

**COMMISSION REGULATION (EC) No 1846/2004****of 22 October 2004****amending Regulation (EC) No 174/1999 laying down special detailed rules for the application of Council Regulation (EEC) No 804/68 as regards export licences and export refunds in the case of milk and milk products**

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 <sup>(1)</sup>, and in particular Article 30 thereof,

Whereas:

- (1) Article 20 of Commission Regulation (EC) No 174/1999 <sup>(2)</sup> provides that export licences for cheese exported to the United States of America as part of the quotas under the agreements concluded during multi-lateral trade negotiations may be allocated according to a special procedure by which preferred importers in the USA may be designated.
- (2) Following the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (new Member States) to the Community on 1 May 2004, the tariff quotas for certain cheeses originally resulting from the Uruguay Round and granted to the Czech Republic, Hungary, Poland and Slovakia by the United States of America in Uruguay Round list XX are to be amalgamated into an EU-25 quota and administered as from 2005 onwards in the same way as the EU-15 quota has been under the abovementioned agreements.
- (3) In order to allow operators in the new Member States to adapt to the system applied in the Community, transitional measures should be introduced for the 2005 quota year in respect of the application of the allocation criteria in Article 20(3) of Regulation (EC) No 174/1999 to requests for export licenses lodged in the new Member States.
- (4) A transitional arrangement as regards the application of the historic export criterion should relate to all applications by applicants established in and applying in the new Member States for quotas for which no country-specific quota has been fixed for 2003.
- (5) Another transitional arrangement as regards the application of the preference for subsidiaries criterion should apply to applications by applicants established in and applying in the Czech Republic, Hungary, Poland and Slovakia for provisional licences to export cheese intended to enter the USA under quotas for which a country-specific quota has been fixed for 2003.
- (6) In order to give some flexibility to EU exporters to export products under quotas described in the Harmonised Tariff Schedule of the United States of America, the application for an export licence should contain the eight-digit product code of the Combined Nomenclature.
- (7) As no export refund is applied for the products falling under CN code 0406 destined to the United States of America the proof of arrival should not be required in order to have the licence security released.
- (8) Regulation (EC) No 174/1999 should therefore be amended accordingly.
- (9) Given the time limit for the implementation of the procedure for 2005, this Regulation should apply as soon as possible.
- (10) The Management Committee for Milk and Milk Products has not delivered an opinion within the time limit set by its chairman,

<sup>(1)</sup> OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Commission Regulation (EC) No 186/2004 (OJ L 29, 3.2.2004, p. 6).

<sup>(2)</sup> OJ L 20, 27.1.1999, p. 8. Regulation as last amended by Regulation (EC) No 810/2004 (OJ L 149, 30.4.2004, p. 138).

HAS ADOPTED THIS REGULATION:

*Article 1*

Article 20 of Regulation (EC) No 174/1999 is amended as follows:

1. Paragraph 1 is replaced by the following:

'1. In accordance with the procedure referred to in Article 42 of Regulation (EC) No 1255/1999, the Commission may decide that export licences shall be issued, in accordance with paragraphs 2 to 11 of this Article, for products falling within CN code 0406 for export to the United States of America as part of the 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 of America 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 of America in Uruguay Round list XX.'

2. In paragraph 2, in the first subparagraph, the following is added:

'By way of derogation from the first sentence of Article 5(1), Section 16 of licence applications and licences shall show the eight-digit product code of the Combined Nomenclature.'

3. In paragraph 3, the following subparagraph is added:

'However, in respect of applications for provisional licences to export cheese to the United States of America for the 2005 quota year by applicants established in the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia ('new Member States') and applying in their Member State of establishment, the following transitional measures shall apply:

- (a) the historic export performance provided for in point (a) of the first subparagraph is not required for applicants who submit with their application documentary proof that they have been established for at least three years in the new Member States and have exported cheese during each of those years, except in the case of applications for provisional licenses submitted:

- (i) in the Czech Republic for the purpose of exporting cheese to the United States of America under the quotas described in additional notes 16, 17, 18, 20 and 25 to Chapter 4 of the Harmonised Tariff Schedule (HTS) for which country-specific quotas have been fixed for 2003,

- (ii) in Hungary for the purpose of exporting cheese to the United States of America under the quota described in additional note 25 to Chapter 4 of the HTS for which a country-specific quota has been fixed for 2003,

- (iii) in Poland for the purpose of exporting cheese to the United States of America under the quotas described in additional notes 16 and 21 to Chapter 4 of the HTS for which country-specific quota have been fixed for 2003,

- (iv) in Slovakia for the purpose of exporting cheese to the United States of America under the quota described in additional note 16 to Chapter 4 of the HTS for which a country-specific quota has been fixed for 2003;

- (b) for the purposes of point (b) of the first subparagraph, an applicant may have his or her designated preferred importer for 2005 deemed to be a subsidiary provided that:

- (i) its application was lodged in

- the Czech Republic for a provisional licence for the purpose of exporting cheese to the United States of America under the quotas described in additional notes 16, 17, 18, 20 and 25 to Chapter 4 of the HTS,

- in Hungary for a provisional licence for the purpose of exporting cheese to the United States of America under the quota described in additional note 25 to Chapter 4 of the HTS,

- in Poland for a provisional licence for the purpose of exporting cheese to the United States of America under the quotas described in additional notes 16 and 21 to Chapter 4 of the HTS,

- in Slovakia for a provisional licence for the purpose of exporting cheese to the United States of America under the quotas described in additional note 16 to Chapter 4 of the HTS,
- (ii) the applicant submits to the competent authority of the Member State in which the application is lodged documentary evidence that he has been established for at least three years in the new Member States and has exported the cheese in question to the USA during each of the three calendar years prior to lodging the application,
- (iii) the applicant gives to the competent authority of the Member State in which the application is lodged a written undertaking to initiate the procedure to establish a subsidiary in the United States of America,
- (iv) the applicant submits to the competent authority of the Member State in which the application is lodged evidence of exports to preferred importers in the 12 months prior to lodging the application.'
4. In paragraph 10, the third subparagraph is replaced by the following:
- 'The security for the full licence shall be released only on presentation of the export declaration duly endorsed by the competent customs authority'.

*Article 2*

This Regulation shall enter into force on the 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, 22 October 2004.

*For the Commission*  
Franz FISCHLER  
*Member of the Commission*

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