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STATUTORY INSTRUMENTS

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**2020 No. 1432**

**The Customs (Tariff Quotas) (EU Exit) Regulations 2020**

**PART 3**

**Import Licences: Part C of the Quota Table and the Preferential Quota Table**

**CHAPTER 2**

**Applying for an import licence**

**Applying for an import licence: available quantity**

**22.**—(1) The Secretary of State may publish a notice inviting applications to be made for an import licence in respect of any quota specified in the notice.

(2) A notice published by the Secretary of State under paragraph (1) must be published before the commencement of the quota period or sub-period in respect of which applications for the import licence are invited and must specify the quantity of quota goods available for the quota concerned (the “available quantity”).

(3) The total sum of each available quantity specified in notices published under paragraph (1) in respect of the same quota period may not exceed the quota volume for the quota concerned.

(4) In determining the available quantity for each quota, the Secretary of State may take into account—

- (a) where applications are invited for a sub-period, the proportion of quota volume corresponding with that sub-period for the quota concerned;
- (b) any quota volume already allocated by the previous issue of import licences for the quota period concerned;
- (c) any quota volume which has been allocated but has not been used for the quota period concerned, including in any case where an import licence has been surrendered to the Secretary of State under regulation 39.

(5) If the available quantity specified in a notice published by the Secretary of State is subject to a conversion factor, the particulars of the applicable conversion factor must also be given by the Secretary of State in the notice.

(6) An available quantity is subject to a conversion factor where the quota is marked “CF1” or “CF2” in column (1) of the Licensing Table and the applicable conversion factor which is specified in the corresponding footnote is to be applied to establish the available quantity for the goods concerned.

(7) Any reference in this Part to an available quantity specified in a notice published under paragraph (1) is a reference to the available quantity for which applications for an import licence have been invited by the Secretary of State in respect of the quota concerned.

**Conditions for granting an import licence**

23.—(1) The Secretary of State may grant an application for an import licence if the Secretary of State is satisfied that the requirements of this regulation have been met.

- (2) The requirements are that—
- (a) the quantity applied for does not exceed the available quantity specified in a notice published by the Secretary of State under regulation 22(1);
  - (b) the applicant is an operator;
  - (c) the licence application has been submitted in accordance with regulation 25; and
  - (d) the applicant has lodged a security in accordance with regulation 26.
- (3) If the application is made in respect of a quota—
- (a) for which the entry in column (3) of the Licensing Table is “Yes” (indicating that a reference quantity applies); and
  - (b) which is the first such application made by the person concerned for the quota period to which the application relates,

the requirements relating to the applicable reference quantity in regulation 27 apply, unless those requirements are suspended by the Secretary of State under regulation 28.

(4) If the application is made in respect of a quota for which the entry in column (4) of the Licensing Table is “Yes” (indicating that proof of origin is required), the applicant must submit to the Secretary of State —

- (a) in the case of a quota listed in Part A of that Table, a declaration that the goods to be imported originate from the country of origin specified in the Quota Table; or
- (b) in the case of a quota listed in Part B of that Table, a declaration that the goods qualify as originating goods in accordance with regulation 6 of the Customs PTA Regulations.

(5) If the application—

- (a) is made in respect of a quota for which the entry in column (5) of the Licensing Table is “Yes” (indicating that proof of trade is required); and
- (b) is the first such application made by the person concerned for the quota period to which the application relates,

the applicant must show proof of trade in accordance with regulation 29.

(6) If the application is made in respect of a quota for which the entry in column (6) of the Licensing Table is “Yes” (indicating that a certificate of authenticity is required), the applicant must submit that certificate in accordance with regulation 30.

(7) If the application is made in respect of a quota for which the entry in column (7) of the Licensing Table is “Yes” (indicating that an Inward Monitoring Arrangement certificate is required), the applicant must submit that certificate in accordance with regulation 31.

(8) If the application is made in respect of a quota for which the entry in column (8) of the Licensing Table is “Yes” (indicating that a declaration of independence is required), the applicant must submit that declaration in accordance with regulation 32, unless a previous declaration of independence remains in force in accordance with that regulation for the quota concerned.

(9) If the application is made in respect of a quota for which the entry in column (9) of the Licensing Table is “Yes” (indicating that an export certificate is required), the applicant must submit that certificate in accordance with regulation 33, unless—

- (a) this requirement is disapplied by the Secretary of State for the purpose of removing the limit to the quantity applied for which would otherwise apply under regulation 33(3); and

(b) the Secretary of State has given notice to that effect in the notice published under regulation 22(1) inviting applications for the quota concerned.

(10) The Secretary of State may require the applicant to provide such documents and evidence as the Secretary of State considers necessary for the verification of any information given in the licence application.

### **Operator**

**24.**—(1) An operator is a person who is—

- (a) registered under the Value Added Tax Act 1994(1); and
- (b) established in the United Kingdom.

(2) In this regulation, “established in the United Kingdom” means—

- (a) in the case of an individual, where the individual is resident in the United Kingdom;
- (b) in any other case, where the person has—
  - (i) a registered office in the United Kingdom; or
  - (ii) a permanent place in the United Kingdom from which the person carries out activities which the person is constituted to perform.

### **Application procedure**

**25.**—(1) Subject to paragraphs (2) and (3), an application for an import licence must be received by the Secretary of State—

- (a) in the case of any application made before the commencement of the quota period, within the period of seven days beginning with the first day of the month which precedes the commencement of the quota period for the quota concerned and no later than 17.00 hours on the last working day within that period;
- (b) in the case of any application made after the commencement of the quota period within the period of seven days beginning with the first day of each month throughout the remaining quota period and no later than 17.00 hours on the last working day within that period.

(2) Any application for an import licence made before the commencement of a quota period beginning on 1st January must be received within the period of seven days beginning with 17th November of the preceding year and no later than 17.00 hours on the last working day within that period.

(3) An application for an import licence in respect of a quota for which a certificate of authenticity or an Inward Monitoring Arrangement certificate is required to be submitted under regulation 23(6) or, as the case may be (7), may be received at any time.

(4) An applicant may not make more than one application per month in respect of the same quota, except that—

- (a) an applicant may make two applications for the same quota during the month of November, if one of those applications is required to be submitted within the period beginning 17th November for the purposes of paragraph (2); and
- (b) an applicant may make more than one such application per month if the application is for a quota for which a certificate of authenticity or an Inward Monitoring Arrangement certificate is required to be submitted under regulation 23.

(5) If an applicant makes more than one application in respect of a quota covering different—

- (a) commodity codes, as specified in column 2 of the Quota Table or column 3 of the Preferential Quota Table, as the case may be, and corresponding with the entry for the quota concerned;
- (b) countries of origin; or
- (c) quota duty rates,

those applications will be treated as a single application for the purposes of paragraph (4) if they are made at the same time and in respect of the same quota.

- (6) An application for an import licence must—
  - (a) be made in the name of the person who is to be the holder of the licence;
  - (b) identify the quota number for the goods concerned; and
  - (c) include a valid Economic Operators' Identification Number ("EORI number") assigned by HMRC on the registration of the applicant under Article 9 of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code<sup>(2)</sup>, read with Articles 5 and 6 of Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code<sup>(3)</sup>.

(7) An application for an import licence may be withdrawn by the applicant at any time before 17.00 hours on the last working day of the period during which that application was received by the Secretary of State under paragraph (1) or (2).

### **Lodging of security**

**26.**—(1) The security which is payable in connection with the application for an import licence must be lodged with the Secretary of State within the same period as the period during which the application for the import licence is to be received under regulation 25.

(2) The amount of security to be lodged in connection with the licence application is the amount payable as a result of applying the formula for the quota concerned set out in column (2) of the Licensing Table to the quantity of quota goods specified in the licence application, save that such amount must be rounded down to the nearest pound.

(3) Subject to any decision under regulation 42(3) that the security is forfeited, any security lodged in respect of a quantity of quota goods for which an import licence is not granted must be returned to the person who lodged the security.

### **Reference quantity**

**27.**—(1) Where this regulation applies, the total quantity of goods specified in applications for an import licence submitted by an applicant in respect of a quota period—

- (a) may not exceed the applicant's applicable reference quantity; and
- (b) if an application concerns a sub-period, may not exceed the proportion of the applicant's applicable reference quantity corresponding with the sub-period.

(2) The applicant's applicable reference quantity is the average annual quantity of goods released by that person under the free-circulation procedure, calculated by reference to—

- (a) the quantity of goods released during the two consecutive 12 month periods ending two months before the commencement of the period for receiving applications for an import licence for the relevant goods under regulation 25(1)(a) or 25(2); or

(2) EUR 952/2013, as amended by S.I. 2019/714. There are other amendments but none is relevant.

(3) EUR 2015/2446, as amended by S.I. 2019/714 and S.I. 2019/715.

- (b) as regards the beef and veal quotas which are marked “BV1” in the Licensing Table, the quantity of goods released by the applicant during the period of 12 months ending two months before the commencement of the period for receiving applications for an import licence for the relevant goods under regulation 25(1)(a) or 25(2).
- (3) The quantity of goods referred to in paragraph (2) is to be calculated by reference to—
  - (a) any goods released by the applicant for which the description as specified in the Goods Classification Table is the same as the goods which are subject to the quota concerned; and
  - (b) in the case of the quota 05.4003, in addition, any goods released by the applicant which fall within the following commodity codes—
    - (i) 02010000;
    - (ii) 02020000;
    - (iii) 02061095;
    - (iv) 02062991.
- (4) The applicant must show evidence of its applicable reference quantity for the goods specified in the licence application, and such evidence may include a declaration for a Customs procedure (including a certified copy of such a declaration) which—
  - (a) shows that the goods were subject to the free-circulation procedure; and
  - (b) indicates that the applicant for the licence was the declarant.
- (5) If an applicant can show to the satisfaction of the Secretary of State that it constitutes a merger of two or more persons such that the applicant is a merged applicant—
  - (a) the applicable reference quantity for the merged applicant will be the combined sum of the goods which each predecessor to the merger could have taken into account in making a separate licence application had the merger not occurred; and
  - (b) for the purposes of providing evidence of reference quantity under paragraph (4), documentation obtained prior to the merger by each predecessor to the merger may be treated as evidence in relation to the application made by the merged applicant.

### **Suspension of reference quantity**

**28.**—(1) The Secretary of State may publish a notice suspending the requirement to show applicable reference quantity in accordance with regulation 27 in respect of any quota specified in the notice.

- (2) The notice may be given if—
  - (a) by the end of the ninth month of the quota period, the sum of the quantities specified in all licence applications in respect of the quota concerned is less than the remaining quantity available under that quota; or
  - (b) in the opinion of the Secretary of State, due to the occurrence of abnormal and unforeseeable circumstances, the sum of the quantities remaining to be specified in licence applications in respect of the quota concerned is anticipated to be less than the remaining quantity available under that quota.
- (3) The period of any suspension must be specified in the notice and may not exceed the end of the quota period.

### **Proof of trade**

**29.**—(1) Where this regulation applies, the proof of trade must show that the applicant has, during each relevant preceding period, released under the free-circulation procedure at least 25 tonnes—

- (a) of quota goods of the same description as the goods specified in the licence application, if the application is for a quota to which regulation 27 or 32 applies; or
  - (b) in any other case, of goods which—
    - (i) are of a description which falls within the same sector in column (1) of the Proof of Trade Table set out in Schedule 3 as the goods specified in the licence application; and
    - (ii) fall within a commodity code which is specified in column (2) of that Table in the corresponding row for that sector.
- (2) Proof of trade may include—
- (a) a Customs declaration showing that the free-circulation procedure has been applied to the relevant goods and containing a reference to the applicant as declarant; or
  - (b) a used import licence endorsed by an HMRC officer (whether made available in electronic form or otherwise) showing that the free-circulation procedure has been applied to the relevant goods and containing a reference to the applicant as the licence holder or transferee.
- (3) Any proof of trade of trade provided under paragraph (2) must, in respect of each relevant preceding period, contain a reference to a valid EORI number assigned by HMRC on the registration of the applicant.
- (4) In this regulation—
- (a) for goods subject to a quota which is marked “BV1” in the Licensing Table, the “relevant preceding period” means the period of 12 months ending two months before the commencement of the period for receiving applications for an import licence for those goods under regulation 25(1)(a) or 25(2);
  - (b) for other goods, a “relevant preceding period” means each of—
    - (i) the period of 12 months ending two months before the commencement of the period for receiving applications for an import licence for the relevant goods under regulation 25(1)(a) or 25(2); and
    - (ii) the period of 12 months immediately preceding that 12 month period.

### **Certificate of authenticity**

- 30.**—(1) Where this regulation applies, the applicant must submit with the licence application—
- (a) the original certificate of authenticity which has been issued by the recognised authority for the exporting country identifying the origin of the goods and certifying that the particulars of the goods set out in the certificate are accurate; and
  - (b) a copy of that certificate.
- (2) The recognised authority for the exporting country is the authority listed in the footnote to the entry in column (6) of the Licensing Table corresponding with the row for the quota concerned.
- (3) The certificate of authenticity must be valid on the date on which the licence application is submitted.
- (4) A certificate of authenticity is deemed to be valid for the purposes of paragraph (3)—
- (a) for a period of three months from the date of its issue; or
  - (b) if that period of three months extends beyond the last day of the quota period in respect of the quota concerned, until the end of the quota period.
- (5) Once a certificate of authenticity has been submitted with a licence application, it cannot be used in connection with any other application for an import licence.

(6) The original certificate of authenticity must be retained by the Secretary of State.

(7) If an import licence is issued, the quantity of quota goods to be imported under the licence is to be noted on the copy of the certificate of authenticity along with the licence issue number and the copy certificate is to be returned to the applicant.

### **Inward Monitoring Arrangement certificate**

**31.**—(1) Where this regulation applies, the applicant must submit with the licence application—

- (a) the original Inward Monitoring Arrangement certificate (the “IMA 1”) which has been issued by the recognised authority for the exporting country, identifying the origin of the goods and certifying that the particulars of the goods set out in the certificate are accurate; and
- (b) a copy of that IMA 1.

(2) The recognised authority for the exporting country is the authority listed in the footnote to the entry in column (7) of the Licensing Table corresponding with the row for the quota concerned.

(3) The IMA 1 must be valid on the date on which the licence application is submitted.

(4) An IMA 1 is deemed to be valid for the purposes of paragraph (3)—

- (a) from the date of its issue until the final day of the month which is the eighth month following its issue; or
- (b) if that period ending with the final day of the eighth month extends beyond 31st December in the year in which the IMA 1 was issued, until 31st December of that year.

(5) An IMA 1 which has been submitted with a licence application cannot be used in connection with any other application for an import licence.

(6) The original IMA 1 must be retained by the Secretary of State.

(7) If an import licence is issued, the quantity of quota goods to be imported under the licence is to be noted on the copy of the IMA 1 along with the licence issue number and the copy of the IMA 1 is to be returned to the applicant.

### **Declaration of independence**

**32.**—(1) Where this regulation applies, a declaration of independence must be made by the applicant containing—

- (a) a declaration that the applicant is not linked with any other person applying to the Secretary of State in respect of the same quota; or
- (b) if the applicant is linked with another person applying to the Secretary of State in respect of the same quota, a declaration to that effect identifying the linked person and providing evidence that the applicant regularly engages in substantial economic activities with other third parties.

(2) An applicant is linked with another person if the applicant—

- (a) has close business links with that person;
- (b) has family ties with that person; or
- (c) has an important business relationship with that person.

(3) In this regulation—

- (a) a person (A) has “close business links” with another person (B) if—
  - (i) B is a parent undertaking of A;
  - (ii) B is a subsidiary undertaking of A;

- (iii) B is a parent undertaking of a subsidiary undertaking of A;
  - (iv) B is a subsidiary undertaking of a parent undertaking of A;
  - (v) B owns or controls 25% or more of the voting rights or capital of A; or
  - (vi) A owns or controls 25% or more of the voting rights or capital of B,
- and for the purposes of this paragraph, “subsidiary undertaking” and “parent undertaking” have the meanings given in section 1162 of the Companies Act 2006, as read with Schedule 7 to that Act<sup>(4)</sup>;

- (b) having “family ties” with another applicant means—
  - (i) the applicants are spouses or civil partners, or are living together as spouses or as if they were civil partners; or
  - (ii) the applicant is the brother, sister, parent, child or grandchild of another applicant;
- (c) “important business relationship” includes a relationship where—
  - (i) the applicants are employer and employee;
  - (ii) the applicants are partners in a partnership, or officers or directors in the same undertaking;
- (d) “substantial economic activities” means activities carried out by the applicant relating to the production, distribution or consumption of goods and services, which are not carried out for the sole purpose of applying for quotas.

(4) For the purpose of assessing whether the applicant regularly engages in substantial economic activities with other third parties, the Secretary of State must take into account the character of the economic activities carried out by the applicant, the expenditure made, and the sales and turnover of the applicant.

(5) The Secretary of State must take into account any documents or evidence submitted in support of the applicant’s declaration of independence with a view to determining the validity of the declaration.

(6) A valid declaration of independence remains in force for the purpose of any subsequent licence application in respect of the quota concerned, subject to any determination made by the Secretary of State under paragraph (8).

(7) If any change of circumstances occurs affecting a valid declaration of independence, the operator must notify the Secretary of State of the particulars of the change within 10 days of the change.

(8) Where particulars of the change are notified under paragraph (7), the Secretary of State must determine whether the effect of the change is such that the declaration of independence is no longer in force and notify the operator accordingly.

### **Export certificates**

**33.**—(1) Where this regulation applies, the applicant must submit with the application for the import licence—

- (a) the original export certificate issued by the recognised authority for the exporting country specifying the quantity of the goods certified for export; and
- (b) a copy of the original certificate.

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(4) 2006 c. 46.

(2) The recognised authority for the exporting country is the authority listed for the applicable country in the footnote to the entry in column (9) of the Licensing Table corresponding with the row for the quota concerned.

(3) The quantity applied for in the licence application must not exceed the quantity of goods specified in the export certificate.

### **Suspension of licence applications**

**34.**—(1) The Secretary of State may publish a notice suspending applications for import licences for any quota specified in the notice, if the available quantity specified in a notice published under regulation 22(1) has been allocated by the grant of previous licences.

(2) The notice must specify the period for which licence applications are suspended.

(3) The Secretary of State is not required to consider an application for an import licence in respect of a quota if a relevant notice has been published under paragraph (1) to the extent it relates to the period specified under paragraph (2).

(4) If unused quota volume becomes available before the end of a quota period within which applications were suspended, the Secretary of State must publish a notice cancelling the notice published under paragraph (1).