Commission Implementing Regulation (EU) No 521/2012 of 19 June 2012 amending Regulation (EC) No 1187/2009 as regards export licences for cheese to be exported to the United States of America under certain GATT quotas

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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 Article 170 and Article 171(1), in conjunction with Article 4 thereof,

Whereas:

(1) Section 2 of Chapter III of 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[(2)] contains the conditions for the applicants to apply for export licences and the procedure of allocation of those licences for exports under the quota to the United States.

(2) In accordance with Article 21 of Regulation (EC) No 1187/2009, Commission Implementing Regulation (EU) No 789/2011 of 5 August 2011 opening the procedure for the allocation of export licences for cheese to be exported to the United States of America in 2012 under certain GATT quotas[(3)], was adopted for 2012 quota year.

(3) For sake of administrative simplification, it is appropriate to integrate into Section 2 of Chapter III of Regulation (EC) No 1187/2009 a permanent mechanism as regards the opening of a yearly procedure for the allocation of export licences, instead of adopting a separate Regulation each year.

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

(1) in Chapter III, Section 2 is replaced by the following:

Changes to legislation: Commission Implementing Regulation (EU) No 521/2012 is up to date with all changes known to be in force on or before 01 February 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SECTION 2

Exports to the United States

Article 21

Products falling within CN code 0406 shall be subject to presentation of an export licence in accordance with this Section when they are exported to the United States under following quotas:

(a) the additional quota under the Agriculture Agreement;

(b) the tariff quotas originally resulting from the Tokyo Round and granted to Austria, Finland and Sweden by the United States in Uruguay Round list XX;

(c) the tariff quotas originally resulting from the Uruguay Round and granted to the Czech Republic, Hungary, Poland and Slovakia by the United States in Uruguay Round list XX.

Article 22

1 Applications for licences shall be lodged with the competent authorities from 1 to 10 September of the year preceding the quota year for which export licences are allocated. All applications shall be lodged at the same time with the competent authority of a single Member State.

The quotas referred to in Article 21 are opened on an annual basis for the period from 1 January to 31 December.

Section 16 of licence applications and licences shall show the eight-digit product code of the Combined Nomenclature. However, the licences shall also be valid for any other code falling under CN code 0406.

The licence application and licence shall contain in Section 20 the following entry:

For export to the United States of America:

Quota for … (year) — Section 2 of Chapter III of Regulation (EC) No 1187/2009.

Quota identification: …

2 For each quota identified in column (3) of Annex IIa, each applicant may lodge one or more licence applications provided that the total quantity applied for per quota does not exceed the maximum quantity limits fixed in Article 22a.

For this purpose, where, for the same group of products referred to in column (2) of Annex IIa the available quantity in column (4) is divided between the Uruguay Round quota and the Tokyo Round quota, both quotas have to be considered as two separate quotas.

3 The applications are subject to the lodging of a security in accordance with Article 9.

4 Applicants for export licences shall provide evidence that they have exported the products of the quota in question to the United States in at least one of the preceding three calendar years and that their designated importer is a subsidiary of the applicant.

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The proof of trade as referred to in the first subparagraph shall be furnished in accordance with the second paragraph of Article 5 of Commission Regulation (EC) No 1301/2006[4].

5 Applicants for export licences shall indicate in the applications:

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;

b the product names in accordance with the Harmonized Tariff Schedule of the United States;

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

6 Applications for export licences shall be accompanied by a declaration 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 Article 21.

7 Applications shall be admissible only if they respect the maximum quantity limits, contain all the information and are accompanied by the documents referred to in this Article.

8 Information referred to in this Article shall be presented in accordance with the model set out in Annex IIb.

Article 22a

As regards the quotas identified as 22-Tokyo, 22-Uruguay, 25-Tokyo and 25-Uruguay in column (3) of Annex IIa, the total quantity applied for per applicant per quota shall cover at least 10 tonnes and shall not exceed the quantity available under the quota concerned as set out in column (4) of that Annex.

As regards the other quotas identified in column (3) of Annex IIa, the total quantity applied for per applicant per quota shall cover at least 10 tonnes and no more than 40 % of the quantity available under the quota concerned as set out in column (4) of that Annex.

Article 22b

1 By 18 September, Member States shall notify the Commission of the applications lodged for each of the quotas identified in Annex IIa, or that no applications have been lodged.

2 For each quota, the notification shall comprise:

a a list of applicants, their name, address and reference number;

b the quantities applied for by each applicant broken down by the product code of the Combined Nomenclature and by their code in accordance with the Harmonised Tariff Schedule of the United States of America;

c the name, address and reference number of the importer designated by the applicant.

Article 23

1 Where applications for export licences for a quota referred to in Article 21 exceed the quantity available for the year concerned, the Commission shall fix an allocation coefficient by 31 October.

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The amount resulting from the application of the coefficient shall be rounded down to the nearest kg.

Securities shall be released in whole or in part for rejected applications or for quantities in excess of those allocated.

2 Where the result of applying the allocation coefficient would be to allocate quantities for less than 10 tonnes per quota per applicant, the corresponding quantities available shall be awarded by the Member State concerned by drawing lots by quota. The Member State shall draw lots for 10 tonnes each amongst the applicants who would have been allocated less than 10 tonnes per quota 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 tonnes 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 per quota, that quantity shall be considered as a single lot.

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

3 Member States concerned by drawing lots shall notify the Commission, within five working days after publication of the allocation coefficients, for each quota, of the quantities allocated by applicant, the product code, the applicant reference number and the designated importer reference number.

Quantities allocated by drawing lots shall be distributed among the individual CN codes in proportion to the quantities of product by CN code applied for.

4 Where applications for export licences for quotas referred to in Article 21 not exceed the quantity available for the year concerned, the Commission shall allocate the remaining quantities to applicants in proportion to the quantities applied for, by fixing an allocation coefficient. The amount resulting from the application of the coefficient shall be rounded down to the nearest kg.

In that case, the operators shall inform the competent authority of the Member States concerned of the supplementary quantity they accept, within a week from the publication of the allocation coefficient. The security lodged shall be increased accordingly.

Article 24

1 The names of the designated importers referred to in Article 22(5)(c) and the quantities allocated shall be communicated by the Commission to the competent authorities of the United States.

2 In case an import licence for the quantities concerned is not allocated to the designated importer, in circumstances which do not cast doubt on the good faith of the operator submitting the declaration referred to in Article 22(6), the operator may be authorised by the Member State to designate another importer, provided that the latter appears on the list communicated to the competent authorities of the United States in accordance with paragraph 1 of this Article.

3 The Member State shall notify the Commission as soon as possible of the change of the designated importer and the Commission shall notify the change to the competent authorities of the United States.