COMMISSION IMPLEMENTING REGULATION (EU) No 990/2013

of 15 October 2013

amending Regulation (EC) No 1187/2009 as regards exports of milk and milk products to the United States of America and the Dominican Republic

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ([1]), and in particular Articles 161(3), 170 and 171(1), in conjunction with Article 4 thereof,

Whereas:

(1) Section 2 of Chapter III of Commission Regulation (EC) No 1187/2009 ([2]) lays down provisions as regards export licences for cheese to be exported to the United States under certain GATT quotas. Experience with certain of those quotas has shown that, because of the continuously evolving market circumstances, in particular high price volatility, increased competition and changes in currency conversion rates, which occur in the long time lapse between the period for submission of applications for export licences ('licence applications') and the moment in which exports take place, exporters may not be able to use their licences and as a result lose the related securities. In order that exporters are not discouraged from applying for those quotas for which the time lapse is set in agreement with the authorities of the Unites States, it is necessary to reduce the applicable rate of the security, starting from the quota year 2015.

(2) Article 22(3) of Regulation (EC) No 1187/2009 provides that for the quotas opened by the Unites States licence applications are subject to the lodging of a security in accordance with Article 9 thereof. Being part of the Chapter on general rules in Regulation (EC) No 1187/2009, Article 9 sets the mechanism for calculating the security for exports not benefiting from trade preferences granted by third countries. Therefore, in view of the experience with the preferential quotas opened by the United States and to render them more attractive to exporters, it is necessary, in addition to reducing the rate of the security, to specify that Article 9 in its entirety should not apply to those quotas.

(3) Section 3 of Chapter III of Regulation (EC) No 1187/2009 provides for the conditions and the procedure to which the exporters are submitted for participating in the milk powder quota opened by the Dominican Republic. Whilst the quota has been fully used since its introduction until the quota year 2010/2011, it appears that as from the quota year 2011/2012 the total quantities applied for are lower than the available quota quantity.

(4) With a view to maximising the use of the quota in the following years, it is necessary to adjust the rules as regards eligibility, applicable quantities, periods for submission of licence applications and security.

(5) In addition, to make the quota more easily accessible to the exporters, the requirements concerning the minimum historical trade performance when applying for the quota part referred to in Article 28(1)(a) of Regulation (EC) No 1187/2009 should be alleviated.

(6) In order to maximize the use of the quota and for the sake of simplification, the maximum quantities for which licence applications can be lodged, as laid down in Article 28(2) of Regulation (EC) No 1187/2009, should be increased to the quota quantity levels. The minimum quantity for which licence applications can be lodged should be fixed at 20 tonnes.

(7) The long time lapse between the period for submission of licence applications, as laid down in Article 29 of Regulation (EC) No 1187/2009, and the quota year during which exports take place, as well as the high price volatility in the dairy sector and an increased competition for milk powders in the Dominican Republic have enhanced the risk for exporters to remain with licences that are not or only partially used, resulting in a loss of the related security. It is therefore appropriate to defer the submission of licence applications from April to May and to provide for a second allocation period.

(8) Moreover, a reduction of the security referred to in Article 28(3) would encourage operators not to refrain from applying for licences and should therefore be provided for. It is also necessary to specify that Article 9 should not apply to the preferential quota opened by the Dominican Republic in order to render that quota more attractive to exporters.

(9) Regulation (EC) No 1187/2009 should therefore be amended accordingly.

(10) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

([1]) OJ L 299, 16.11.2007, p. 1.

([2]) Commission Regulation (EC) No 1187/2009 of 27 November 2009 laying down special detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards export licences and export refunds for milk and milk products (OJ L 318, 4.12.2009, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

Amendment of Regulation (EC) No 1187/2009

Chapter III of Regulation (EC) No 1187/2009 is amended as follows:

(1) Section 2 is amended as follows:

(a) In Article 22, paragraph 3 is replaced by the following:

'3. The licence applications shall be subject to the lodging of a security of EUR 3/100 kg.'

(b) Article 26 is replaced by the following:

'*Article 26*

Chapter II, with the exceptions of Articles 7, 9 and 10, shall apply.'

(2) Section 3 is replaced by the following:

'*SECTION 3*

Exports to the Dominican Republic

Article 27

1. The presentation to the competent authorities of the Dominican Republic of a certified copy of the export licence issued in accordance with this Section and a duly endorsed copy of the export declaration for each consignment shall be required for exports to the Dominican Republic of milk powder under the quota provided for in Appendix 2 of Annex III to the Economic Partnership Agreement between the Cariforum States and the European Union and its Member States.

2. Applications for export licences ('licence applications') can be lodged for all the products falling under CN codes 0402 10, 0402 21 and 0402 29.

Products must have been produced entirely within the Union. 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.

Article 28

1. The quota referred to in Article 27(1) shall be of 22 400 tonnes 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 tonnes, shall be distributed among Union exporters who can prove that they have exported products referred to in Article 27(2) to the Dominican Republic during at least one of the four calendar years prior to the period for submission of licence applications;

(b) the second part, equal to 20 % or 4 480 tonnes, shall be reserved for applicants other than those referred to in point (a) who can prove, at the time they submit their licence application, that they have been engaged during the 12 last months in trade with third countries in the milk products listed in Chapter 4 of the Combined Nomenclature.

The proof of trade as referred to in the first subparagraph shall be furnished in accordance with the second paragraph of Article 5 of Regulation (EC) No 1301/2006.

2. Licence applications shall relate to at least 20 tonnes and may not cover more, per applicant, than:

(a) the respective quantities referred to in points (a) and (b) of the first subparagraph of paragraph 1, as regards the period for submission of licence applications referred to in the first paragraph of Article 29;

(b) the total remaining quantity from both parts of the quota referred to in points (a) and (b) of the first subparagraph of paragraph 1, as regards the period for submission of licence applications referred to in the second paragraph of Article 29.

Licence applications for the total remaining quantity as referred to in point (b) of the first subparagraph, can be submitted either by exporters referred to in point (a) of the first subparagraph of paragraph 1, or by applicants referred to in point (b) of the first subparagraph of paragraph 1.

Licence applications for quantities which exceed the ceilings provided for in points (a) and (b) of the first subparagraph shall be rejected.

3. To be admissible, only one licence application per period for submission of applications, as referred to in Article 29, may be submitted per product code in the Combined Nomenclature. Each applicant shall lodge all licence applications at the same time with the competent authority of a single Member State.

Licence applications shall be admissible only where applicants, at the time they present their applications:

(a) lodge a security of EUR 3/100 kg;

(b) for the part referred to in point (a) of the first subparagraph of paragraph 1, indicate the quantity of products referred to in Article 27(2) that they have exported to the Dominican Republic during one of the four calendar years prior to the respective period for submission of licence applications, as referred to in Article 29, and are able to prove this to the satisfaction of the competent authority of the Member State concerned. To this end the operator whose name appears on the relevant export declaration shall be regarded as the exporter;

(c) for the part referred to in point (b) of the first subparagraph of paragraph 1, are able to prove to the satisfaction of the competent authority of the Member State concerned that they fulfil the conditions laid down therein.

Article 29

Licence applications shall be lodged from 20 to 30 May each year for exports during the quota year running from 1 July to 30 June the following year;

If, after the period for submission of licence applications referred to in the first paragraph, any quantity remains available, licence applications shall be lodged from 1 to 10 November each year for exports during the remaining period of the running quota year.

Article 30

Licence applications and licences shall contain:

(a) in section 7, the words 'Dominican Republic — DO';

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

(c) in section 20, one of the entries listed in Annex III.

Licences issued under this Section shall give rise to an obligation to export to the Dominican Republic.

Article 31

1. As regards the licence applications referred to in the first paragraph of Article 29, Member States shall notify, by 6 June each year, the Commission, for each of the two parts of the quota and for each product code of the Combined Nomenclature, of the quantities covered by licence applications or, where applicable, that no applications have been lodged.

2. The Commission shall decide as quickly as possible to what extent licences for quantities applied for may be granted and shall fix allocation coefficients for each part of the quota. The amount resulting from the application of the coefficient shall be rounded down to the nearest kilogramme.

3. Where for at least one of the two parts of the quota the licence applications are submitted for quantities lower than the quantities referred to in Article 28(1), the Commission shall include in its decision referred to in paragraph 2 the total remaining quantity for which licence applications can be submitted during the period referred to in the second paragraph of Article 29.

As regards the licence applications referred to in the second paragraph of Article 29, Member States shall notify, by 17 November each year, the Commission, for each product code of the Combined Nomenclature, of the quantities covered by licence applications or, where applicable, that no applications have been lodged.

The Commission shall decide as quickly as possible to what extent licences for quantities applied for may be granted and shall fix an allocation coefficient. The amount resulting from the application of the coefficient shall be rounded down to the nearest kilogramme.

If the quantities applied for in accordance with the first subparagraph do not reach the total remaining quantity, the Commission shall allocate, pursuant to the decision referred in the third subparagraph the remaining quantity in proportion to the quantities applied for.

The applicants shall inform the competent authority whether they accept the supplementary quantity, within one week from the day of publication of Commission's decision referred to in the third subparagraph. The security lodged shall be increased accordingly. The competent authority shall notify the Commission, by 31 December at the latest, of the supplementary quantity that was accepted.

4. Before the notifications referred to in paragraph 1 and in the second subparagraph of paragraph 3, Member States shall verify that the conditions referred to in Article 27(2) and in Article 28 are fulfilled.

5. If the application of the allocation coefficient results in a quantity per applicant of less than 20 tonnes, applicants may withdraw their licence applications. In such cases, they shall notify the competent authority within three working days following the publication of the Commission's decisions referred to in paragraph 2 and in the third subparagraph of paragraph 3. The security shall be released immediately. The competent authority shall notify the Commission, within 10 days following the publication of the decision, of the quantities broken down by product codes of the Combined Nomenclature, for which licence applications have been withdrawn and for which the security has been released.

Article 32

1. Export licences shall be issued by 30 June and by 31 December where applicable after the publication of the Commission's decision referred to in Article 31(2) and in the third subparagraph of Article 31(3), respectively.

They shall be issued only to operators whose licence applications were taken into account for the quantities notified by Member States in accordance with Article 31(1) and the second subparagraph of Article 31(3).

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

2. Export licences issued in accordance with this Section shall be valid from their actual day of issue within the meaning of Article 22(2) of Regulation (EC) No 376/2008 until 30 June of the quota year for which the licence application was made.

For the purposes of Article 6(2), the export licence shall also be valid for any of the products falling under the codes referred to in the first subparagraph of Article 27(2).

3. Member States shall notify the Commission by 15 July, and by 15 January where applicable, of the quantities for which licences were issued, broken down by product code of the Combined Nomenclature.

4. The security shall be released only in one of the following cases:

(a) on presentation of the proof referred to in Article 32(2) of Regulation (EC) No 376/2008 together with the transport document referred to in Article 17(3) of Regulation (EC) No 612/2009 mentioning as destination the Dominican Republic;

(b) in respect of the quantities covered by applications for which no licence could be issued.

The security relating to the quantity not exported shall be forfeited.

5. By way of derogation from Article 8 of Regulation (EC) No 376/2008, licences shall not be transferable.

6. By 31 August each year at the latest, Member States shall notify the Commission for both parts of the quota referred to in Article 28(1), and in respect to the previous 12-month period as referred to in Article 28(1), broken down by product code of the Combined Nomenclature:

(a) the quantity for which licences were not issued or cancelled,

(b) the quantity exported.

Article 33

1. Chapter II shall apply, with the exception of Articles 7, 9 and 10.

2. The notifications to the Commission referred to in this Chapter shall be made in accordance with Commission Regulation (EC) No 792/2009 (*).

(*) OJ L 228, 1.9.2009, p. 3.'

Article 2

Transitional measures

As regards the exports to the Dominican Republic for the quota year 2013/2014, the total remaining quantity as referred to in point (b) of the first subparagraph of Article 28(2) of Regulation (EC) No 1187/2009 as amended by point (2) of Article 1 of this Regulation is 9 018 tonnes.

Applications for export licences relating to the quantity referred to in the first paragraph of this Article may be lodged from 1 to 10 November 2013 in accordance with Section 3 of Chapter III of Regulation (EC) No 1187/2009 as amended by point (2) of Article 1 of this Regulation.

Article 3

Entry into force and application

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

Point (1) of Article 1 shall apply as from the quota year 2015.

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

Done at Brussels, 15 October 2013.

For the Commission
The President
José Manuel BARROSO