COMMISSION REGULATION (EC) No 1513/2005

of 16 September 2005

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 (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products [1], and in particular Article 26(3), Article 30(1) and Article 31(14) thereof,

Whereas:

(1) Commission Regulation (EC) No 750/2005 of 18 May 2005 on the nomenclature of countries and territories for the external trade statistics of the Community and statistics of trade between Member States [2] has amended country codes which also appear in the destination zones referred to in Article 15 of Commission Regulation (EC) No 174/1999 [3]. That provision should be updated accordingly.

(2) Article 20 of Regulation (EC) No 174/1999 provides that export licences for certain cheeses exported to the United States of America (US) as part of the quotas under the agreements concluded during multilateral trade negotiations may be allocated according to a special procedure by which preferred importers in the US may be designated.

(3) It is therefore appropriate to fix certain eligibility criteria for the allocation of the export licences, ensuring that the quotas operate smoothly and are fully utilised. To that end the licences should be allocated to those exporters who can prove that they have been previously engaged in exports of cheese to the United States. Furthermore, it appears necessary, in order to prevent a loss of market share for the Community and to maximise the value of certain quotas, to restrict access to those quotas to operators whose designated importer is a subsidiary. Finally, where the applications for export licences exceed the quantities available, provision should be made for the distribution of the quota by applying an allocation coefficient.

(4) To ensure a smooth transition from the method currently applied for allocating licences, more flexible provisions are desirable for the coming period. For 2006, applicants whose designated importer is not a subsidiary should nevertheless be eligible, provided they have exported the products in question to the US during each of the three preceding years.

(5) In the light of the difficulties some traders have encountered in setting up a subsidiary in the United States, a transitional arrangement should apply for 2006 as regards the requirement for the designated importer to be a subsidiary of the applicant.

(6) Experience acquired in the past years should be taken into account for the allocation of licences for 2006 by applying an allocation coefficient that gives a certain preference to those applicants whose designated preferred importers are subsidiaries or are deemed to be subsidiaries.

(7) In accordance with Article 20(4), where a reduction coefficient would mean allocating provisional licences for quantities of less than 5 tonnes, the Commission may allocate licences by drawing lots. It is appropriate to adapt that provision by providing for a redistribution of minor quantities by the national competent authorities with a view to maximising the use of the quota.

(8) Article 20a(8) of Regulation (EC) No 174/1999 lays down the percentages to be applied to the full refund rates in order to fix the refunds for products intended for export to the Dominican Republic under the quota referred to in paragraph 1 of that Article. With a view to transparency, simplification and consistency, that provision should be deleted and included in a footnote providing for a differentiated refund rate, to be introduced in the future in Commission Regulations fixing the export refunds on milk and milk products in accordance with Article 31(3) of Regulation (EC) No 1255/1999.

(9) Regulation (EC) No 174/1999 should therefore be amended accordingly.

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[1] OJ L 160, 26.6.1999, p. 48. Regulation last amended by Commission Regulation (EC) No 186/2004 (OJ L 29, 3.2.2004, p. 6).

[2] OJ L 126, 19.5.2005, p. 12.

[3] OJ L 20, 27.1.1999, p. 8. Regulation last amended by Regulation (EC) No 558/2005 (OJ L 94, 13.4.2005, p. 22).

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

HAS ADOPTED THIS REGULATION:

Article 1

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

1. In Article 15, paragraph 3 is replaced by the following:

'3. The following definitions shall apply for the purposes of paragraph 1:

(a) zone I: destination codes AL, BA, XK, MK, XM and XS;

(b) zone II: destination code US;

(c) zone III: all other destination codes.'

2. Article 20 is amended as follows:

(a) Paragraph 2 is replaced by the following:

'2. Exports of cheese to the United States of America under the quotas referred to in paragraph 1 shall be subject to presentation of an export licence. By way of derogation from the first sentence of Article 5(1), Section 16 of licence applications and licences shall show the eight-digit product code of the Combined Nomenclature.

Traders may apply, within a period to be determined, for a provisional export licence for the export of the products referred to in paragraph 1 during the following calendar year, subject to the lodging of a security equal to 50 % of the rate fixed in accordance with Article 9, with a minimum of EUR 6 per 100 kg.

Applicants for provisional export licences in respect of the product group and quotas identified by 22-Tokyo and 22-Uruguay in the regulation opening the procedure for the allocation of such export licences must provide evidence that they have exported cheese to the United States of America in at least one of the preceding three years.

Applicants for provisional export licences in respect of the product groups and quotas identified by 16-Tokyo, 16-, 17-, 18-, 20- and 21-Uruguay, 25-Tokyo and 25-Uruguay in the regulation opening the procedure for the allocation of such export licences must provide evidence that they have exported the products in question to the United States of America in at least one of the preceding three years and that their designated importer is a subsidiary of the applicant.

However, for the 2006 quota year, applicants for provisional export licences for the product groups and quotas referred to in the fourth subparagraph shall not be subject to the requirement for the designated importer to be their subsidiaries if they provide evidence that they have exported such products to the United States of America in each of the preceding three years.

Furthermore, for the 2006 quota year, the designated preferred importer of an applicant may be deemed to be a subsidiary for 2006, provided that

(i) the application was lodged in:

— the Czech Republic for a provisional licence for the purpose of exporting cheese to the United States of America under the quotas described in additional notes 16, 17, 18, 20 and 25 to Chapter 4 of the HTS, or

— in Hungary for a provisional licence for the purpose of exporting cheese to the United States of America under the quota described in additional note 25 to Chapter 4 of the HTS,

— in Poland for a provisional licence for the purpose of exporting cheese to the United States of America under the quotas described in additional notes 16 and 21 to Chapter 4 of the HTS,

— in Slovakia for a provisional licence for the purpose of exporting cheese to the United States of America under the quotas described in additional note 16 to Chapter 4 of the HTS,

(ii) the applicant submits documentary evidence to the competent authority of the Member State in which the application is lodged that he has been established for at least three years in the new Member States and has exported the cheese in question to the USA in each of the three calendar years prior to lodging the application;

(iii) the applicant submits documentary evidence to the competent authority of the Member State in which the application is lodged that the procedure for establishing a subsidiary in the USA has been initiated;

(iv) the applicant submits evidence to the competent authority of the Member State in which the application is lodged that he has carried out exports to preferred importers in the 12 months prior to lodging the application.

Traders shall also indicate in the applications for provisional export licences:

(a) the designation of the product group covered by the United States quota in accordance with Additional Notes 16 to 23 and 25 in Chapter 4 of the Harmonized Tariff Schedule of the United States of America (most recent version);

(b) the product names in accordance with the Harmonised Tariff Schedule of the United States of America (most recent version);

(c) the name and address of the importer in the United States designated by the applicant.

In addition, applications shall be accompanied by a certificate from the designated importer stating that he is eligible under the rules in force in the United States on the issue of import licences for the products referred to in paragraph 1.

For the 2006 quota year, applications for provisional export licences shall indicate whether the designated importer is a subsidiary of the applicant, or, is deemed to be a subsidiary in accordance with the sixth subparagraph.'

(b) Paragraphs 3 and 4 are replaced by the following:

'3. Where applications for provisional licences for a product group or a quota as referred to in paragraph 1 exceed the available quantity for the year in question, the Commission shall apply a uniform allocation coefficient to the quantities for which application is made.

Notwithstanding the first subparagraph, where an allocation coefficient is applied in respect of applications for provisional licences for 2006, the allocation coefficient for applicants whose designated preferred importers are subsidiaries or are deemed to be subsidiaries in accordance with the sixth subparagraph of paragraph 2 shall be three times higher than for other applicants.

4. Where the result of applying the allocation coefficient would be to allocate provisional licences for less than 10 tonnes per application, the corresponding quantities available shall be awarded by the Member State concerned drawing lots by quota. The Member State shall draw lots for provisional licences of 10 tonnes each amongst the applicants who would have been allocated less than 10 tonnes as a result of applying the allocation coefficient.

Quantities of less than 10 tonnes remaining when establishing the lots shall be equally distributed over the 10-tonne lots before the lots are drawn.

Where the result of applying the allocation coefficient would be to leave a quantity of less than 10 tonnes, that quantity shall be considered a single lot.

The security for applications which are not successful in the allocation by drawing lots shall be released immediately.'

3. In Article 20a, paragraph 8 is deleted.

Article 2

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

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

Done at Brussels, 16 September 2005.

For the Commission
Mariann FISCHER BOEL
Member of the Commission