COMMISSION REGULATION (EC) No 711/2004

of 16 April 2004

laying down transitional measures as regards import licence applications pursuant to Regulation (EC) No 780/2003 opening and providing for the administration of a tariff subquota for frozen meat of bovine animals covered by CN code 0202 and products covered by CN code 0206 29 91, by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, and in particular Article 2(3) thereof,

Having regard to the Act of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, and in particular the first paragraph of Article 41 thereof,

Whereas:

(1) Commission Regulation (EC) No 780/2003 [1] provided for the administration of a tariff subquota for 34 450 tonnes of certain frozen meat of bovine animals, with the order number 09.4003, for the period from 1 July 2003 to 30 June 2004 (subquota II), divided into two half-year periods.

(2) In order to ensure access for operators from the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (new Member States) to benefit from this subquota as from 1 May 2004, the quantities available for the subquota period running from 1 January to 30 June 2004 were divided into two tranches on a *pro rata temporis* basis by Commission Regulation (EC) No 2341/2003 [2]. Licence applications may be lodged during the period 5 to 8 January 2004 and 3 to 7 May 2004.

(3) Articles 8 to 11 of Part III of Regulation (EC) No 780/2003 lay down specific provisions for the approval of applicants for import licences as regards subquota II. In order to ensure access for operators from the new Member States to import licences as from the date of accession of those countries to the European Union, transitional measures should be adopted.

(4) Operators of the new Member States should be allowed to apply for import licences under subquota II in the period 3 May to 7 May 2004 without prior approval. They should prove that they are genuinely involved in importing or exporting beef from or to third countries. Proof of that involvement calls for evidence to be presented of recent import or export of some significance. As regards the requirement on the proof on trade performance, the applicants in the new Member States should be allowed to consider not only trade with the Community but trade with all third countries.

(5) To ensure the proper functioning of the system and due to the short period of time available for the verification of applicants, provisions concerning *expost* audit controls to be undertaken by the authorities of the new Member States on the operators applying for import licences in the new Member States should be adopted.

(6) Where there are obvious reasons to suspect that fictitious operators have applied for import licences, new Member States should proceed to a more detailed examination of the applications.

(7) Penalties should be determined where fictitious operators of the new Member States have applied for import licences or the licences were granted on the basis of forged or fraudulent documentation. These penalties should be applicable also to operators of the Community as constituted on 30 April 2004 where they are related to fictitious operators of the new Member States or are involved in the presentation of forged or fraudulent documentation by these operators.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Beef and Veal Products,

HAS ADOPTED THIS REGULATION:

Article 1

1. By way of derogation from Article 11 of Regulation (EC) No 780/2003, operators established in the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (hereinafter new Member States) may apply for import licences with regard to subquota II in the period 3 May to 7 May 2004 without prior approval by the competent authorities of the Member State in which they are established.

[1] OJ L 114, 8.5.2003, p. 8.
[2] OJ L 346, 31.12.2003, p. 33. Regulation amended by Regulation (EC) No 385/2004 (OJ L 64, 2.3.2004, p. 24).

2. By way of derogation from Article 12 of Regulation (EC) No 780/2003, operators established in the new Member States may apply for import licences for the quota referred to in paragraph 1 only in the Member State where the operator is entered in the VAT register.

3. Licence applications shall be admissible only where the applicant submits a request to the competent authority of a new Member State accompanied by documentary proof that:

(a) he/she has been engaged on his/her own account in the commercial activity of importing from other countries or exporting to other countries, beef falling within CN codes 0201, 0202 or 0206 29 91 during the years 2002 and 2003;

(b) by virtue of this activity:

— he/she has imported in the course of the two years concerned a minimum of 100 tonnes of such beef expressed in product weight, or

— he/she has exported in the course of the two years concerned a minimum of 220 tonnes of such beef expressed in product weight,

in, at least, two operations per year.

Operators who at 1 January 2004 have ceased their activities in the beef and veal sector shall not be eligible for the purpose of this subquota.

For the purposes of this Article 'other countries' means all third countries, including the Member States of the Community as constituted on the date previous to the entry into force of the Treaty of Accession of 2003.

4. In order to prove the commercial activity of his/her own account as referred to in paragraph 3(a), the operator shall present documentary proofs in form of commercial invoices and officials accounts as well as any other documents showing to the satisfaction of the new Member State concerned that the required commercial activity is related solely to the applicant concerned.

5. Proof of import or export shall be provided exclusively by means of customs documents duly endorsed by the customs authorities of the new Member States.

New Member States may accept copies of the above documents duly certified by the competent authorities.

6. New Member States shall examine and verify the validity of the documentation presented.

7. A company formed by a merger of companies each having rights to apply pursuant to paragraphs 2 to 4 shall enjoy the same rights as those former companies.

Article 2

1. New Member States shall verify that applicants are not related to one another within the meaning of Article 143 of Commission Regulation (EEC) No 2454/93 [1], where:

— in the proof of imports or exports referred to in paragraph 3 of Article 1 of this Regulation, two or more applicants are entered as having the same postal address, or

— two or more applicants at the time of application are registered for VAT purposes or similar official register, on the same postal address, or

— new Member States have grounds to suspect that applicants are connected in terms of management, staff or operation.

2. Where related applicants are consequently identified, all applications concerned shall be rejected unless the applicants concerned can provide further evidence to the satisfaction of the competent authority that they are independent from one another in terms of management, staff and all operations linked to their commercial or technical activity.

3. Where a new Member State or a Member State of the Community as constituted on 30 April 2004 has grounds to suspect that an applicant in a New Member State is connected in terms of management, staff or operations with an applicant in another new Member State or in a Member State of the Community as constituted on 30 April 2004, the Member States concerned shall mutually verify whether a relationship exists within the meaning of Article 143 of Regulation (EEC) No 2454/93.

For this purpose, the competent authorities of the new Member States shall send to the Commission by 15 May 2004 lists of operators having applied for import licences under subquota II in the period 3 May to 7 May 2004. These lists shall contain the name and address of the operators concerned. The Commission shall subsequently distribute to all Member States authorities the lists received together with the list of operators approved by the Member States of the Community as constituted on 30 April 2004.

4. New Member States shall, by means of controls to be undertaken for at least one third of the applicants, verify, after the period of licence issuance, that the applicants are not related to one another within the meaning of Article 143 of Regulation (EEC) No 2454/93.

Where related applicants are consequently identified, licences granted in respect of the application period 3 May to 7 May 2004 to all the operators concerned shall be withdrawn retrospectively, together with any advantage already granted on the basis of them, unless these operators can provide further evidence to the satisfaction of the competent authority that they are independent from one another in terms of management, staff and all operations linked to their commercial or technical activity.

[1] OJ L 253, 11.10.1993, p. 1.

5. Where it is subsequently established that the admissibility of licences application was decided upon forged or fraudulent documentation, licences granted in respect of the application period 3 May to 7 May 2004 to all the operators involved in the presentation of such documentation shall be withdrawn retrospectively, together with any advantage already granted on the basis of them.

Article 3

This Regulation shall enter into force subject to and on the date of the entry into force of the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia.

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

Done at Brussels, 16 April 2004.

For the Commission
Franz FISCHLER
Member of the Commission