



Brussels, 30.7.2024
C(2024) 5321 final

COMMISSION DELEGATED REGULATION (EU) .../...

of 30.7.2024

**amending Delegated Regulation (EU) 2020/760 as regards the rules on the reference
quantity for groups of tariff quotas in the poultry sector**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Commission Delegated Regulation (EU) 2020/760, which applies since 1 January 2021, lays down rules on how operators can obtain licences to import agricultural products under existing tariff quotas.

To ensure proper administration of certain over-demanded tariff quotas, the maximum quantity of the licences for which operators can apply is set out in the form of a reference quantity, calculated individually for each operator based on the imports of the products covered by a certain tariff quota in the years preceding the licence application. To calculate the reference quantity for a specific tariff quota, operators can also use imports outside that quota, if they concern products originating from a third country covered by that tariff quota.

However, for some tariff quotas, Regulation (EU) 2020/760 allows operators to calculate the reference quantity by also considering imports from countries not covered by the relevant quota. In such cases, Regulation (EU) 2020/760 groups several quotas together, allowing operators to calculate the reference quantity for the whole group first and then distribute the reference quantity to licence applications for the different quotas of the group in their discretion. Consequentially, an operator could calculate the reference quantity based on imports of poultry from Thailand and then ask for a licence to import poultry from Brazil, under a quota of the same group.

This mechanism was created to allow operators to import alternatively from one origin or another in order to avoid any risks of major disturbances in case of global disruptions in trade such as an outbreak of avian influenza.

Following the temporary liberalisation of trade between the EU and Ukraine provided by Regulations (EU) 2022/870 and (EU) 2023/1077 of the European Parliament and of the Council, imports of poultry from Ukraine increased significantly. These imports can be used by operators to calculate the reference quantity for the groups of tariff quotas governed by Regulation (EU) 2020/760. However, this would put operators importing from Ukraine at an unfair advantage compared to their competitors.

Therefore, the Regulation should be amended to limit the impact of these imports on the calculation of the reference quantity for groups of tariff quotas.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

This draft delegated act was presented and discussed with experts at the Group of Experts – Horizontal questions concerning the CAP meetings on 24 April 2024 and 24 June 2024.

This draft delegated act has been submitted to the Feedback Mechanism which took place from 5 June 2024 to 3 July 2024. Twelve feedback was received from eleven stakeholders (one stakeholder submitted two feedback) and from different Member States. The feedback comes from five private companies, five associations and a chamber of commerce.

Seven stakeholders expressed opinions against the exclusion of *erga omnes* tariff quotas (09.4213, 09.4216, and 09.4412) from the groups of Article 9, paragraphs 6 and 7, of Regulation (EU) 2020/760, based on the main following arguments:

- the amendment will reduce the flexibility of importers to choose to allocate their reference quantity to imports from countries other than Brazil, Thailand and Argentina;

- the amendment may give increased market power to exporters in third countries (Brazil, Thailand, and Argentina) in respect to EU importers;
- imports from Ukraine are relevant only for one of the erga omnes tariff quotas excluded from the groups, whereas they are quite marginal for others;
- EU importers should be allowed to calculate the reference quantity for these groups also based on imports from other countries (e.g. China);
- the amendment can have positive effects for EU poultry producers but at the same time hamper the business of EU importers and may result in higher prices for the consumers.

Four stakeholders, instead, were in favour of the solution proposed by the Commission, although two stakeholders stressed that their preferred solution would have been to exclude from the calculation of the reference quantity uniquely imports from Ukraine or, alternatively, to exclude all imports into the EU outside tariff quotas at zero duty from any third country.

The Commission took note of the feedback received and concludes that it does not intend to amend the Regulation for the following reasons:

- since the adoption of Regulation (EU) 2022/870¹ imports of poultry from Ukraine have increased significantly, and the quantities imported have been used for the calculation of the reference quantity of the tariff quotas covering the relevant products;
- this circumstance gave a significant advantage to operators importing poultry from Ukraine, who could build reference quantity for imports from other countries, too, while maintaining high imports from Ukraine;
- the reference quantity is calculated on the imports of the two years preceding the application for licences, hence operators who imported from Ukraine could use their increased imports to calculate their reference quantity up until two years after the elimination of duties from imports from Ukraine ceases to have effect and the quantities imported return to normal levels;
- the Commission estimates that modifying only one of the groups covered by Article 9, paragraphs 6 and 7, of Regulation (EU) 2020/760, as proposed by some stakeholders, may result in a measure targeting specifically individual companies, and hence does not intend to proceed in this sense;
- similarly, the Commission considers that eliminating from the calculation of the reference quantity all imports at zero duty from any third country would be disproportionate, as it would affect all tariff quotas in all sectors where the reference quantity applies, and moreover it would exclude from that calculation not only imports resulting from the elimination of duties to imports from Ukraine, but also all those measures entailed in bilateral agreements between the EU and third countries, as well as imports taking place under specific EU programmes (e.g. POSEI).

¹ Regulation (EU) 2022/870 of the European Parliament and of the Council of 30 May 2022 on temporary trade-liberalisation measures supplementing trade concessions applicable to Ukrainian products under the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part (OJ L 152, 3.6.2022, p. 103, ELI: <http://data.europa.eu/eli/reg/2022/870/oj>).

3. LEGAL ELEMENTS OF THE DELEGATED ACT

This delegated act provides for the deletion of tariff quotas under order numbers 09.4213, 09.4216, and 09.4412 from Article 9(6) and 9(7) of Delegated Regulation (EU) 2020/760.

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THE EUROPEAN COMMISSION,

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

Having regard to 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 and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007², and in particular Article 186 thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2020/760³ supplements Regulation (EU) No 1308/2013 as regards the rules for the administration of import and export tariff quotas for agricultural products subject to licences.
- (2) Pursuant to Article 9(1) of Delegated Regulation (EU) 2020/760, operators may submit applications for licences under a given tariff quota only for a limited quantity, calculated on the basis of the quantities that they imported in the past (“reference quantity”). Article 9(2) of that Delegated Regulation provides that the reference quantity is to cover products released for free circulation in the Union which fall within the same tariff quota number and have the same origin.
- (3) Article 9(6) and (7) of Delegated Regulation (EU) 2020/760 sets out a derogation from the rule that the reference quantity is to be calculated on the basis of imports of products coming from the same origin. For certain groups of tariff quotas, the reference quantity is calculated cumulatively for the whole group set out in that Article 9 instead of being calculated for a single tariff quota. Consequently, that group reference quantity may be used to apply for licences for any of the tariff quota of the group concerned.
- (4) The derogation set out in Article 9(6) and (7) of Delegated Regulation (EU) 2020/760 thus allows importers to apply for the tariff quotas under the group reference quantity with a certain degree of flexibility.
- (5) However, the use of that derogation could potentially lead to market distortions, as recent legislative and market developments enable a limited number of companies to obtain significant shares of import licences under the tariff quotas concerned. That risk was increased by the elimination of duties on imports from Ukraine, as provided for in

² OJ L 347, 20.12.2013, p. 671, ELI: <http://data.europa.eu/eli/reg/2013/1308/oj>.

³ 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, ELI: http://data.europa.eu/eli/reg_del/2020/760/oj).

Regulations (EU) 2022/870⁴, (EU) 2023/1077⁵ and (EU) 2024/1392⁶ of the European Parliament and of the Council.

- (6) To minimise this risk of market distortions and to ensure that all interested operators can apply for import licences under the tariff quotas concerned, it is appropriate to remove tariff quotas under order numbers 09.4213, 09.4216, and 09.4412 from the groups listed in Article 9(6) and (7) of Delegated Regulation (EU) 2020/760.
- (7) Delegated Regulation (EU) 2020/760 should therefore be amended accordingly.
- (8) To ensure the proper management of those groups of tariff quotas, and taking into consideration the fact that the tariff quota periods are not the same for all of them, the amendments introduced by this Regulation should apply as of the tariff quota periods starting after the entry into force of this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2020/760

In Article 9 of Delegated Regulation (EU) 2020/760, paragraphs 6 and 7 are replaced by the following:

“6. By way of derogation from paragraph 2, the reference quantity shall be calculated by cumulating the quantities of products released for free circulation in the Union, which fall within each of the following groups of two or three quotas under order numbers set out in Annex I to Implementing Regulation (EU) 2020/761:

(a) 09.4211, 09.4212 and 09.4290;

(b) 09.4214 and 09.4215;

(c) 09.4410, 09.4411 and 09.4289.

7. By way of derogation from paragraph 3, for the tariff quotas under order numbers 09.4211, 09.4212 and 09.4290, the total quantity of products covered by licence applications submitted in the tariff quota period for those three tariff quotas shall not exceed the applicant’s total reference quantity for those tariff quotas. The applicant may choose how to sub-divide the total reference quantity among the tariff quotas for which the applicant has submitted licence applications. This rule shall also apply to tariff quotas under order numbers 09.4214 and 09.4215 and order numbers 09.4410, 09.4411 and 09.4289.”.

⁴ Regulation (EU) 2022/870 of the European Parliament and of the Council of 30 May 2022 on temporary trade-liberalisation measures supplementing trade concessions applicable to Ukrainian products under the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part (OJ L 152, 3.6.2022, p. 103, ELI: <http://data.europa.eu/eli/reg/2022/870/oj>).

⁵ Regulation (EU) 2023/1077 of the European Parliament and of the Council of 31 May 2023 on temporary trade-liberalisation measures supplementing trade concessions applicable to Ukrainian products under the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part (OJ L 144, 5.6.2023, p. 1, ELI: <http://data.europa.eu/eli/reg/2023/1077/oj>).

⁶ Regulation (EU) 2024/1392 of the European Parliament and of the Council of 14 May 2024 on temporary trade-liberalisation measures supplementing trade concessions applicable to Ukrainian products under the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part (OJ L, 2024/1392, 29.5.2024, ELI: <http://data.europa.eu/eli/reg/2024/1392/oj>).

Article 2

Entry into force and application

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

It shall apply as of the tariff quota periods starting after the entry into force of this Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 30.7.2024

For the Commission
The President
Ursula VON DER LEYEN