Commission Implementing Regulation (EU) No 498/2012 of 12 June 2012 on the allocation of tariff-rate quotas applying to exports of wood from the Russian Federation to the European Union

COMMISSION IMPLEMENTING REGULATION (EU) No 498/2012

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on the allocation of tariff-rate quotas applying to exports of wood from the Russian Federation to the European Union

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Decision 2012/105/EU of 14 December 2011 on the signing, on behalf of the European Union, and provisional application of the Agreement in the form of an Exchange of Letters between the European Union and the Russian Federation relating to the administration of tariff-rate quotas applying to exports of wood from the Russian Federation to the European Union and the Protocol between the European Union and the Government of the Russian Federation on technical modalities pursuant to that Agreement[(1)], and in particular Article 4 thereof,

Whereas:

(1) Considering the economic importance for the European Union of imports of raw wood and the importance that the Russian Federation has for the Union as a supplier of raw wood, the Commission has negotiated with the Russian Federation commitments by the Russian Federation to reduce or eliminate its currently applied export duties, including on raw wood.

(2) These commitments, which will become part of the World Trade Organization (WTO) Schedule of Concessions of the Russian Federation upon its accession to the WTO, include tariff-rate quotas for the export of specified types of coniferous wood, a share of which has been allocated for exports to the Union.

(3) In the context of the negotiations regarding the accession of the Russian Federation to the WTO, the Commission has negotiated, on behalf of the Union, with the Russian Federation, an agreement in the form of an Exchange of Letters relating to the administration of those tariff-rate quotas applying to exports of certain coniferous wood from the Russian Federation to the Union (hereinafter referred to as 'the Agreement').

(4) As provided for in the Agreement, the Union and the Russian Federation have negotiated detailed technical modalities on the management of the tariff-rate quotas, which are contained in an agreement in the form of a Protocol negotiated between the Union and the Government of the Russian Federation (hereinafter referred to as 'the Protocol').

(5) In implementation of the Agreement and the Protocol, methods for allocating tariff quotas depending on the date of submission of applications by importers should be

established and rules and methods for establishing rights of traditional importers for each quota period and for each product group should be laid down.

(6) Rules on business continuity for the determination of whether an importer claiming status of traditional importer is the same natural or juridical person that imported the covered products during the reference periods specified in this Regulation should be laid down.

(7) Rules and procedures related to unused quota authorisations should be laid down.

(8) Transitional rules applicable during the first three quota periods of application of this Regulation should be established in connection with the choice of reference periods for the calculation of ceilings of quota authorisations for traditional importers.

(9) The measures provided for in this Regulation are in accordance with the opinion of the Wood Committee established by Decision 2012/105/EU,

HAS ADOPTED THIS REGULATION:

CHAPTER 1

SCOPE AND DEFINITIONS

Article 1

This Regulation lays down detailed rules on the allocation of quota authorisations in accordance with Article 5(2) of the Protocol, and establishes other provisions necessary for the management by the Union of the quantities of the tariff-rate quotas allocated to exports to the Union in implementation of the Agreement and the Protocol.

Article 2

For the purposes of this Regulation the definitions set out in Article 1(3), Article 2 and Article 5(3) and (4) of the Protocol shall apply.

In addition, the following definition shall apply: ‘product group’ means each of the two categories of covered products according to the classification of such products under the tariff and statistical nomenclature applied in the Russian Federation, namely spruce (tariff lines 4403 20 110 and 4403 20 190) and pine (tariff lines 4403 20 310 and 4403 20 390). The relevant tariff codes applied in the Russian Federation and corresponding Combined Nomenclature[(2)] (‘CN’) and TARIC codes are attached as Annex I.

CHAPTER 2

ALLOCATION PRINCIPLES

I[F1] Article 3

The method for allocating the tariff quota shall depend on the date of submission of the application by the importer, as follows:

(a) for any application submitted by 31 May of each year (hereinafter referred to as ‘first part of the quota period’), the Commission shall allocate tariff quotas in accordance

with the 'traditional' or 'new' categories of importers, pursuant to Article 5(2)(b) of the Protocol; and

(b) for any application submitted from 1 June (hereinafter referred to as 'second part of the quota period'), the Commission shall allocate the remaining quantities of the tariff quotas in accordance with the chronological order of receipt by the Commission of notifications from the competent authorities of Member States (hereinafter referred to as 'Licence Office(s)') of applications submitted by individual importers, pursuant to Article 5(2)(a) of the Protocol.**]**

Textual Amendments

F1 Substituted by Commission Implementing Regulation (EU) 2016/623 of 21 April 2016 amending Implementing Regulation (EU) No 498/2012 on the allocation of tariff-rate quotas applying to exports of wood from the Russian Federation to the European Union.

Article 4

1 During the first part of the quota period:

a 70 % of each tariff quota per product group shall be allocated to traditional importers (hereinafter referred to as 'quota for traditional importers'); and

b 30 % of each tariff quota per product group shall be allocated to new importers (hereinafter referred to as 'quota for new importers').

2 The quota for new importers shall be allocated in accordance with the chronological order of receipt by the Commission of notifications from the Licence Offices of applications for a quota authorisation from such importers.

3 Each new importer shall be granted a maximum of 1,5 % of the tariff quota for each product group in accordance with the allocation procedure referred to in paragraph 2.

Article 5

During the second part of the quota period, each importer shall be granted a maximum of 5 % of the remaining tariff quota for each product group.

Article 6

1 During the first part of the quota period, each traditional importer shall only be entitled to request quota authorisations for a specific share of the quota for traditional importers for each product group (hereinafter referred to as 'ceiling'), calculated in accordance with paragraph 2. All the quota authorisations granted to a traditional importer during the first part of the quota period shall be counted against such importer's ceilings.

[F1 2 The ceiling for each product group of a traditional importer applicable in the following quota period ('quota period n+1') shall be calculated in accordance with the average of such importer's actual imports of the product group concerned during the two quota periods preceding the year of calculation of such ceiling, on the basis of the following formula:

$$C_i = T * (\bar{I}_i/\Sigma\bar{I}_i)$$

where:

'Ci' represents the ceiling for the product group concerned (spruce or pine) for importer i during quota period n+1;

'T' represents the quota for traditional importers available for the product group concerned during the year of calculation of the ceiling ('quota period n');

'$\bar{I}i$' represents the average of the actual imports by the traditional importer i of the product group concerned, in the two quota periods preceding the calculation ('quota period n-2' and 'quota period n-1', respectively), as follows:

[(actual imports of importer i in quota period n-2) + (actual imports of importer i in quota period n-1)]/2

'$\Sigma\bar{I}_i$' represents the sum of all traditional importers' average imports $\bar{I}_i$ for the product group concerned.**]**

Textual Amendments

F1 Substituted by Commission Implementing Regulation (EU) 2016/623 of 21 April 2016 amending Implementing Regulation (EU) No 498/2012 on the allocation of tariff-rate quotas applying to exports of wood from the Russian Federation to the European Union.

[F1 Article 7

1 Every year, the Commission shall calculate ceilings applicable to each traditional importer for the following quota period in accordance with the method established in Article 6(2). If the calculated ceiling of a traditional importer for a given product group is higher than 0 %, but lower than the maximum of 1,5 % of the tariff quota granted to new importers in accordance with Article 4(3), the ceiling of the traditional importer concerned shall be established at a level of 1,5 % of the tariff quota for the respective product group.

2 Licence Offices shall provide the Commission, by 31 March of quota period n at the latest, with information on actual imports of covered products in quota period n-1 notified to them in accordance with Article 11(1). Such summary shall be submitted in an electronic format, in conformity with the information technology system established by the Commission.

3 The Commission shall inform the Licence Offices of ceilings resulting from the calculations made in accordance with Articles 6(2) and 7(1) by 30 April of quota period n at the latest.**]**

Textual Amendments

F1 Substituted by Commission Implementing Regulation (EU) 2016/623 of 21 April 2016 amending Implementing Regulation (EU) No 498/2012 on the allocation of tariff-rate quotas applying to exports of wood from the Russian Federation to the European Union.

CHAPTER 3

BUSINESS CONTINUITY

Article 8

1 Where an importer claiming status of traditional importer under Article 5(4) of the Protocol (hereinafter referred to as 'the applicant') does not provide satisfactory evidence that it is the same natural or legal person that imported the covered products during the reference period retained pursuant to Article 17(2) (hereinafter referred to as 'the predecessor'), it shall provide the Licence Office with the necessary evidence to prove that it has business continuity with the activities of the predecessor.

2 Business continuity as referred to in paragraph 1 shall be deemed to exist where:

a the applicant and the predecessor are under the control of the same legal entity within the meaning of Council Regulation (EC) No 139/2004[(3)]; or

b the economic activity of the predecessor, as regards the covered products, has been legally transferred to the applicant, for instance as a result of a merger or acquisition within the meaning of Regulation (EC) No 139/2004.

3 Importers that do not provide evidence of business continuity shall be considered as new importers.

Article 9

The provisions of Article 8 shall apply *mutatis mutandis* where an importer claims status of traditional importer under Article 5(3) of the Protocol.

CHAPTER 4

APPLICATIONS FOR QUOTA AUTHORISATIONS

Article 10

1 Applications for quota authorisations shall be submitted in the form established in Annex II. If information provided in the application is considered inadequate, the Licence Office may require additional details from the applicant.

2 The granting of a quota authorisation shall be subject to the requirement that the corresponding products undergo processing, within the customs territory of the Union, conferring Union origin in accordance with Article 24 of Council Regulation (EEC) No 2913/92[(4)].

3 Applications for quota authorisations shall be accompanied by an affidavit by the applicant containing a commitment to:

a assign the products concerned to the prescribed processing within one year from the date on which the customs declaration for release for free circulation, containing the exact description of the goods and the TARIC codes, was accepted by the competent customs authorities;

b keep adequate records in the Member State where the authorisation was granted enabling the Licence Office to carry out any checks which they consider necessary to ensure that the products are actually assigned to the prescribed processing, and to retain such records; for the purpose of this subparagraph, ‘records’ means the data containing all the necessary information and technical details on whatever medium, enabling the Licence Offices to supervise and control operations;

c enable the Licence Office to trace the products concerned to their satisfaction in the premises of the undertaking concerned throughout their processing;

d notify the Licence Office of all factors which may affect the authorisation.

4 Where the products concerned are transferred, the applicant shall provide sufficient evidence of their assignment to the prescribed processing in accordance with paragraph 3(a).

5 Article 308d of Commission Regulation (EEC) No 2454/93[(5)] shall apply.

6 Non-compliance with the commitment referred to in paragraph 3 of this Article, by the importer or by any natural or legal person to whom the importer subsequently transfers such products, shall be considered as equivalent to an unused quota authorisation, in accordance with Article 13, for the relevant amount of products.