.

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.<sup>6</sup>

## A. LEGAL SITUATION AFTER THE END OF THE TRANSITION PERIOD

### 1. PRODUCTS ORIGINATING IN THE UNITED KINGDOM IMPORTED INTO THE EU (AND VICE VERSA)

Article GOODS.18 ('Use of existing WTO tariff rate quotas') of the Trade and Cooperation Agreement lays down rules for the use of existing WTO tariff rate quotas, stating that **products originating in the United Kingdom shall not be eligible to be imported into the European Union under existing WTO tariff rate quotas.**

Similarly, products originating in the European Union shall not be eligible to be imported into the United Kingdom under existing WTO tariff rate quotas.

For the notion of "existing", see Article GOODS.18(2) of the Trade and Cooperation Agreement. As regards the EU's tariff rate quotas, the list of the tariff rate quotas concerned is set out in the Annex to Regulation (EU) 2019/216.<sup>7</sup>

For this purpose, the originating status of the products shall be determined on the basis of non-preferential rules of origin applicable in the importing Party.

In order to implement Article GOODS.18 of the Trade and Cooperation Agreement, applying as from 1 January 2021, the amendment of the relevant EU legislation<sup>8</sup> is in preparation.

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<sup>6</sup> [https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/preparing-end-transition-period\\_en](https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/preparing-end-transition-period_en)

<sup>7</sup> 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, OJ L 38, 8.2.2019, p. 1.

<sup>8</sup> Such as Commission Implementing Regulation (EU) 2020/761 of 17 December 2019 laying down rules for the application of Regulations (EU) No 1306/2013, (EU) No 1308/2013 and (EU) No 510/2014 of the European Parliament and of the Council as regards the management system of tariff quotas with licences (OJ L 185, 12.6.2020, p. 24), Commission Implementing Regulation (EU) 2020/1988 of 11 November 2020 laying down rules for the application of Regulations (EU) No 1308/2013 and (EU) No 510/2014 of the European Parliament and of the Council as regards the administration of import tariff quotas in accordance with the 'first come, first served' principle (OJ L 422, 14.12.2020, p. 4), Commission Regulation (EC) No 218/2007 of 28 February 2007 opening and providing for the administration of Community tariff quotas for wines (OJ L 62, 1.3.2007, p. 22), and Commission Regulation (EC) No 1518/2007 of 19 December 2007 opening and providing for the administration of a tariff quota for vermouth (OJ L 335, 20.12.2007, p. 14).

In the meantime, the Commission has invited Member States' competent authorities to apply the relevant EU legislation in line with Article GOODS.18 with effect from 1 January 2021 and for customs declarations accepted as from this date. In relation to existing WTO tariff rate quotas, competent authorities of Member States have been asked not to:

- accept licence applications for products originating in the United Kingdom;
- issue tariff rate quotas licences for products originating in the United Kingdom; and
- release for free circulation products originating in United Kingdom under these tariff-rate quotas (TRQ).

## 2. PRODUCTS ORIGINATING IN THIRD COUNTRIES OTHER THAN THE UNITED KINGDOM AND IMPORTED INTO THE EU

Since the end of the transition period, the EU rules on tariff rate quotas no longer apply in the United Kingdom.<sup>9</sup> This has in particular the following consequences:<sup>10</sup>

**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.<sup>11</sup>

### 2.1. 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);<sup>12</sup>

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<sup>9</sup> Regarding the applicability of EU tariff rate quotas to Northern Ireland, see Part C of this notice.

<sup>10</sup> 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.

<sup>11</sup> 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.

<sup>12</sup> 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.

- bilateral agreements of the EU with third countries (bilateral tariff rate quotas);<sup>13 14</sup> or
- autonomous tariff rate quotas.<sup>15 16</sup>

There are two different management approaches of EU tariff rate quotas: the “first come first served” management (see below, section 2.2), and the management with import licences (see below, section 2.3). 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 2.4).

## 2.2. “First come first served” management of EU tariff rate quotas<sup>17</sup>

According to Article 50 of Commission Implementing Regulation (EU) 2015/2447,<sup>18</sup> customs authorities shall examine whether a request to benefit from a 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.

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<sup>13</sup> Examples of bilateral tariff rate quotas can be found in Commission Implementing Regulation (EU) 2020/761 of 17 December 2019 laying down rules for the application of Regulations (EU) No 1306/2013, (EU) No 1308/2013 and (EU) No 510/2014 of the European Parliament and of the Council as regards the management system of tariff quotas with licences, OJ L 185, 12.6.2020, p. 24..

<sup>14</sup> Origin derogation quotas (see above) are always bilaterally agreed.

<sup>15</sup> 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) 2020/1706 of 13 November 2020 opening and providing for the management of autonomous Union tariff quotas for certain fishery products for the 2021-2023 period, OJ L 385, 17.11.2020, p. 3.

<sup>16</sup> Tariff rate quotas set under the Union’s trade defence regimes are always autonomous tariff rate quotas.

<sup>17</sup> 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.

<sup>18</sup> 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.

### 2.3. Management of EU tariff rate quotas with import licences<sup>19</sup>

Some EU tariff rate quotas for agricultural products<sup>20</sup> are administered on the basis of a licence issued by a Member State<sup>21</sup> in accordance with the rules laid down in the relevant Commission acts.

#### 2.3.1. *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.<sup>22</sup> 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 licences allocated by the licensing issuing authorities of the United Kingdom (so-called UK licences) ceased to be valid in the EU at the end of the transition period.<sup>23</sup> After the end of the transition period, EU customs administrations shall no longer accept those licences.

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<sup>19</sup> See also [https://ec.europa.eu/info/food-farming-fisheries/farming/eu-agriculture-and-brexiteu\\_en](https://ec.europa.eu/info/food-farming-fisheries/farming/eu-agriculture-and-brexiteu_en).

<sup>20</sup> See Commission Delegated Regulation (EU) 2020/760 of 17 December 2019 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the rules for the administration of import and export tariff quotas subject to licences and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards the lodging of securities in the administration of tariff quotas, OJ L 185, 12.6.2020, p. 1, and Commission Implementing Regulation (EU) 2020/761 of 17 December 2019 laying down rules for the application of Regulations (EU) No 1306/2013, (EU) No 1308/2013 and (EU) No 510/2014 of the European Parliament and of the Council as regards the management system of tariff quotas with licences, OJ L 185, 12.6.2020, p. 24...

<sup>21</sup> 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.

<sup>22</sup> See 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; and Article 3 of Commission Delegated Regulation (EU) 2020/760 of 17 December 2019 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the rules for the administration of import and export tariff quotas subject to licences and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards the lodging of securities in the administration of tariff quotas, OJ L 185, 12.6.2020, p. 1.

<sup>23</sup> 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.

Licences held by UK operators are no longer valid after the end of the transition period. This also applies in the case of transfers<sup>24</sup> of a licence issued by the licencing authorities of a Member State, before the end of the transition period, to an operator established in the United Kingdom.<sup>25</sup>

Licences issued by EU licensing authorities and held by EU operators remain valid within the EU.<sup>26</sup>

### 2.3.2. *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. Where operators have lodged securities with the United Kingdom authorities, they should seek confirmation about the applicable rules on release of securities with the United Kingdom authorities.

## 2.4. **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 licences (“export licence”) that may be delivered by national administrations to exporters wishing to benefit from the tariff rate quota in question.<sup>27 28</sup>

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<sup>24</sup> 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.

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

<sup>26</sup> Cf. also, with regard to certain tariff rate quotas, the first subparagraph of Article 2(2) of Commission Implementing Regulation (EU) 2019/386.

<sup>27</sup> Commission Implementing Regulation (EU) 2020/761 of 17 December 2019 laying down rules for the application of Regulations (EU) No 1306/2013, (EU) No 1308/2013 and (EU) No 510/2014 of the European Parliament and of the Council as regards the management system of tariff quotas with licences, OJ L 185, 12.6.2020, p. 24.

<sup>28</sup> Export licences for milk and milk products are not transferable, see Article 7(2) of Commission Delegated Regulation (EU) 2020/760 of 17 December 2019 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the rules for the administration of import and export tariff quotas subject to licences and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards the lodging of securities in the administration of tariff quotas, OJ L 185, 12.6.2020, p. 1.

An export licence issued by the United Kingdom ceases 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 2.3.2. 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 quotas<sup>29</sup> (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 authorities<sup>30</sup> 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 allocated quantities on the basis of the requests transmitted by the UK according to Article 51(2) of Regulation (EU) 2015/2447 and communicated 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 quota's allocation) in respect of goods which are the subject of a request for the benefit of a tariff rate quota.

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<sup>29</sup> 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.

<sup>30</sup> 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.

### **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.<sup>31</sup> 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.<sup>32</sup>

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.<sup>33</sup>

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.<sup>34</sup>

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.<sup>35</sup> 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 territory.<sup>36</sup>

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

#### **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.

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<sup>31</sup> Article 185 of the Withdrawal Agreement.

<sup>32</sup> Article 18 of the IE/Ni Protocol.

<sup>33</sup> Article 7(1) of the Withdrawal Agreement in conjunction with Article 13(1) of the IE/Ni Protocol.

<sup>34</sup> Articles 5(3), 5(4) and sections 1 and 4 of annex 2 of the IE/Ni Protocol.

<sup>35</sup> 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”.

<sup>36</sup> Article 4 of the IE/Ni Protocol.

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, Regulation (EU) 2020/2170<sup>37</sup> provides that the EU's tariff rate quotas and other import quotas **are available only for goods imported and released into free circulation in the Union and not in Northern Ireland.**

After having been released for free circulation within the Union, a good which has benefitted from an EU tariff rate quota or other import quota can be moved forward into Northern Ireland, since this is to be considered as an internal movement within the EU customs union.

The websites of the Commission on tariff rate quotas ([https://ec.europa.eu/info/food-farming-fisheries/farming/eu-agriculture-and-brexit\\_en](https://ec.europa.eu/info/food-farming-fisheries/farming/eu-agriculture-and-brexit_en) and [https://ec.europa.eu/taxation\\_customs/business/calculation-customs-duties/what-is-common-customs-tariff/tariff-quotas\\_en](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.

European Commission  
Directorate-General Taxation and Customs Union  
Directorate-General Trade  
Directorate-General for Agriculture and Rural Development  
Directorate-General for Maritime Affairs and Fisheries

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<sup>37</sup> 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).