

Commission Regulation (EC) No 793/2006 of 12 April 2006 laying down certain detailed rules for applying Council Regulation (EC) 247/2006 laying down specific measures for agriculture in the outermost regions of the Union (repealed)

TITLE II

SPECIFIC SUPPLY ARRANGEMENTS

CHAPTER I

Forecast supply balances

Article 3

Purpose of forecast supply balances and amendments thereto

The forecast supply balances provided for in Article 2 of Regulation (EC) No 247/2006 shall state the quantities needed to meet the supply requirements of each outermost region every calendar year. They may be amended in accordance with Article 49 of this Regulation.

CHAPTER II

Supplies through imports from third countries

Section 1

Importation of products subject to the presentation of an import licence

Article 4

Import licence

1 Products subject to the presentation of an import licence shall be exempt from import duties, as provided for in Article 3(1) of Regulation (EC) No 247/2006, on production of that licence.

2 Import licences shall be drawn up in accordance with the specimen set out in Annex I to Regulation (EC) No 1291/2000.

3 Box 20 of import licence applications and import licences themselves shall contain one of the entries listed in Annex I(A) and one of the entries listed in Annex I(B).

4 Box 12 of import licences shall show the last day of validity.

5 The competent authorities shall issue import licences at the request of the parties concerned, subject to the limits of the forecast supply balances.

6 Import duties shall be levied on quantities which exceed those stated on the import licence. The tolerance of 5 % provided for in Article 8(4) of Regulation (EC) No 1291/2000 shall be allowed, provided that the import duties relating thereto are paid.

Section 2

Importation of products not subject to the presentation of an import licence

Article 5

Exemption certificate

1 Products not subject to the presentation of an import licence shall be exempt from import duties, as provided for in Article 3(1) of Regulation (EC) No 247/2006, on production of an exemption certificate.

2 Exemption certificates shall be drawn up on the basis of the specimen import licence set out in Annex I to Regulation (EC) No 1291/2000.

Articles 8(5), 13, 15, 17, 18, 21, 23, 26, 27, 29 to 33 and 36 to 41 of Regulation (EC) No 1291/2000 shall apply, *mutatis mutandis*, subject to this Regulation.

3 One of the entries listed in Annex I(C) shall be printed or stamped in the upper left-hand box of the certificate.

4 Box 20 of exemption certificate applications and of exemption certificates themselves shall contain one of the entries listed in Annex I(D) and one of the entries listed in Annex I(B).

5 Box 12 of exemption certificates shall show the last day of validity.

6 The competent authorities shall issue exemption certificates at the request of the parties concerned, subject to the limits of the forecast supply balances.

CHAPTER III

Community supply

Article 6

Fixing and granting of aid

1 For the purposes of applying Article 3(2) of Regulation (EC) No 247/2006, Member States shall determine within the context of the programme the amount of aid to be granted in order to compensate for remoteness, insularity and distant location, taking into account:

- a as regards specific additional transport costs, the intermediate reloading costs involved in supplying goods to the outermost regions concerned;
- b as regards the specific additional costs involved in local processing, the small size of the market, the need to guarantee security of supply and the specific quality requirements for goods in the outermost regions concerned.

2 No aid shall be granted for the supply of products which have already benefited from the specific supply arrangements in another outermost region.

No aid shall be granted for the supply of C sugar.

Article 7

Aid certificate and payment

1 Aid shall be paid on presentation of a certificate, hereinafter referred to as an ‘aid certificate’, which has been fully utilised.

Presenting an aid certificate to the authorities responsible for making payments shall be tantamount to applying for the aid. Except in cases of *force majeure* or climatic aberrations, certificates must be presented within 30 days of the date on which they are charged. Where that time limit is overrun, the aid shall be reduced by 5 % per day of delay.

The aid shall be paid by the competent authorities not later than 90 days after the date on which the utilised aid certificate is lodged, except in one of the following cases:

- a *force majeure* or climatic aberration;
- b where an administrative enquiry has been opened concerning entitlement to the aid; in such cases, payment shall take place only after entitlement has been recognised.

2 Aid certificates shall be drawn up on the basis of the specimen import licence set out in Annex I to Regulation (EC) No 1291/2000.

Articles 8(5), 13, 15, 17, 18, 21, 23, 26, 27, 29 to 33 and 36 to 41 of Regulation (EC) No 1291/2000 shall apply, *mutatis mutandis*, subject to this Regulation.

3 One of the entries listed in Annex I(E) shall be printed or stamped in the upper left-hand box of the certificate.

Boxes 7 and 8 of the certificate shall be struck out.

4 Box 20 of aid certificate applications and of aid certificates themselves shall contain one of the entries listed in Annex I(F) and one of the entries listed in Annex I(G).

5 Box 12 of aid certificates shall show the last day of validity.

6 The amount of the aid applicable shall be that in force on the day on which the application for the aid certificate was lodged.

7 The competent authorities shall issue aid certificates at the request of the parties concerned, subject to the limits of the forecast supply balances.

CHAPTER IV

Common provisions

Article 8

Passing on the advantage to the end#user

1 For the purposes of applying this Title:

- a the 'advantage' referred to in Article 3(4) of Regulation (EC) No 247/2006 means either the exemption from customs duties or the grant of Community aid provided for in that Regulation;
- b 'end#user' means
 - (i) in the case of products for direct consumption: the consumer;
 - (ii) in the case of products for the processing or packaging industry which are intended for human consumption:
 - the final processor or packager, for the part of the aid intended to compensate for remoteness, insularity and distant location,
 - the consumer, for the additional part of the aid intended to take account of export prices;
 - (iii) in the case of products for the processing or packaging industry for use as animal feed and products for use as agricultural inputs: the farmer.

2 The competent authorities shall take all appropriate steps to check that the advantage is actually passed on to the end#user. In doing so they may assess the trading margins and prices applied by the various operators concerned.

The measures referred to in the first subparagraph, and in particular the control points used to determine whether the aid has been passed on, and any amendments made, shall be notified to the Commission in the context of the report provided for in Article 48.

Article 9

Register of operators

1 Import licences, exemption certificates and aid certificates shall be issued only to operators entered in a register kept by the competent authorities (hereinafter referred to as the register).

2 Any operator established in the Community may apply to be entered in the register.

Entry in the register shall be subject to the following conditions:

- a operators shall possess the means, structures and legal authorisations required to carry on their activities and shall, in particular, have duly complied with their obligations regarding business accounting and taxation;
- b operators shall be able to guarantee that their activities are carried on in the outermost region concerned;
- c in the context of the specific supply arrangements for the outermost region concerned, and in compliance with the objectives of those arrangements, operators shall undertake to:
 - (i) communicate to the competent authorities, at their request, all relevant information about their commercial activities, particularly regarding the prices and profit margins they practise,
 - (ii) operate exclusively in their own name and on their own account,
 - (iii) submit licence and certificate applications commensurate with their real capacity to dispose of the products concerned, such capacity being proven by reference to objective factors,

- (iv) refrain from acting in any way likely to create artificial shortages of products and from marketing the available products at artificially low prices,
- (v) ensure to the satisfaction of the competent authorities that, when the agricultural products are disposed of in the outermost region concerned, the advantage is passed on to the end#user.

3 Operators intending to dispatch or export processed or unprocessed products under the conditions referred to in Article 16 shall, at the time of applying for entry in the register or later, declare their intention to engage in this activity and indicate the location of the packaging plant where applicable.

4 Processors intending to export or dispatch processed products under the conditions referred to in Article 16 or 18 shall, at the time of applying for entry in the register or later, declare their intention to engage in this activity, indicate the location of the processing plant and, where applicable, provide analytical lists of the processed products.

Article 10

Documents to be presented by operators and validity of licences and certificates

1 Subject to Articles 4(5), 5(6), 7(7), 14 and 15, the competent authorities shall accept the import-licence, exemption-certificate or aid-certificate application presented by operators for each consignment, provided that they are accompanied by the original or a certified copy of the purchase invoice and the original or a certified copy of the following documents:

- a the bill of lading or airway bill;
- b the certificate of origin for products originating in third countries or, for products originating in the Community, the T2L document, or the T2LF document under the terms of Article 315(1) and (2) of Commission Regulation (EEC) No 2454/93⁽¹⁾.

The purchase invoice, bill of lading or airway bill must be drawn up in the name of the applicant.

2 The period of validity of licences and certificates shall be fixed on the basis of the transportation time. This time may be extended by the competent authority in special cases where serious and unforeseeable difficulties affect the transportation time, but may not exceed two months from the date on which the licence or certificate was issued.

Article 11

Presentation of licences, certificates and goods; non-transferability of licences and certificates

1 For products covered by the specific supply arrangements, import licences, exemption certificates and aid certificates shall be presented to the customs authorities with a view to completing the customs formalities within no more than 15 working days from the date of unloading the goods. The competent authorities may reduce this maximum time.

In the case of products which have been the subject of inward processing or customs warehousing in the Azores, Madeira and the Canary Islands and subsequently released into free circulation there, the maximum period of 15 days shall start to run on the date on which the licences or certificates referred to in the first subparagraph are applied for.

2 The goods shall be presented in bulk or in separate lots corresponding to the licence or certificate presented.

The licences and certificates shall be used for a single operation only when completing the customs formalities.

3 Licences and certificates shall not be transferable.

Article 12

Quality of products

Only products of sound and fair marketable quality, within the meaning of Article 21(1) of Regulation (EC) No 800/1999, may qualify for the specific supply arrangements.

Conformity of the products with the requirements laid down in the first paragraph shall be examined no later than the stage of first marketing, in accordance with the standards or practices in force in the Community.

Where a product is considered not to meet the requirements laid down in the first paragraph, its entitlement under the specific supply arrangements shall be withdrawn and the corresponding quantity shall be reattributed to the forecast supply balance. Where aid has been granted in accordance with Article 7, the aid shall be reimbursed. Where imports have been made in accordance with Articles 4 or 5, the import duty shall be paid, unless the party concerned supplies proof that the products have been re-exported or destroyed.

Article 13

Lodging of security

No security shall be required when applying for import licences, exemption certificates or aid certificates.

However, in special cases and to the extent necessary to ensure the proper application of this Regulation, the competent authorities may require a security to be lodged equal to the amount of the advantage accorded. In such cases, Article 35(1) and (4) of Regulation (EC) No 1291/2000 shall apply.

Article 14

Significant increases in applications for licences and certificates

1 If the state of execution of a forecast supply balance indicates a significant increase in applications for import licences, exemption certificates or aid certificates for a given product which might jeopardise achievement of one or more of the objectives of the specific supply arrangements, the Member State shall take all necessary steps to ensure that the outermost region concerned is supplied with essential products, taking account of available supply and the requirements of the priority sectors.

2 In the event of restrictions on the issue of licences and certificates, the competent authorities shall apply to all pending applications a uniform reduction percentage.

3 Paragraphs 1 and 2 shall apply after the authorities concerned have been consulted.

Article 15

Fixing a maximum quantity per licence or certificate application

In so far as is strictly necessary to avoid disturbances on the market in the outermost region concerned, or the pursuit of speculative actions likely to be prejudicial to the smooth functioning of the specific supply arrangements, the competent authorities shall fix a maximum quantity per licence or certificate application.

The competent authorities shall notify the Commission immediately of the instances in which this Article is applied.

CHAPTER V

Export and dispatch

Article 16

Conditions of export or dispatch

1 The export and dispatch of unprocessed products which have benefited from the specific supply arrangements, or packaged or processed products containing products which have benefited from the specific supply arrangements, shall be subject to the requirements laid down in paragraphs 2 to 6.

2 For exported products, box 44 of the export declaration shall contain one of the entries listed in Annex I(H).

3 Quantities of products which have been exempt from import duties and which are exported shall be reattributed to the forecast supply balance.

Such products shall not be eligible for export refunds.

4 Quantities of products which have been exempt from import duties and are dispatched shall be reattributed to the forecast supply balance and the amount of the *erga omnes* import duties applicable on the day of importation shall be paid by the consignor by the time of dispatch at the latest.

Such products may not be dispatched until the payment referred to in the first subparagraph has taken place.

Where it is impossible to establish the day of importation, products shall be considered to have been imported on the day on which the highest *erga omnes* import duties applied during the six-month period preceding the day of dispatch.

5 Quantities of products which have benefited from aid and are exported or dispatched shall be reattributed to the forecast supply balance and the aid granted shall be reimbursed by the exporter or consignor by the time of export or dispatch at the latest.

Those products may not be dispatched or exported until the reimbursement referred to in the first subparagraph has been made.

Where it is impossible to establish the amount of aid granted, the products shall be considered to have received the highest rate of aid fixed by the Community for such products during the six-month period preceding the submission of the application for export or dispatch.

Such products may benefit from an export refund, provided that the criteria for granting such a refund are met.

6 The competent authorities shall authorise the export or dispatch of quantities of processed products other than those referred to in paragraphs 3, 4 and 5 of this Article and in Article 18 only where the processor or exporter certifies that the products concerned do not contain raw materials imported or introduced under the specific supply arrangements.

The competent authorities shall authorise the re-export or redispach of unprocessed products or packaged products other than those referred to in paragraphs 3, 4 and 5 of this Article only where the exporter certifies that those products have not benefited from specific supply arrangements.

The competent authorities shall carry out the necessary checks to ensure the accuracy of the certificates referred to in the first and second subparagraphs and shall, if necessary, recover the advantage.

Article 17

Export licence and significant increase in exports

1 Export of the following products shall not be subject to the presentation of an export licence:

- a the products referred to in Article 16(3);
- b the products referred to in Article 16(5) which do not fulfil the conditions for the grant of an export refund.

2 If there is a risk that regular supplies to the outermost regions might be jeopardised by a significant increase in exports of the products referred to in Article 16(1), the competent authorities may restrict quantities in such a way as to ensure that priority needs in the sectors concerned are met. This quantitative restriction shall be applied in a non-discriminatory manner.

Article 18

Traditional exports, exports in the context of regional trade, and traditional dispatches of processed products

1 Processors who have declared, in accordance with Article 9(4), that they intend to export in the context of traditional trade flows or regional trade, or to dispatch in the context of traditional trade flows, as referred to in Article 4(2) of Regulation (EC) No 247/2006, processed products containing raw materials which have benefited from specific supply arrangements may do so within the limits of the annual quantities indicated in Annexes II to V. The competent authorities shall deliver the requisite authorisations in such a way as to ensure that transactions do not exceed those annual quantities.

‘Regional trade’ means the trade carried on by each French overseas department, by the Azores and Madeira and by the Canary Islands in the form of supplies to the third countries referred to in Annex VI.

For exports within the framework of regional trade, exporters shall submit the documents specified in Article 16 of Regulation (EC) No 800/1999 to the competent authorities within the time limits laid down in Article 49 of that Regulation. Where documents have not been submitted within the time limits provided, the competent authorities shall recover the advantage granted under the specific supply arrangements.

Products delivered to the French overseas departments, the Azores, Madeira or the Canary Islands which have benefited from the specific supply arrangements and are used to supply ships and aircraft shall be deemed to have been consumed locally.

2 Processing operations which may give rise to traditional or regional trade exports or traditional dispatches in accordance with paragraph 1 shall meet, *mutatis mutandis*, the processing conditions applicable under inward processing arrangements and the procedure for processing under customs control provided for in Council Regulation (EEC) No 2913/92⁽²⁾ and Regulation (EEC) No 2454/93, with the exception of all usual forms of handling.

3 The export of products referred to in this Article shall not be subject to the presentation of an export licence.

4 For exported products referred to in this Article, box 44 of the export declaration shall contain one of the entries listed in Annex I(I).

CHAPTER VI

Checks and penalties

Article 19

Checks

1 The administrative checks carried out on the import, entry, export and dispatch of agricultural products shall be exhaustive and shall involve cross-checks with the documents referred to in Article 10(1).

2 The physical checks carried out in the outermost region concerned on the import, entry, export and dispatch of agricultural products shall involve a representative sample amounting to at least 5 % of the licences and certificates presented in accordance with Article 11.

Physical checks shall be carried out, *mutatis mutandis*, in accordance with the procedures laid down in Council Regulation (EEC) No 386/90⁽³⁾.

In special cases the Commission may request that physical checks cover different percentages.

Article 20

Penalties

1 Except in cases of *force majeure* or climatic aberrations, if an operator fails to comply with the undertakings given under Article 9, and without prejudice to any penalties applicable under national law, the competent authorities shall:

- a recover the advantage granted from the holder of the import licence, exemption certificate or aid certificate;

- b temporarily suspend or revoke the operator's registration, depending on the seriousness of the infringement.

The advantage referred to in the first indent shall be equal to the amount of the exemption from import duties or to the amount of the aid determined in accordance with Article 16(4) and (5).

2 Except in cases of *force majeure* or climatic aberrations, where holders of a licence or certificate do not carry out the planned importation or entry, their entitlement to apply for licences and certificates shall be suspended for a period of 60 days following expiry of that licence or certificate. After the suspension period, the issue of subsequent licences or certificates shall be subject to the lodging of a security equal to the amount of the advantage to be granted during a period to be determined by the competent authorities.

3 The competent authorities shall adopt the measures required to reutilise any quantities of products made available as a result of non-execution, partial execution or cancellation of the licences and certificates issued or recovery of the advantage.

CHAPTER VII

National provisions

Article 21

National management and monitoring rules

The competent authorities shall adopt the additional rules needed to manage and monitor the specific supply arrangements in real time.

They shall notify the Commission of any measures they intend to implement pursuant to the first paragraph, prior to the entry into force of those measures.

- (1) OJ L 253, 11.10.1993, p. 1.
- (2) OJ L 302, 19.10.1992, p. 1.
- (3) OJ L 42, 16.2.1990, p. 6.