COMMISSION REGULATION (EC) No 1452/2006

of 29 September 2006

providing for interim measures for the management of a tariff quota for New Zealand butter from October to December 2006 and derogating from Regulation (EC) No 2535/2001

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 29(1) thereof,

Whereas:

(1) Commission Regulation (EC) No 2535/2001 of 14 December 2001 laying down detailed rules for applying Council Regulation (EC) No 1255/1999 as regards the import arrangements for milk and milk products and opening tariff quotas [2] set out in particular rules for 'New Zealand butter' as referred to in Article 25(1) of that Regulation.

(2) In order to comply with Articles 26 and 29 of Regulation (EC) No 1255/1999 which stipulate that the Commission is to ensure that import licences are issued to all applicants irrespective of where in the Community they are established and that discrimination between importers must be avoided, as interpreted by the Court of Justice of the European Communities in its judgment of 11 July 2006 in Case C-313/04 *Franz Egenberger GmbH Molkerei und Trockenwerk* v *Bundesanstalt für Landwirtschaft und Ernährung*, Commission Regulation (EC) No 1118/2006 [3] provided for the suspension of import licences under the current New Zealand butter quota as from 12 July 2006.

(3) The establishment of the appropriate instruments for managing the tariff quota cannot be completed in time in order to allow imports to take place for the remaining quantities of 2006. Interim measures should therefore be adopted for the issue of import licences for the period ending 31 December 2006 in order to ensure the continuity of trade flows with New Zealand, until such time as the definitive arrangements for managing the tariff quota as from 1 January 2007 are put in place, ensuring non-discriminatory access of importers to the quota in conformity with the Court's judgment in Case C-313/04.

(4) To ensure that the interim measures operate effectively and that the quantities allocated to each operator are economically viable, it is appropriate, in view of the limited time available for deliveries, to require that each application must be for a certain minimum quantity. To ensure that applications for import licences are genuine and to secure maximum utilisation of the quota it is appropriate to provide for the import licence applications to be accompanied by a contract with the exporter and for the non-transferability of the import licences.

(5) In order to ensure that the quota is managed correctly and fairly, it is necessary to provide that if there are not a certain minimum number of applications, a new licensing round should start as quickly as possible with the ultimate result that, if there are not at least six contracts, no import licence will be issued under the transitional regime.

(6) Imports of New Zealand butter must comply with certain quality requirements laid down in Regulation (EC) No 2535/2001. The IMA 1 certificate should be presented at the time of import to show compliance with those requirements and to prove the origin of the butter.

(7) For the remaining quantities to be imported in 2006 under quota No 09.4589 as referred to in Annex III (A) to Regulation (EC) No 2535/2001 it is therefore necessary to lift the suspension of the issuing of import licences by repealing Regulation (EC) No 1118/2006 and to derogate from certain provisions of Regulation (EC) No 2535/2001.

(8) 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

Import of New Zealand butter

Save as otherwise provided for in this Regulation, Chapter III of Title 2 of Regulation (EC) No 2535/2001 shall apply to the import of a quantity of 14 294,6 tonnes of butter for the year 2006 under quota number 09.4589 referred to in Annex III(A) to that Regulation (hereinafter referred to as 'New Zealand butter') for which the issue of licences was suspended under Regulation (EC) No 1118/2006.

[1] OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).
[2] OJ L 341, 22.12.2001, p. 29. Regulation as last amended by Regulation (EC) No 926/2006 (OJ L 170, 23.6.2006, p. 8).
[3] OJ L 199, 21.7.2006, p. 11.

Article 2

Conditions for applications for import licences

1. Applications for licences for import of New Zealand butter under this Regulation shall be admissible only if the following conditions are satisfied:

(a) the importers must be approved under Article 8 of Regulation (EC) No 2535/2001 and, by way of derogation from Article 35(2) of Regulation (EC) No 2535/2001, lodge licence applications in the Member State in which they are approved;

(b) importers must submit the original or an authenticated copy of a purchase contract with a New Zealand exporter for the import of butter as described in Annex III(A) to Regulation (EC) No 2535/2001 for a quantity at least equal to that mentioned in the application;

(c) importers may lodge only one application and if they lodge more than one application, all those applications shall be rejected;

(d) applications must relate to a quantity of at least 1 000 tonnes but to no more than 30 % of the quantity referred to in Article 1.

2. Licence applications shall be lodged from 16 to 18 October 2006.

Article 3

Issue of licences

1. By 20 October 2006 at the latest, Member States shall notify the Commission by fax or electronic mail of the licence applications lodged under this Regulation, specifying the names of the applicants and the quantities applied for by each one.

2. The Commission shall decide within three working days following the date referred to in paragraph 1 to what extent licence applications may be accepted and shall inform the Member States of its decision. Where in total less than six valid applications have been lodged, no applications shall be accepted and Article 4 shall apply.

3. Where the total quantity covered by licence applications exceeds the quantity referred to in Article 1, the Commission shall apply an allocation coefficient to the quantities applied for. In that case, the part of the security corresponding to the quantities not allocated shall be released.

4. Licences shall only be issued to applicants whose licence applications have been notified under paragraph 1. The issue of such licences shall be made no more than two working days after the Member States have been informed of the decision referred to in paragraph 2.

Article 4

New licensing round

1. If the Commission has decided that no licence applications should be accepted, pursuant to Article 3(2), a new licensing round shall be opened under this Regulation, for the purposes of which:

(a) the period referred to in Article 2(2) shall be deemed to be from 2 to 6 November 2006; and

(b) the date referred to in Article 3(1) shall be deemed to be 8 November 2006.

2. If in the period referred to in paragraph 1(a), fewer than six valid applications have been lodged, no import licences shall be issued for the quota referred to in Article 1.

Article 5

Entries on applications and licences

By way of derogation from Article 28(1)(c) of Regulation (EC) No 2535/2001, Box 16 of licence applications may show one or more of the CN codes listed under quota number 09.4589 referred to in Annex III(A) to that Regulation. If a licence application indicates more than one CN code, it must specify the quantity requested for each code and a separate licence shall be issued for each code.

By way of derogation from Article 28(1)(d) of Regulation (EC) No 2535/2001, licence applications and licences shall show in Box 20 a reference to this Regulation.

Article 6

Licences

1. Import licences issued under this Regulation shall be valid until 31 December 2006.

2. By way of derogation from Article 9 of Commission Regulation (EC) No 1291/2000 [1], import licences issued under this Regulation may not be transferred.

3. Article 35(3) of Regulation (EC) No 2535/2001 shall not apply.

[1] OJ L 152, 24.6.2000, p. 1. Regulation as last amended by Regulation (EC) No 410/2006 (OJ L 71, 10.3.2006, p. 7).

4. By way of derogation from Article 36, second paragraph, of Regulation (EC) No 2535/2001, where a consignment of butter does not meet the compositional requirements set out in Annex III(A) to that Regulation, the customs authorities shall not send the licence to the issuing authorities.

The quantity shall not be booked off of the import licence.

Article 7

IMA 1 certificates

1. By way of derogation from Article 25(1) of Regulation (EC) No 2535/2001, the duty rate provided for in Annex III(A) to Regulation (EC) No 2535/2001 shall be applied to New Zealand butter imported under the present Regulation only on presentation of the declaration of release for free circulation accompanied by an IMA 1 certificate, proving the eligibility requirements and the origin of the butter covered by that declaration.

2. The IMA 1 certificate shall not be valid beyond 31 December 2006.

3. The undertaking referred to in Article 33(1)(d) of Regulation (EC) No 2535/2001 to issue the IMA 1 certificate for the total quantity covered before the product it covers leaves the territory of the issuing country shall not apply.

Article 8

Information to the Commission

Without prejudice to Article 39 of Regulation (EC) No 2535/2001, Member States shall, by 28 February 2007, communicate to the Commission the quantity of New Zealand butter imported under the present Regulation and released for free circulation for which the security has been released.

Article 9

Repeal of Regulation (EC) No 1118/2006

Regulation (EC) No 1118/2006 is repealed.

Article 10

Entry into force

This Regulation shall enter into force on the day following 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, 29 September 2006.

For the Commission
Mariann FISCHER BOEL
Member of the Commission