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

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

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[(1)],

Whereas:

(1) On 29 March 2017, the United Kingdom submitted the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union(TEU). The TEU and the Treaty on the Functioning of the European Union (TFEU) (collectively, the 'Treaties') will cease to apply to the United Kingdom from the date of entry into force of a withdrawal agreement or failing that, two years after that notification, that is from 30 March 2019, unless the European Council, in agreement with the United Kingdom, unanimously decides to extend that period.

(2) The withdrawal agreement as agreed between the negotiators contains arrangements for the application of provisions of Union law to and in the United Kingdom beyond the date the Treaties cease to apply to and in the United Kingdom. If that agreement enters into force, Council Regulation (EC) No 32/2000[(2)] will apply to and in the United Kingdom during the transition period in accordance with that agreement and will cease to apply at the end of that period.

(3) The United Kingdom's withdrawal from the Union will have effects on the relations of the United Kingdom and the Union with third parties, in particular in the context of the World Trade Organisation (WTO) of which both are original members. As negotiations on that withdrawal have been ongoing at the same time as the negotiations on the multiannual financial framework (MFF), and taking into account the share dedicated to the agricultural sector in the MFF, that sector could be exposed to a great extent.

(4) By letter of 11 October 2017, the Union and the United Kingdom informed the other WTO Members that it was their intention that, upon leaving the Union, the United Kingdom would replicate to the extent possible its current obligations as a Member State of the Union in its new, separate, schedule of concessions and commitments on trade in goods. However, given that, as regards quantitative commitments, replication is not an appropriate method, the Union and the United Kingdom informed the other WTO Members of their intention to ensure that other WTO Members' current market access levels would be maintained by apportioning the Union's tariff rate quotas between the Union and the United Kingdom.

(5) In line with the WTO rules, such apportionment of tariff rate quotas that are part of the schedule of concessions and commitments of the Union will have to occur in accordance with Article XXVIII of the General Agreement on Tariffs and Trade 1994 (GATT 1994). The Union will, therefore, following completion of preliminary contacts, engage in negotiations with WTO Members having a principal or substantial supplying interest or holding an initial negotiating right in relation to each of these tariff rate quotas. Those negotiations should remain limited in scope and should in no way extend to a renegotiation of the general terms or degree of access of products to the Union market.

(6) However, given the time limits imposed on this process by the negotiations on the United Kingdom's withdrawal from the Union, it is possible that agreements might not be concluded with all WTO Members concerned in relation to all of the tariff rate quotas on the date the Union's WTO schedule of concessions and commitments on trade in goods ceases to apply to the United Kingdom. In view of the need to ensure legal certainty and the continuous smooth operation of imports under the tariff rate quotas to the Union and to the United Kingdom, it is necessary for the Union to be able to proceed unilaterally to the apportionment of the tariff rate quotas. The methodology used should be in line with the requirements of Article XXVIII of GATT 1994.

(7) The following methodology should therefore be used: as a first step the United Kingdom's usage share for each individual tariff rate quota should be established. That share, expressed as a percentage, is the United Kingdom's share of total Union imports under the tariff rate quota over a recent representative three-year period. That share should then be applied to the entire scheduled tariff rate quota volume, taking into account any under-fill thereof, in order to arrive at the United Kingdom's share of a given tariff rate quota. The Union's share would then consist of the remainder of the tariff rate quota in question. This means the total volume of a given tariff rate quota is not changed, that is to say EU-27 volume equals current EU-28 volume minus the United Kingdom volume. The underlying data should be extracted from the relevant Commission databases.

(8) The methodology for the usage share for each individual tariff rate quota has been established and agreed by the Union and the United Kingdom, in line with the requirements of Article XXVIII of GATT 1994, and therefore, that methodology should be wholly maintained to ensure its consistent application.

(9) In those cases where no trade is observed for a specific tariff rate quota over the representative period, two alternative approaches should be pursued in order to establish

the United Kingdom's usage share. In those cases where there is another tariff rate quota with the identical product definition, the usage share of that identical tariff rate quota should be applied to the tariff rate quota that is without observed trade over the representative period. In those cases where there is no tariff rate quota with an identical product definition, the formula to calculate the usage share should be applied to Union imports in the corresponding tariff lines outside of the tariff rate quota.

(10) For the agricultural tariff rate quotas concerned, Articles 184 to 188 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council[(3)] provide the necessary legal basis for the administration of the tariff rate quotas once apportioned by this Regulation. In this regard, the tariff rate quota quantities concerned are set out in Part A of the Annex to this Regulation. That administration should therefore be carried out having due regard to the objectives of the Common Agricultural Policy, as laid down in the TFEU, and the multi-functionality of agricultural activities. For the tariff rate quotas covering most fisheries products, industrial products and certain processed agricultural products, the administration of the tariff rate quotas is carried out pursuant to Regulation (EC) No 32/2000. The tariff rate quotas quantities concerned are set out in Annex I to that Regulation and that Annex should therefore be replaced by the quantities set out in Part B of the Annex to this Regulation.
Four fisheries tariff rate quotas are not administered under Regulation (EC) No 32/2000 but under Commission Regulation (EC) No 847/2006[(4)], which implements Council Decision 2006/324/EC[(5)]. The tariff rate quota quantities concerned are set out in Part C of the Annex to this Regulation. Implementing powers should be conferred on the Commission to adapt the provisions of Regulation (EC) No 847/2006 in respect of those four fisheries tariff rate quotas in line with the apportioned quantities established by this Regulation. Those implementing powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[(6)].

(11) In order to take into account the fact that negotiations with affected WTO Members have been taking place in parallel with the ordinary legislative procedure for the adoption of this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to amend Parts A and C of the Annex to this Regulation with respect to the quantities of the apportioned tariff rate quotas listed therein, in order to take account of any agreements concluded or of pertinent information that it might receive in the context of those negotiations which would indicate that specific factors that were not previously known require an adjustment to the apportionment of the tariff quotas between the Union and the United Kingdom, while ensuring consistency with the common methodology agreed jointly with the United Kingdom. That power to adopt acts should also be delegated to the Commission where such pertinent information becomes available from other sources with an interest in a specific tariff rate quota. In addition, Regulation (EC) No 32/2000 should be amended in order to delegate to the Commission the power to adopt acts in accordance with Article 290 TFEU to amend Annex I to that Regulation.

(12) In accordance with the principle of proportionality and in light of the United Kingdom's withdrawal from the Union, it is necessary and appropriate to lay down rules to apportion tariff rate quotas included in the WTO schedule of the Union. This Regulation

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2019/216 of the European Parliament and of the Council. (See end of Document for details)*

does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with Article 5(4) TEU.

(13) In accordance with Article 4(3) of Regulation (EEC, Euratom) No 1182/71 of the Council[7], the cessation of application of acts fixed at a given date shall occur on the expiry of the last hour of the day falling on that date. This Regulation should therefore apply from the day following that on which Regulation (EC) No 32/2000 ceases to apply to the United Kingdom given that from that day both the Union and the United Kingdom need to know what their WTO obligations are. However, the provisions of this Regulation setting out the delegation of power and the conferral of implementing powers should apply from the date of entry into force of this Regulation.

(14) Taking into account the procedural requirements of the ordinary legislative procedure and the need to subsequently adopt implementing acts for the application of this Regulation on the one hand, and the necessity to have the apportioned tariff rate quotas in place and ready to be applied at the moment that the United Kingdom ceases to be covered by the schedule of concessions and commitments of the Union, which could be as early as 30 March 2019, on the other hand, it is essential for this Regulation to enter into force as soon as possible,

HAVE ADOPTED THIS REGULATION:

Article 1

1 The tariff rate quotas included in the schedule of concessions and commitments of the Union annexed to the General Agreement on Tariffs and Trade 1994 (GATT 1994) shall be apportioned between the Union and the United Kingdom of Great Britain and Northern Ireland (the 'United Kingdom') in line with the following methodology:

a the Union's usage share of imports in percentages, for each individual tariff rate quota is established, over a recent representative three-year period;

b the Union's usage share of imports, in percentages, is applied to the entire scheduled tariff rate quota volume to arrive at its share in volume of a given tariff rate quota;

c for individual tariff rate quotas for which no trade can be observed during the representative period as laid down in point (a), the Union's portion is instead established by following the procedure laid down in point (b) on the basis of the Union's usage share of imports, in percentages, of another tariff rate quota with the exact same product definition, or in the corresponding tariff lines outside of the tariff rate quota.

2 The Union's portion of the tariff rate quotas referred to in paragraph 1 resulting from the application of the methodology referred to in that paragraph shall be as follows:

a as regards tariff rate quotas for agricultural products, as set out in Part A of the Annex;

b as regards tariff rate quotas for fisheries products, industrial products and certain processed agricultural products, as set out in Parts B and C of the Annex.

Article 2

While ensuring consistency with the methodology referred to in Article 1(1) and in particular ensuring that the market access into the Union as composed after the withdrawal of the United Kingdom does not exceed that which is reflected in the share of trade flows during a representative period, the Commission is empowered to adopt delegated acts in accordance with Article 3 to amend Parts A and C of the Annex in order to take account of the following:

(a) any international agreement concluded by the Union under Article XXVIII of GATT 1994 concerning the tariff rate quotas referred to in those parts of the Annex; and

(b) pertinent information that it may receive either in the context of negotiations under Article XXVIII of GATT 1994 or from other sources with an interest in a specific tariff rate quota.

Article 3

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 referred to in Article 2 shall be conferred on the Commission for a period of five years from 9 February 2019. 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 2 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 of 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 of 13 April 2016 on Better Law-Making[(8)].

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 2 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.

Article 4

The Commission shall adopt implementing acts in order to adjust, in line with Part C of the Annex to this Regulation, the volumes of the tariff rate quotas opened and managed by Regulation (EC) No 847/2006. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 5(2).

Article 5

1 The Commission shall be assisted by the Customs Code Committee established by Article 285(1) of Regulation (EU) No 952/2013 of the European Parliament and of the Council[(9)]. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2 Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.