COMMISSION IMPLEMENTING REGULATION (EU) 2015/824

of 27 May 2015

amending Regulation (EC) No 900/2008 laying down the methods of analysis and other technical provisions necessary for the application of the arrangements for imports of certain goods resulting from the processing of agricultural products

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 510/2014 of the Parliament and of the Council of 16 April 2014 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products and repealing Council Regulations (EC) No 1216/2009 and (EC) No 614/2009 ([1]), and in particular Article 35(2) thereof,

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff ([2]), and in particular Article 9(1)(a) thereof,

Whereas:

(1) Commission Regulation (EC) No 900/2008 ([3]) lays down the methods of analysis necessary for calculating the import duty of certain processed agricultural products on the basis of their milk fat content, milk protein content, starch/glucose content and sucrose/invert sugar/isoglucose content.

(2) Those methods of analysis are used for the verification of the composition of imported processed agricultural products as declared in the import declaration. The agricultural component of the import duty is in many cases calculated on the basis of the declared composition. The methods of analysis are applied on samples taken by customs authorities from imported goods.

(3) Where no other fats than milk fat are declared in the composition of the goods, the milk fat content of imported processed agricultural products is determined by extraction with light petroleum after hydrolysis with hydrochloric acid. Where other fats than milk fat are declared in the composition of the goods, the milk fat content is calculated on the basis of the percentage concentration of butyric acid, assuming that the butyric acid content in milk fat is at a constant level. Based on scientific evidence, the concentration of butyric acid, expressed as methyl butyrate, in milk fat is 4 %, and, to this effect, a coefficient of 25 is applied in the calculation. Both methods have generally proven their reliability during proficiency tests and long term experience.

(4) However, due to their production process, some dairy products have a depleted butyric acid content in the milk fat they contain. The Commission's Joint Research Centre determined in a report of 13 March 2015 ([4]) that the depletion of the butyric acid content in milk fat occurs in dairy products resulting from a skimming, churning or cheese making process such as skimmed milk, buttermilk and whey and in products obtained from their further processing, such as skimmed milk powder, milk protein concentrate, milk protein isolate, buttermilk powder, sweet whey powder, acid whey powder, whey protein concentrate and whey protein isolate. Experimental evidence showed that the degree of butyric acid depletion in the milk fat isolated from those products is about 50 %.

(5) When those dairy products are used in the manufacturing of processed agricultural products, the depletion of butyric acid content is also present in the milk fat contained in the processed agricultural products manufactured on the basis of them. When no other dairy products are added, the same rate of depletion is reflected in the processed agricultural products.

([1]) OJ L 150, 20.5.2014, p. 1.
([2]) OJ L 256, 7.9.1987, p. 1.
([3]) Commission Regulation (EC) No 900/2008 of 16 September 2008 laying down the methods of analysis and other technical provisions necessary for the application of the arrangements for imports of certain goods resulting from the processing of agricultural products (OJ L 248, 17.9.2008, p. 8).
([4]) Report of the Commission's Joint Research Centre of 13 March 2015 'Technical analysis of anomalies in respect of the test set out in point (b) of Article 2(3) of Regulation (EC) No 900/2008 for the determination of milk fat content in processed agricultural products for the purpose of establishing import duties, when fats other than milk fats are present' (ISBN 978-92-79-45593-3, ISSN 1831-9424, DOI 10.2787/781672, EUR 27105, OPOCE LA-NA-27105-EN-N).

(6) All dairy products with a depleted butyric acid content in the milk fat they contain have a low milk fat content and a high milk protein content in their dry matter. The average milk protein content in those products is predominantly at least eight times higher than their average milk fat content.

(7) Due to the depletion of the butyric acid content, the analysed milk fat content in a processed agricultural product, as determined by the method applicable to date, may be lower than the milk fat content indicated in the import declaration. This may in turn result in a classification under an additional code and a calculation of an import duty which are different from those for products without a depleted butyric acid content.

(8) In most cases an apparently lower milk fat content as determined by the method applicable to date leads to a classification under an additional code which results in an import duty lower than the import duty applied to products which contain the same amount of milk fat with non-depleted butyric acid. In some cases, however, an apparently lower milk fat content leads to a classification under an additional code with a significantly higher import duty, resulting in an unjustified increase of that duty.

(9) An alternative method for the determination of milk fat content should therefore be introduced for the processed agricultural products concerned.

(10) The method introduced by this Regulation should only concern processed agricultural products with a depleted butyric acid content for which a reliable method of determination of milk fat content can be established given existing scientific evidence. The new method should not be used for products for which the results of the method of analysis used to date are reliable or for products for which it is not possible to establish a reliable method of determining milk fat content with the same level of accuracy and precision.

(11) The scientific evidence available to date shows that the rate of depletion of butyric acid content can be reliably determined only for processed agricultural products containing 30 % or more of milk protein and less than 6 % of milk fat. Those products are based solely on skimmed milk, whey or buttermilk or dairy ingredients that have been produced thereof, without the addition of other dairy products.

(12) The depletion of the butyric acid content in milk fat by 50 % decreases the butyric acid content in the milk fat expressed as methyl butyrate to only 2 % instead of 4 %. Therefore, a coefficient of 50 instead of 25 should be applied in the calculation of the milk fat content under the new method.

(13) Regulation (EC) No 900/2008 should therefore be amended accordingly.

(14) In order to ensure that the objectives of the modifications introduced by this Regulation are met, the Commission should re-examine the functioning of the method of analysis introduced by this Regulation after an appropriate time period allowing it to collect from Member States sufficient information on the application of that method. That information should be limited only to elements which are necessary in order to evaluate the functioning of the new method, without imposing undue administrative burden.

(15) The Customs Code Committee has not delivered an opinion within the time limit set by its chair,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 900/2008 is amended as follows:

(1) in Article 2(3):

(a) point (a) is replaced by the following:

'(a) Save as otherwise provided in point (b) or (c), the milk fat content by weight of the goods as presented shall be determined by extraction with light petroleum after hydrolysis with hydrochloric acid;';

(b) the following point (c) is added:

'(c) Where fats other than milk fats are also declared in the composition of goods which are charged by an agricultural component as provided for in Part Two and in Annex 1 to Section I of Part Three of the Combined nomenclature set out in Annex I to Regulation (EEC) No 2658/87, and contain 30 % milk protein or more as determined in accordance with point 4 of this Article, and less than 6 % milk fat as declared by the declarant, the following procedure shall be applied instead of the procedure set out in point (b):

— the percentage of weight of the total fats in the goods shall be determined as set out in point (a),

— for the purposes of determining the milk fat content, a method based on extraction with light petroleum, preceded by hydrolysis with hydrochloric acid and followed by gas chromatography of the methyl esters of the fatty acids shall be used. If the presence of milk fats is detected, the percentage proportion thereof shall be calculated by multiplying the percentage concentration of methyl butyrate by 50, multiplying the product by the total percentage fat content by weight of the goods and dividing by 100.';

(2) the following Article 4a is inserted:

'*Article 4a*

1. By 17 December 2017 the Member States shall communicate to the Commission information on results of analysis carried out in accordance with the procedures provided for in Article 2(3) and (4), related to goods with a milk protein content of 30 % or more as determined in accordance with Article 2(4) and declared for customs between 17 June 2015 and 17 June 2017.

2. The information referred to in paragraph 1 shall be communicated in an electronic form and consist of:

(a) the date of acceptance of the customs declaration;

(b) the quantity of the goods concerned;

(c) tariff classification of the goods concerned;

(d) the additional code declared and, for goods to which the method of analysis set out in point (c) of Article 2(3) has been applied, the additional code applicable on the basis of the results of that method;

(e) the milk protein content as determined by the method of analysis referred to in Article 2(4);

(f) indication of the method of analysis applied for the determination of milk fat content in accordance with Article 2(3);

(g) the total fat content as determined by the method of analysis referred to in point (a) of Article 2(3);

(h) the milk fat content as determined by one of the methods of analysis referred to in Article 2(3);

(i) where relevant, the type of fat other than milk fat contained in the processed agricultural product.

3. On the basis of the information received from the Member States in accordance with paragraphs 1 and 2, the Commission shall present to the Member States a report on the functioning of the procedure provided for in point (c) of Article 2(3). The Commission shall present that report by 17 June 2018.'.

Article 2

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

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

Done at Brussels, 27 May 2015.

For the Commission
The President
Jean-Claude JUNCKER