Commission Regulation (EC) No 2020/2006 of 22 December 2006 amending Regulation (EC) No 2535/2001 as regards the management of the WTO tariff quota for New Zealand butter

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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)] sets out in particular rules for 'New-Zealand butter' as referred to in second subparagraph of Article 25(1) of that Regulation.

(2) 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* stated that: 'Article 35(2) of 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 is invalid inasmuch as it provides that applications for import licences for New Zealand butter at reduced duty may be lodged solely with the competent authorities of the United Kingdom'; and 'Articles 25 and 32 of Regulation (EC) No 2535/2001, read in conjunction with Annexes III, IV and XII to that Regulation, are invalid since they permit discrimination in the issue of import licences for New Zealand butter at reduced duty.'

(3) A new arrangement for managing the tariff quota as from 1 January 2007 needs to be 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) With a view of providing at the same time stability in the trade while gradually opening of the entire quota to all interested operators, it seems appropriate to manage the quota through the method referred to in the third indent of Article 29(2) of Regulation (EC) No 1255/1999. Therefore, a division of the quota amongst traditional importers and newcomers should be set up. Provision should be made for the traditional part to be managed taking into account the past trade under the same quota and the newcomers' part to be managed by a simultaneous examination of the licences.

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(5) In order to ensure that applications for import licences are genuine, to prevent speculation and to ensure maximum utilisation of the quota, each applicant under the newcomers part of the quota should apply for a minimum quantity and applications shall be limited to 10 % of the quantity available. For the same reasons, criteria should be laid down to allow participation in the quota; in particular, the quota should be opened to those operators who prove a certain level of trade activity in the milk sector. In order to provide for more equal access to the newcomers' quota each applicant may apply for a maximum quantity.

(6) The security level should be set at a level which ensures that only genuine traders are applying under the quota. It is appropriate to adopt therefore the security level which is applicable for the management of the quotas referred to under Chapter 1 of Title II of Regulation (EC) No 2535/2001.

(7) In order to avoid licences issued for quantities which are economically not viable, a drawing lots procedure shall be provided for in case licences would be issued for quantities less than 20 tonnes.

(8) Imports of New Zealand butter must comply with certain quality and compositional requirements laid down in Regulation (EC) No 2535/2001. In order to show compliance with those requirements and to prove the origin of the products provision should be made for the operator to present the IMA 1 certificate at the time of import.

(9) 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

Regulation (EC) No 2535/2001 is amended as follows:

1. Article 9 is replaced by the following:

Article 9

Before 1 June, the competent authority shall inform applicants of the outcome of the approval procedure and their approval number where applicable. Approval shall be valid for one year.

2. Article 24 and 25 are replaced by the following:

Article 24

1 This section shall apply to imports under the quotas for specified countries of origin listed in the CXL schedule referred to in Annex III.B.

2 Annex III.B to this Regulation sets out the duties to be applied and the maximum quantities to be imported by import tariff quota period.

Article 25

1 Import licences for the products listed in Annex III.B at the rate of duty indicated shall be issued only on presentation of a corresponding IMA 1 certificate, for the total net quantity indicated therein.

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IMA 1 certificates must meet the requirements laid down in Articles 29 to 33. Import licences must show the number and date of issue of the corresponding IMA 1 certificate.

2 Import licences may be issued only after the competent authority has verified that Article 33(1)(e) has been complied with.

The licence issuing bodies shall transmit to the Commission a copy of the IMA 1 certificate lodged with each import licence application no later than 18.00 (Brussels time) on the day it is lodged.

Licence issuing bodies shall issue import licences on the fourth working day following, provided the Commission has not taken any special measures before that date.

The competent import licence issuing body shall retain the original of each IMA 1 presented

3. In Article 26(2) the second subparagraph is deleted.

4. Articles 34 to 39 are replaced by the following:

Article 34

1 This section shall apply to imports of butter from New Zealand under the quota numbers 09.4195 and 09.4182 as referred to in Annex III.A to this Regulation.

2 The provisions of Articles 27, 30, 31(1), 32(2) and (3) and Article 33(1) points (a) to (d) shall apply.

3 The words “at least six weeks old” in the description of the quota for New Zealand butter shall mean at least six weeks old on the date on which a declaration of release for free circulation is presented to the customs authorities.

4 Annex III.A sets out the tariff quotas, the duty to be applied and the maximum quantities to be imported during each import tariff quota period or subperiod.

Article 34a

1 The quotas shall be divided into two parts as referred to in Annex III.A:

a quota No 09.4195 (hereafter called part A) shall be distributed among Community importers who are approved according to the provisions of Article 7 and who can prove:

(i) for the quota year 2007, that they have imported under the quota 09.4589 during 2006,

(ii) for the quota year 2008, that they have imported under one of the quotas 09.4589, 09.4195 or 09.4182 in the period from 1 January 2006 until 31 December 2007,

(iii) for the following quota years, that they have imported under one of the quotas 09.4589, 09.4195 or 09.4182 in the course of the 24 months prior to the month of November preceding the quota year;

b quota No 09.4182 (hereafter called part B) shall be reserved for applicants:

(i) who are approved according to the provisions of Article 7, or

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(ii) for the period January to June 2007 for applicants established in Bulgaria and Romania, who comply with the provisions of Article 1(2) of Commission Regulation (EC) No 2018/2006[(3)],

and

(iii) who can prove that during the 12 month period prior the month of November preceding the quota year that they imported into and/or exported from the Community at least 100 tonnes of milk or milk products covered by Chapter 04 of the Combined Nomenclature in at least 4 separate operations.

However, for the quota years 2007 and 2008, the 12 month period referred to shall be respectively the calendar year 2006 and 2007.

2 The trade performance proofs referred to under points (a) and under points (b)(ii) and (iii) of paragraph 1 shall be valid for both half yearly periods of the quota year.

3 Licence applications may be lodged only during the first 10 days of the following months:

a in January 2007 and 2008 for the quota subperiod January-June; however for January 2007 licence applications may be lodged during the first 15 days;

b in the month of November for the following January-June quota subperiods;

c in the month of June for the quota subperiod July-December.

4 To be admissible, applications for import licences may cover, per applicant:

a For part A, no more than 125 %:

(i) for the quota year 2007, of the quantity of products that they have imported under the quota 09.4589 in 2006,

(ii) for the quota year 2008, of the total quantity of products that they have imported under the quotas 09.4589, 09.4195 and 09.4182, in 2006 and 2007,

(iii) for the following quota years, of the quantities that they have imported under the quotas 09.4589, 09.4195 or 09.4182, in the course of the 24 month period prior to the month of November preceding the quota year;

b For part B, not less than 20 tonnes and no more than 10 % of the available quantity for the subperiod and provided they are able to prove to the satisfaction of the competent authority of the Member State concerned that they fulfil the conditions laid down in paragraph 1 point b.

The proofs referred to above shall be submitted at the time the applications for licences are lodged.

Subject to complying with the eligibility conditions, applicants may apply simultaneously under both parts of the quota.

The licence applications must be separate for part A and for part B.

Proof of imports or exports shall be furnished in accordance with the second subparagraph of Article 5 of Regulation (EC) No 1301/2006.

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5 Licence applications may be lodged only in the Member State of approval, and must bear the importer's approval number.

Article 35

The security referred to in Article 15(2) of Regulation (EC) No 1291/2000 shall be EUR 35 per 100 kilograms net of product.

Article 35a

1 At the latest on the third working day following the end of the period for lodging applications, Member States shall notify the Commission of the applications lodged for each of the products concerned.

2 Notifications shall include the quantities applied for under each quota number, broken down by CN code.

3 The Commission shall decide within five working days after the notification period referred to in paragraph 1 to what extent applications may be accepted. Where the applied quantities do not exceed the available quota quantities, no decision is taken by the Commission and licences are issued for the quantities applied for.

Where applications for licences for a subquota exceed the available quantity for the quota period in question, the Commission shall apply a uniform allocation coefficient to the quantities for which application is made. The part of the security corresponding to the quantities not allocated shall be released.

Where, for one of the subquotas, the result of applying the allocation coefficient would be to allocate licences for less than 20 tonnes per application, the corresponding quantities available shall be awarded by the Member State concerned by drawing lots for licences of 20 tonnes each amongst the applicants who would have been allocated less than 20 tonnes as a result of applying the allocation coefficient.

Where the result of establishing lots of 20 tonnes leads to a residual quantity of less than 20 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.

4 The issue of licences shall be made no more than five working days after the decision referred to in paragraph 3.

5 Import licences issued under this Regulation shall be valid until the last day of the half yearly period referred to in Annex III.A.

6 Import licences issued under this section may be transferred only to natural or legal persons approved in accordance with Article 7. Together with the request for transfer, the transferor shall notify the issuing body of the approval number of the transferee.

Article 35b

Licence applications and licences shall contain the references provided for in Article 28, except the references to the IMA 1 certificate.

Box 16 of licence applications may show one or more of the CN codes listed in Annex III.A.

Box 20 of the licences shall show the subquota period for which the licences are issued.