COMMISSION REGULATION (EC) No 1596/1999

of 20 July 1999

amending Regulation (EC) No 174/1999 laying down special detailed rules for the application of Council Regulation (EEC) No 804/68 as regards export licences and export refunds in the case of milk and milk products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products [1], as last amended by Regulation (EC) No 1587/96 [2], and in particular Articles 13(3), 16a(1) and 17(3) and (14) thereof,

(1) Whereas Commission Regulation (EC) No 174/1999 of 26 January 1999 laying down special detailed rules for the application of Council Regulation (EEC) No 804/68 as regards export licences and export refunds in the case of milk and milk products [3] is a recasting of Commission Regulation (EC) No 1466/95 [4], as last amended by Regulation (EC) No 2184/98 [5]; whereas that exercise revealed that certain provisions containing references are incorrect or out of date; whereas the necessary corrections should be made;

(2) Whereas Regulation (EC) No 174/1999 stipulates that no refund may be granted on exports of cheese where the free-at-frontier price prior to application of the refund in the Member State of export is less than EUR 230/100 kg; whereas the Member States' authorities must be in a position to verify that this provision is complied with; whereas the provision should be adapted to that end and the definition of 'free-at-frontier price' laid down; whereas, in this connection, a flat-rate amount should be fixed to take account of the different transport costs in the Community;

(3) Whereas Regulation (EC) No 174/1999 fixes the term of validity of licences for the various product groups; whereas, in view of the present difficulty in exporting certain milk products, the term of validity of licences for those products should be extended;

(4) Whereas export refunds for cheeses are differentiated according to destination; whereas the provision concerned must be adapted to take account of the accession negotiations being conducted with certain third countries;

(5) Whereas management of the quota for exports of cheeses to Canada is based on certain formalities sto be completed by the competent Canadian authorities when such products are imported; whereas those authorities have not been able to apply the provisions laid down to that end; whereas other arrangements must therefore be adopted to ensure the scheme is applied correctly;

(6) Whereas management of the quota for exports of cheeses to Switzerland can be facilitated by anticipating the date of issue of licences; whereas the provisions concerned should be adapted accordingly;

(7) Whereas Council Decision 98/486/EC [6] approved the Memorandum of Understanding between the European Community and the Dominican Republic on import protection for milk powder in the Dominican Republic; whereas the Memorandum provides for the European Community to manage its share of the tariff quota according to a mechanism of export licences; whereas the procedure for awarding licences to interested parties must therefore be determined;

(8) Whereas, in order to ensure that products imported from the Dominican Republic are part of the quota and to establish a link between the products imported and those indicated on the export licence, exporters are obliged, at the time of import, to present a certified copy of the export declaration, which must contain certain information; whereas a provision to that effect must be adopted;

(9) Whereas, in order to ensure that the planned measures operate smoothly and to prevent any excessive fragmentation of the market which could result in a loss of market share for the Community, use of the quota should be restricted by giving priority to licence applications exclusively for those products which have in the past represented almost all exports to the Dominican Republic and, when licences are awarded, most of the quantities available should be reserved for 'traditional' exporters of milk powder to that country; whereas there should be a link between the quantities of milk powder exported by those exporters to the Dominican Republic in the past and the quantity for which a licence may be applied for;

[1] OJ L 148, 28.6.1968, p. 13.
[2] OJ L 206, 16.8.1996, p. 21.
[3] OJ L 20, 27.1.1999, p. 8.
[4] OJ L 144, 28.6.1995, p. 22.
[5] OJ L 275, 10.10.1998, p. 21.
[6] OJ L 218, 6.8.1998, p. 45.

(10) Whereas, however, in order to ensure that trade relations in this sector do not become excessively rigid, a second tranche should be made available to exporters who can prove that they are seriously engaged in trade; whereas, in order to ensure efficient management and a fair distribution of quantities, the maximum quantity which a licence application may cover should be fixed;

(11) Whereas products exported to the Dominican Republic under the quota are imported into that country at a reduced rate of duty; whereas the introduction of a quota means that exporters who are awarded licences are to some extent protected from competition from other exporters and enjoy some price stability; whereas it is therefore justified to fix a lower refund rate than that applicable to products exported outside the quota;

(12) Whereas, to facilitate checks, all applications by the same exporter should be lodged in the same Member State;

(13) Whereas the date of issue of certificates should be defined with reference to Commission Regulation (EEC) No 3719/88 [1], amended by Regulation (EC) No 1127/1999 [2];

(14) Whereas, in order to enable exporters better to manage the licences awarded them, the term of validity of licences should be extended to cover the reference period of the quota;

(15) Whereas, to ensure the smooth operation of the scheme and prevent speculation, licences should not be transferable;

(16) Whereas the Management Committee for Milk and Milk Products has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 174/1999 is amended as follows:

1. Article 1(2) is replaced by the following:

'2. Section 7 of licence applications and licences shall show the country of destination and the code number of the country or territory of destination, as indicated in the country nomenclature for the external trade statistics of the Community and statistics of trade between Member States, drawn up by the Commission on the basis of Article 21(1) of Council Regulation (EC) No 1172/95 (*).'

(*) OJ L 118, 25.5.1995, p. 10.

2. In Article 3, the first paragraph is replaced by the following:

'No refund shall be granted on exports of cheese where the free-at-frontier price prior to application of the refund in the Member State of export is less than EUR 230/100 kg. "Free-at-frontier price" means the ex-works price plus a flat-rate amount of EUR 3/100 kg.

Where an export refund has been applied for, section 22 of licences shall contain the words "minimum free-at-frontier price, as referred to in Article 3 of Regulation (EC) No 174/1999, complied with".

At the request of the competent authorities, applicants shall supply any further information and substantiation which the authorities consider necessary to ensure compliance with the free-at-frontier price when the customs formalities are conducted and shall accept, where applicable, any checks by those authorities of the accounts within the maeaning of Council Regulation (EEC) No 4045/89 (**).'

(**) OJ L 388, 30.12.1989, p. 10.

3. Article 6(c) is replaced by the following:

'(c) the end of the fourth month following issue in the case of products falling within CN code 0406;'

4. Article 15(3) is replaced by the following:

'3. The zones referred to in paragraph 1 shall be as follows:

— Zone I: destination codes 053 to 070 (inclusive) and 091 to 096 (inclusive),

— Zone II: destination codes 072 to 083 (inclusive),

— Zone III: destination code 400,

— Zone IV: all other destination codes.'

5. Article 18 is amended as follows:

(a) paragraph 6 is replaced by the following:

'6. Export licences presented to the competent authority for attribution and endorsement in accordance with Article 22 of Regulation (EEC) No 3719/88 may be used for one export declaration only. Licences shall be exhausted once the export declaration has been presented.

Titular holders of export licences shall ensure that a certified copy of the licence is presented to the competent Canadian authority when the import licence is applied for.'

(b) Paragraph 8 is replaced by the following:

'8. Before the end of July for the preceding six-month period and before the end of January for the previous quota year, the competent authority of the Member State shall notify the Commission, in accordance with Annex IV, of the number of licences issued and the quantity of cheese concerned.'

[1] OJ L 331, 2.12.1988, p. 1.
[2] OJ L 135, 29.5.1999, p. 48.

6. Article 19(5) is replaced by the following:

'5. In the case of exports not covered by refund applications, Section 22 of licence applications and licences shall contain the words "Without export refund".

Licences shall be issued as soon as possible after applications are submitted.

Licences shall be valid from their date of issue within the meaning of Article 21(1) of Regulation (EEC) No 3719/88 until the following 30 June.

However, licences may be issued from 20 June and shall be valid from 1 July until 30 June of the following year provided the words "quota for...(following year)" appear in Section 20 of licences applications and licences.'

7. The second subparagraph of Article 20(10) is replaced by the following:

'The full licences issued shall be valid only for exports as referred to in paragraph 1'

8. Article 20(11) is replaced by the following:

'11. Chapter I, with the exception of Article 10, shall apply to full licences. However, the term of validity of licences as provided for in Article 6 may not extend beyond the end of the year concerned.'

9. The following Article is inserted after Article 20:

'*Article 20a*

1. The following provisions shall apply to exports to the Dominican Republic of milk powder imported into that country at a reduced rate of duty under the quota, for 12 month periods commencing on 1 July, as referred to in the Memorandum of Understanding concluded between the European Community and the Dominican Republic and approved by Council Decision 98/486/EC (***).

2. Exports as referred to in paragraph 1 shall be subject to the presentation to the competent authorities of the Dominican Republic of a certified copy of the export licence issued in accordance with this Article and a duly endorsed copy of the export declaration for each consignment.

3. When export licences are issued, priority shall be given to milk powder falling within the following product codes from the nomenclature of export refunds:

— 0402 10 19 9000,

— 0402 21 11 9900,

— 0402 21 19 9900,

— 0402 21 91 9200,

— 0402 21 99 9200.

Products covered by applications must have been produced entirely within the European Community. At the request of the competent authorities, applicants shall supply any further substantiation which the authorities consider necessary for the issuing of licences and shall accept, where applicable, any checks by those authorities of the bookkeeping and manufacturing conditions of the products concerned.

4. The quota referred to in paragraph 1 shall be of 22 400 t per 12-month period commencing on 1 July. The quota shall be divided into two parts:

(a) the first part, equal to 80 % or 17 920 t, shall be distributed among Community exporters who can prove that they have exported products as referred to in paragraph 3 to the Dominican Republic during each of the three calendar years prior to the period for submission of applications;

(b) the second part, equal to 20 % or 4 480 tonnes, shall be reserved for applicants other than those referred to at (a) who can prove, at the time they submit their application, that they have been engaged for at least 12 months in trade with third countries in the milk products listed in Chapter 4 of the tariff and statistical nomenclature and the common customs tariff and are registered in a Member State for VAT purposes.

5. Applications for export licences may not cover more, per applicant, than:

— for the part referred to in paragraph 4(a), a quantity equal to 110 % of the total quantity of products referred to in paragraph 3 exported during one of the three calendar years prior to the period for submission of applications,

— for the part referred to in paragraph 4(b), a total maximum quantity of 600 t.

Applicants who fail to comply with this ceiling shall have their applications rejected.

6. (a) To be accepted, only one export licence application may be submitted per product code in the nomenclature for refunds and all applications must be lodged at the same time with the competent authority of a single Member State;

(b) Export licence applications shall be admissible only where applicants, at the time they present their applications:

— lodge a security calculated in accordance with Article 9 on the basis of the refund rate referred to in paragraph 8,

— for the part referred to in paragraph 4(a), indicate the quantity of products referred to in paragraph 3 that they have exported to the Dominican Republic during one of the three calendar years prior to the period referred to in paragraph 4(a) and are able to prove this to the satisfaction of the competent authority of the Member State concerned. To this end the trader whose name appears on the relevant export declaration shall be regarded as the exporter,

— for the part referred to in paragraph 4(b), are able to prove to the satisfaction of the competent authority of the Member State concerned that they fulfil the conditions laid down.

7. Licence applications shall be lodged from 1 to 10 April each year for the quota relating to the period 1 July to 30 June the following year.

However, for the period from 1 July 1999 to 30 June 2000, licence applications shall be lodged from 1 to 10 August 1999.

For the purposes of Article 1(1), all applications lodged before the deadline shall be deemed to have been lodged on the first day of the period for submission of licence applications.

8. The refund rate for products intended for export to the Dominican Republic under the quota referred to in paragraph 1 shall be:

— 70 %, for products covered by CN code 0402 10, and

— 85 %, for products covered by CN codes 0402 21 and 0402 29,

of the rate fixed by the Commission in accordance with Article 17(3) of Regulation (EEC) No 804/68 on the first day of the period referred to in paragraph 7.

9. Licence applications and licences shall contain:

(a) in section 7, the words "Dominican Republic, 456";

(b) in sections 17 and 18 of the application, the quantity to which the application relates;

(c) in section 20 of the application:

— the words "Article 20a of Regulation (EC) No 174/1999"

— the words "tariff quota for... (year)".

Licences issued under this Article shall give rise to an obligation to export to the destination indicated in section 7.

10. Not later than the fifth working day following expiry of the period for lodging licence applications, Member States shall notify the Commission, in accordance with the model in Annex V, for each of the two parts of the quota and for each product code of the nomenclature for refunds, of the quantities covered by licence applications or, where applicable, that no applications have been lodged.

All notifications, including notifications of nil applications, shall be made by telex or fax on the working day stipulated.

Before issuing licences, the Member States shall verify in particular that the information referred to in paragraphs 3 to 5 is correct.

If the information provided by a trader to whom a licence has been issued is found to be incorrect, the licence shall be cancelled and the security forfeited.

11. The Commission shall decide as quickly as possible to what extent applications notified to it may be granted and shall inform the Member States of its decision.

If all the quantities covered by licence applications for both parts of the quota exceed one or other of the quantities referred to in paragraph 4, the Commission shall fix allocation coefficients. If application of the allocation coefficient results in a quantity per applicant of less than 20 t, applicants may withdraw their applications. In such cases, they shall notify the competent authority within three working days of publication of the Commission's decision. The security shall be released immediately. The competent authority shall notify the Commission, within eight working days of publication of the decision, of the quantities for which applications have been withdrawn and for which the security has been released.

Where the total quantity covered by licence applications is less than the quantity available for the period in question, the Commission shall allocate the quantity remaining, on the basis of objective criteria taking account in particular of licence applications for all the products falling within CN codes 0402 10, 0402 21 and 0402 29.

12. Licences shall be issued at the request of the exporter, not earlier than 1 July and not later than 15 February the following year. They shall be issued only to exporters whose licence applications were notified in accordance with paragraph 10.

Member States shall communicate to the Commission before 1 March, in accordance with Annex VI, for both parts of the quota, the quantities for which no licences were issued.

13. Notwithstanding Article 6, export licences shall be valid from their date of issue within the meaning of Article 21(2) of Regulation (EEC) No 3719/88 to 30 June thereafter.

14. The security shall be released only on presentation of the proof referred to in Article 33(4) of Regulation (EEC) No 3719/88, or in respect of quantities covered by applications for which no licence could be issued.

Notwithstanding the fifth subparagraph of Article 33(2) of Regulation (EEC) No 3719/88, the security relating to the quantity not exported shall be forfeit.

15. Notwithstanding Article 9 of Regulation (EEC) No 3719/88, licences shall not be transferable.

16. Before 1 September each year, the competent authority of the Member State shall report to the Commission, in accordance with Annex VII, broken down by product code of the nomenclature for refunds:

— the quantity allocated,

— the quantity for which licences have been issued,

— the quantity exported

during the previous 12-month period as referred to in paragraph 1.

17. Chapter I shall apply, with the exception of Articles 6 and 10.'

(***) OJ L 218, 6.8.1998, p. 45.

10. In Annex II, the last code of Group 23 is replaced by code '0405 90 90 9000'.

11. Annex IV is replaced by Annex I to this Regulation.

12. The annexes in Annex II hereto are added.

Article 2

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

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

Done at Brussels, 20 July 1999.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

'ANNEX IV

Canada

Information required under Article 18(8)

Member State: .....

Data for the period from ..... to .....

Trader's name/address	CN code of product (pursuant to Article 18(2))	Licences issued	
		Number of licences	Quantity tonnes'
	Total		

ANNEX II

'ANNEX V

Dominican Republic

Information required under Article 20a(10)

Member state: .....

applications for the period: .....

Quota referred to in Article 20a(4)(a)

Name/address of applicant	Reference data exports to the Dominican Republic			Applications	
	Product code in the refunds nomenclature	Quantities exported (t)	Year of export	Product code in the refunds nomenclature	Quantity maximum = 110 % of (3) (t)
(1)	(2)	(3)	(4)	(5)	(6)
Total					

Quota referred to in Article 20a(4)(b)

name/address of applicant	Product code in the refunds nomenclature	Quantity applied for (t)

ANNEX VI

Dominican Republic

Information required under Article 20a (12)

Member State: .....

Data relating to the period from ..... to .....

Quota referred to in Article 20a(4)(a)

Exporter's name and address	Code in the refunds nomenclature	Quantities allocated for which licences were not issued (t)

Total

Quota referred to in Article 20a(4)(b)

Exporter's name and address	Code in the refunds nomenclature	Quantities allocated for which licences were not issued (t)

Total

ANNEX VII

Dominican Republic

Information required under Article 20a(16)

Member State: .....

Data relating to the period from: ..... 1 July to 30 June .....

Quota referred to in Article 20a(4)(a)

Code in the refunds nomenclature	Quantites for which licences were allocated	Quantities for which licences were issued	Quantities exported
	(t)	(t)	(t)
Total			

Quota referred to in Article 20a(4)(b)

Code in the refunds nomenclature	Quantities for which licences were allocated	Quantities for which licences were issued	Quantities exported
	(t)	(t)	(t)
Total'			