Commission Regulation (EC) No 76/2009 of 26 January 2009 amending Regulation (EC) No 504/2007 laying down detailed rules for the application of the arrangements for additional import duties in the milk and milk products sector

COMMISSION REGULATION (EC) No 76/2009

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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 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 143(b) in conjunction with Article 4 thereof,

Whereas:

(1) Article 4(1) of Commission Regulation (EC) No 504/2007[(2)] provides that the importer may, on request, for the establishment of the additional duty, have the cif import price of the consignment in question applied, where this is more than the applicable representative price referred to in Article 2(2) thereof. In the absence of such request, paragraph 3 of the same Article provides that the additional duty is to be established on the basis of the representative price referred to in Article 2(2) of the said Regulation.

(2) The Court of Justice of the European Communities in its judgment given on 13 December 2001 in Case C-317/99 *Kloosterboer Rotterdam BV v Minister van Landbouw, Natuurbeheer en Visserij*[(3)] stated that paragraphs 1 and 3 of Article 3 of Commission Regulation (EC) No 1484/95 of 28 June 1995 laying down detailed rules for implementing the system of additional import duties and fixing additional import duties in the poultrymeat and egg sectors and for egg albumin, and repealing Regulation No 163/67/EEC[(4)], are invalid, inasmuch as they provide that the additional duty referred to therein is, as a general rule, established on the basis of the representative price laid down in Article 2(1) of Regulation (EC) No 1484/95 and that the duty is established on the basis of the cif import price of the shipment concerned only if the importer so requests. Those paragraphs were identical to Article 4(1) and (3) of Regulation (EC) No 504/2007. Article 28(3) of Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products[(5)] corresponds to Article 5(3) of Regulation (EEC) No 2777/75 of the Council of 29 October 1975 on the common organisation of the market in poultrymeat[(6)]. Article 4 of Regulation (EC) No 504/2007 should therefore be amended accordingly.

(3) In order to comply with the Court ruling, Regulation (EC) No 504/2007 should be amended accordingly.

(4) As from 1 January 2008, some CN codes of Chapter 4 have been amended by Commission Regulation (EC) No 1214/2007 of 20 September 2007 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff[7]. The Annex to Regulation (EC) No 504/2007 should 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 504/2007 is amended as follows:

1. in Article 2 paragraph 3 is replaced by the following:

3. The additional duties applicable pursuant to Article 4 shall be fixed by the Commission at the same time as the representative prices.;

2. the introductory phrase of the first paragraph of Article 3 is replaced by the following:

If the difference between the trigger price in question referred to in Article 1(2) and the cif import price of the consignment in question:;

3. Article 4 is replaced by the following:

Article 4

1 The additional duty shall be established on the basis of the cif import price of the consignment in question in accordance with the provisions of Article 3.

2 When the cif import price per 100 kg of a consignment is higher than the applicable representative price referred to in Article 2(2), the importer shall present to the competent authorities of the importing Member States at least the following proofs:

a the purchasing contract or any other equivalent document;
b the insurance contract;
c the invoice;
d the certificate of origin (where applicable);
e the transport contract;
f and, in the case of sea transport, the bill of lading.

3 In the case referred to in paragraph 2, the importer must lodge the security referred to in Article 248(1) of Commission Regulation (EEC) No 2454/93[8], equal to the amount of additional duty which he would have paid if the calculation of the additional duty had been made on the basis of the representative price applicable to the product in question.

4 The importer shall have one month from the sale of the products in question, subject to a limit of six months from the date of acceptance of the declaration of release for free circulation, to prove that the consignment was disposed of under conditions confirming the correctness of the prices referred to in paragraph 2. Failure to meet one or other of these deadlines shall entail the loss of the security lodged. However, the time limit of six months may be extended by the competent authorities by a maximum of three months at the request of the importer, which must be duly substantiated.