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 (recast)

COMMISSION REGULATION (EC) No 1187/2009

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(recast)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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) Regulation (EC) No 1234/2007 lays down, amongst others, general rules for granting export refunds in the milk and milk products sector, in order, in particular, to permit the monitoring of the value and quantity limits for refunds. Detailed rules for the application of those general rules have been laid down in Commission Regulation (EC) No 1282/2006 of 17 august 2006 laying down special detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards export licences and export refunds for milk and milk products[(2)].

(2) Regulation (EC) No 1282/2006 has been substantially amended several times[(3)]. Since further amendments are to be made, it should be recast in the interest of clarity.

(3) Under the Agriculture Agreement[(4)] concluded during the Uruguay Round of the GATT trade negotiations and approved by Council Decision 94/800/EC[(5)] (hereinafter referred to as the 'Agriculture Agreement'), export refunds on agricultural products, including milk products, are limited within each 12-month period starting from 1 July 1995 to a maximum quantity and a maximum value. In order to ensure compliance with those limits, the issue of export licences should be monitored and procedures should be adopted for allocating the quantities which may be exported with a refund.

(4) For a refund to be granted the products should meet the relevant requirements of Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs[(6)] and of Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin[(7)], notably preparation in an approved establishment

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and compliance with the identification marking requirements specified in Section I of Annex II to Regulation (EC) No 853/2004.

(5) In order to ensure effective controls on limits, there should be no refunds paid on quantities exceeding what is indicated on the licence.

(6) The term of validity of export licences should be fixed.

(7) In order to ensure accurate checking of the products exported and to minimise the risk of speculation, the possibility of changing the product for which a licence has been issued should be restricted.

(8) Article 4(2) of Commission Regulation (EC) No 612/2009 of 7 July 2009 laying down common detailed rules for the application of the system of export refunds on agricultural products[8] lays down rules for the use of export licences with advance fixing of the refund for the exportation of products with a 12-digit code other than that shown in section 16 of the licence. That provision is applicable in a specific sector only if product categories as referred to in Article 13 of Commission Regulation (EC) No 376/2008 of 23 April 2008 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products[9] and product groups as referred to in the second indent of the first subparagraph of Article 4(2) of Regulation (EC) No 612/2009 have been defined.

(9) For the milk and milk products sector, product categories are already defined with reference to the categories provided for in the Agriculture Agreement. In the interest of sound management this use of categories should be retained. With a view to simplification and completeness, the product groups as referred to in the second indent of the first subparagraph of Article 4(2) of Regulation (EC) No 612/2009 should be replaced and based on the Combined Nomenclature codes. If the product actually exported is different from the product shown in box 16 of the licence, the general provisions of Article 4 of Regulation (EC) No 612/2009 should apply. To avoid discriminations between operators exporting under the current regime and those exporting under this Regulation, that provision may be applied retroactively at the request of the licence holder.

(10) To enable operators to participate in invitations to tender opened by third countries without affecting the restrictions as regards volume, a system of provisional licences should be introduced giving successful tenderers the right to a full licence. To ensure that such licences are correctly used, for certain exports with refunds the country of destination should be defined as compulsory.

(11) In order to ensure effective monitoring of licences issued, which depends on the notification of information to the Commission by the Member States, a waiting time should be provided for before licences are issued. In order to ensure the smooth operation of the arrangements, and in particular an equitable allocation of the quantities available within the limits laid down by the Agriculture Agreement, various management measures should be laid down and, in particular, provision should be made for the issue of licences to be suspended and for an allocation coefficient to be applied to the quantities applied for, if necessary.

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(12) Exports of the products in the context of food-aid operations should be excluded from certain provisions in regard to issuing of export licences.

(13) The method for fixing the refund on milk products containing added sugar, the price of which is determined by the price of the ingredients, should be laid down according to the percentage of the ingredients contained therein. However, to facilitate the management of refunds for these products, and particularly measures to ensure compliance with commitments regarding exports in the context of the Agriculture Agreement, a maximum quantity should be fixed for sucrose incorporated for which a refund may be granted. Forty-three percent by weight of whole product should be considered as representative of the sucrose content of such products.

(14) Article 12(5)(c) of Regulation (EC) No 612/2009 provides that refunds may be granted for ingredients of Community origin in processed cheese manufactured under the inward processing arrangements. Certain special rules are needed to ensure that this specific measure operates properly and can be effectively checked.

(15) Under the Agreement concluded between the European Community and Canada[(10)], approved by Council Decision 95/591/EC[(11)], export licences issued by the Community are to be presented for cheese qualifying for preferential terms on import into Canada. The detailed rules for issuing such licences should be laid down.

(16) The Community has the option of designating which importers may import Community cheese into the United States under the additional quota arising from the Agriculture Agreement. To allow the Community to maximise the value of the quota, a procedure should therefore be laid down for designating importers on the basis of the allocation of export licences for the products concerned.

(17) The Economic Partnership Agreement between the Cariforum States, of the one part, and the European Community and its Member States, of the other part[(12)], the signature and provisional application of which have been approved by Council Decision 2008/805/EC[(13)] provides for the Community to manage its share of the tariff quota according to a mechanism of export licences. The procedure for awarding licences should therefore be determined. In order to ensure that products imported into the Dominican Republic are part of the quota and to establish a link between the products imported and those indicated on the export licence, exporters should present, at the time of import, a certified copy of the export declaration, which must contain certain information.

(18) In respect of that quota, Article 30 of Regulation (EC) No 1282/2006 provides for the eligibility criteria applicable to lodge licence applications under the two parts of the quota. Applications under part (b) of the quota can be lodged for a fixed quantity, independent of the trade performance. The number of applicants under part (a) of the quota is increasing steadily and the quantity for which applications may be lodged depends on the export performance in the past years. Given the oversupply of milk powder on the world market in the past years, the quantity imported by the Dominican Republic originating in the Community has decreased, resulting in low performance quantities for which applications can be lodged under part (a). It is therefore appropriate

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to allow the eligible applicants under part (a) to opt for part (b). However, applications under both parts of the quota should be excluded.

(19) In order to maximise the use of the quota and to alleviate the administrative burden on exporters, the derogation allowing to use the export licence also for a product covered by a 12-digit product code other than that indicated in box 16 of the licence if the same amount of export refund is granted to both products and if both products belong to the same product category, or if both products belong to the same product group, should also apply to exports to the Dominican Republic.

(20) 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:

CHAPTER I

INTRODUCTORY RULES

Article 1

This Regulation lays down:

(a) the general rules concerning licences and refunds for exports from the Community of the products listed in Part XVI of Annex I to Regulation (EC) No 1234/2007;

(b) the specific rules concerning exports of the products referred to in point (a) from the Community to certain third countries.

Article 2

Regulations (EC) No 376/2008 and (EC) No 612/2009 shall apply, save as otherwise provided in this Regulation.

CHAPTER II

GENERAL RULES

Article 3

To be granted a refund, the products listed in Part XVI of Annex I to Regulation (EC) No 1234/2007 must meet the relevant requirements of Regulations (EC) No 852/2004 and (EC) No 853/2004, notably preparation in an approved establishment and compliance with the identification marking requirements specified in Section I of Annex II to Regulation (EC) No 853/2004.

Article 4

1 The refund to be paid shall be the rate valid on the day the application for the export licence or, where relevant, the provisional licence, is submitted.

2 Licence applications with advanced fixing of the refund, for the products referred to in Part XVI of Annex I to Regulation (EC) No 1234/2007, which were lodged, within the meaning of Article 16 of Regulation (EC) No 376/2008, on the Wednesday and Thursday following the

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end of each tendering period as referred to in Article 4(2) of Commission Regulation (EC) No 619/2008[(14)] shall be deemed to have been submitted on the working day following that Thursday.

3 Section 7 of licence applications and licences shall show the country of destination and the code of the country or territory of destination, as indicated in the nomenclature of countries and territories for the external trade statistics of the Community and statistics of trade between Member States, laid down by Commission Regulation (EC) No 1833/2006[(15)].

Article 5

1 The product categories as referred to in the Agriculture Agreement concluded during the Uruguay Round of the GATT trade negotiations (hereinafter referred to as the 'Agriculture Agreement') shall be those set out in Annex I to this Regulation.

2 The product groups as referred to in the second indent of the first subparagraph of Article 4(2) of Regulation (EC) No 612/2009 shall be those set out in Annex II to this Regulation.

Article 6

1 Section 16 of licence applications and licences shall show the 12-digit product code of the nomenclature for refunds where a refund is requested or the eight-digit product code of the Combined Nomenclature where no refund is requested. Licences shall be valid for that product alone except in the case specified in paragraphs 2 and 3.

2 By way of derogation from paragraph 1, an export licence shall also be valid for the exportation of a product covered by a 12-digit product code other than that indicated in box 16 of the licence if the same amount of export refund is granted to both products and if both products belong to the same product category as referred to in Annex I.

3 By way of derogation from paragraph 1, an export licence shall also be valid for the exportation of a product covered by a 12-digit product code other than that indicated in box 16 of the licence if both products belong to the same product group as referred to in Annex II.

In such case, refunds shall be calculated in accordance with the second subparagraph of Article 4(2) of Regulation (EC) No 612/2009.

Article 7

Export licences shall be valid from the day of issue, within the meaning of Article 22(1) of Regulation (EC) No 376/2008, until:

(a) the end of the fourth month following issue in the case of products falling within CN code 0402 10;

(b) the end of the fourth month following issue in the case of products falling within CN code 0405;

(c) the end of the fourth month following issue in the case of products falling within CN code 0406;

(d) the end of the fourth month following issue for the other products referred to in Part XVI of Annex I to Regulation (EC) No 1234/2007;

(e) the date by which the obligations arising from invitations to tender as referred to in Article 8(1) of this Regulation must be fulfilled and by the end of the eighth month following issue of the full export licence referred to in Article 8(3) of this Regulation at the latest.