

European Commission publishes new rules for applying tariff quota in agricultural sector as of 1 January 2021

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Executive summary

The European Commission published, on 12 June 2020, Commission Delegated Regulation (EU) 2020/760,¹ regarding new rules for import tariff quotas subject to import licenses which will apply as of 1 January 2021. Under the new rules operators may, in principle, only apply for tariff quotas where they are not linked with other operators applying for the same tariff quota order number. This prevents the current practice whereby several linked operators separately apply for import tariff quotas. As a result, companies may, as of 1 January 2021, benefit from a full or partial suspension of import duties for only a limited quantity of products. This Alert summarizes the new rules and how these might impact existing trade practices of companies importing agricultural products.

Detailed discussion

Tariff quotas for agricultural products

A tariff quota constitutes, during the period of validity of the measure and for a limited quantity, the total (total suspension) or partial waiver (partial suspension) of the normal duties applicable to imported goods. Tariff quotas apply for different raw materials, semi-finished products and components belonging to the agricultural sector for which a deficit exists in the European Union (EU). Tariff quotas exist for example for horticultural products, poultry eggs, beef, pork and dairy products.

New requirements for operators applying for tariff quotas

Commission Delegated Act (EU) 2020/760 introduces new rules for the operators that apply for tariff quotas. As of 1 January 2021, operators may apply for tariff quotas for which prior registration of operators is required only where:²

- ▶ They are not linked with other legal or natural persons applying for the same tariff quota order number.

Or

- ▶ They are linked with other legal or natural persons applying for the same tariff quota order number but regularly perform substantial economic activities.

These requirements also apply if the import license is transferred to a transferee (e.g., the person that requires the right).

The *Commission Delegated Act (EU) 2020/760* defines that an operator is linked to another legal or natural persons where:³

- ▶ It owns or controls another legal person; or
- ▶ It has family links to another natural person; or
- ▶ It has an important business relationship with another legal or natural person.

If the operator has presented an incorrect document or has submitted incorrect data to substantiate that the requirements are met, sanctions may be imposed. These sanctions include the possibility to exclude the operator from the license application system for the import tariff quota concerned for a tariff quota period following the tariff quota period during which such finding was made.

Impact of the new rules on companies importing agricultural products

In practice, linked operators (e.g., entities belonging to the same company) separately apply for tariff quotas with the purpose of benefitting from a full or partial suspension of import duties for a larger quantity of imported agricultural products. The new rules are intended to prevent that linked operators each apply for the same tariff quota order number. An exception to this rule applies to linked applicants that, if considered in isolation, each perform substantial economic activities. In this context, "substantial economic activities" means actions or activities carried out by a person with the objective to ensure production, distribution or consumption of goods and services.⁴ In practice this means that an operator applying for a tariff quota should perform real economic activities and should not be established for the sole purpose of applying for a tariff quota.

Also, in practice it is quite common that companies establish entities with the sole purpose of applying for a tariff quota. As the before-mentioned definition of "substantial economic activities" requirement shows, this will no longer be possible under the new rules. This means that only one operator out of a group of linked operators (e.g., one entity belonging to the same company), is allowed to apply for a tariff quota. As a consequence, after the *Commission Delegated Act (EU) 2020/760* becomes applicable, a full or partial suspension of import duties is only available for a limited quantity of imported agricultural products.

Endnotes

1. 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, *PB L 185 van 12.6.2020*, p. 1-23.
2. Article 11(1) Commission Delegated Regulation (EU) 2020/760. Additionally, other (existing) requirements should be fulfilled, including the need for an operator to be established in the "license issuing authority" and the have VAT and EORI registration.
3. Artikel 11(2) Commission Delegated Regulation (EU) 2020/760.
4. Article 11(3)(e) Commission Delegated Regulation (EU) 2020/760.

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EYG no. 004885-20Gbl

1508-1600216 NY
ED None

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