

COMMISSION REGULATION (EC) No 1215/2008**of 5 December 2008****on opening and providing for the administration of a Community tariff quota for malting barley from third countries and derogating from Council Regulation (EC) No 1234/2007****(Codified version)**

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 products (Single CMO Regulation) ⁽¹⁾, and in particular Article 144(1), in conjunction with Article 4 thereof,

Having regard to Council Decision 2006/333/EC of 20 March 2006 on the conclusion of an Agreement in the form of an Exchange of Letters between the European Community and the United States of America pursuant to Article XXIV:6 and Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions in the schedules of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic in the course of their accession to the European Union ⁽²⁾, and in particular Article 2 thereof,

Having regard to Council Decision 2007/444/EC of 22 February 2007 on the conclusion of an Agreement between the European Community and the Government of Canada on the conclusion of GATT Article XXIV:6 Negotiations ⁽³⁾, and in particular Article 2 thereof,

Whereas:

(1) Commission Regulation (EC) No 2377/2002 of 27 December 2002 opening and providing for the administration of a Community tariff quota for malting barley from third countries and derogating from Council Regulation (EEC) No 1766/92 ⁽⁴⁾ has been substantially amended several times ⁽⁵⁾. In the interests of clarity and rationality the said Regulation should be codified.

(2) Following trade negotiations, the Community has changed the conditions for the import of common

wheat of low and medium quality and of barley by creating import quotas. For barley, the Community has decided to replace the 'margin of preference' system by two tariff quotas: one tariff quota of 50 000 tonnes for malting barley and one tariff quota of 300 000 for barley. This Regulation concerns the tariff quota of 50 000 tonnes of malting barley.

(3) Under the Community's international commitments, malting barley for import must be intended for use in the manufacture of beer aged in vats containing beechwood. In this respect, provisions should be adopted relating to the quality criteria for barley and to processing requirements similar to those of Commission Regulation (EC) No 1234/2001 of 22 June 2001 laying down detailed rules for applying Council Regulation (EC) No 822/2001 and providing for the partial reimbursement of import duties levied on a quota of barley for malting ⁽⁶⁾.

(4) Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences ⁽⁷⁾ applies to import licences for tariff quota periods starting from 1 January 2007.

(5) Regulation (EC) No 1301/2006 applies without prejudice to additional conditions or derogations which might be laid down by this Regulation.

(6) To ensure that imports of the barley covered by this tariff quota are orderly and not speculative, they should be made subject to the issue of import licences.

(7) To ensure the proper management of this quota, deadlines for the lodging of licence applications should be laid down and the information to be included in applications and licences should be specified.

(8) To take account of supply conditions, a derogation should be made concerning the period of validity of the licences.

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 124, 11.5.2006, p. 13.

⁽³⁾ OJ L 169, 29.6.2007, p. 53.

⁽⁴⁾ OJ L 358, 31.12.2002, p. 95.

⁽⁵⁾ See Annex II.

⁽⁶⁾ OJ L 168, 23.6.2001, p. 12.

⁽⁷⁾ OJ L 238, 1.9.2006, p. 13.

- (9) Taking account of the obligation to apply a high level of guarantee to ensure sound management of the quota and that this guarantee would have to be in place during all the processing period, it is appropriate to exempt importers whose consignments of malting barley are accompanied by a certificate of conformity agreed with the government of the United States of America according to the administrative cooperation procedure provided for in Articles 63, 64 and 65 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽¹⁾.
- (10) To ensure sound management of this quota, the security on the import licences should be set at a relatively high level, notwithstanding Article 12 of Commission Regulation (EC) No 1342/2003 of 28 July 2003 laying down special detailed rules for the application of the system of import and export licences for cereals and rice ⁽²⁾.
- (11) Rapid two-way communication should be established between the Commission and the Member States regarding the quantities applied for and imported.
- (12) 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

Notwithstanding Article 135 of Regulation (EC) No 1234/2007, the import duty for malting barley falling within CN code 1003 00 shall be fixed in the framework of the quota opened by this Regulation.

Article 135 of Regulation (EC) No 1234/2007 shall apply to imports of the products referred to in this Regulation, in excess of the quantity provided for in Article 2 of this Regulation.

Article 2

1. A tariff import quota of 50 000 tonnes of malting barley falling within CN code 1003 00 to be used in the manufacture of beer aged in beechwood vats is hereby opened on 1 January each year. It carries the serial number 09.4061.

2. Duties on imports within the tariff quota shall be levied at a rate of EUR 8 per tonne.

⁽¹⁾ OJ L 253, 11.10.1993, p. 1.

⁽²⁾ OJ L 189, 29.7.2003, p. 12.

3. Commission Regulation (EC) No 376/2008 ⁽³⁾ and Regulations (EC) No 1342/2003 and (EC) No 1301/2006 shall apply, save as otherwise provided for in this Regulation.

Article 3

For the purposes of applying this Regulation, the following definitions shall apply:

- (a) 'damaged grains' means grains of barley, other cereals or wild oats that display damage, including deterioration caused by disease, frost, heat, insects or fungus, bad weather and all other forms of physical damage;
- (b) 'sound and fair merchantable barley' means barley grains or pieces of grains that are not damaged as defined in point (a), except grains damaged by frost or fungus.

Article 4

1. The benefit of the tariff quota shall be granted provided the imported barley meets the following criteria:

- (a) specific weight: minimum 60,5 kg/hl;
- (b) damaged grains: maximum 1 %;
- (c) moisture: maximum 13,5 %;
- (d) sound and fair merchantable barley: minimum 96 %.

2. Compliance with the quality criteria set out in paragraph 1 shall be certified by one of the following documents:

- (a) a certificate of analysis carried out at the importer's request by the customs office of release for free circulation; or
- (b) a certificate of conformity for the imported barley issued by a government authority of the country of origin and recognised by the Commission.

Article 5

1. The benefit of access to this quota shall be granted provided the following conditions are fulfilled:

- (a) the imported barley must be malted within six months from the date of release for free circulation;

⁽³⁾ OJ L 114, 26.4.2008, p. 3.

(b) the resulting malt must be used in the manufacture of beer aged in vats containing beechwood within no more than 150 days following the date on which the barley is processed into malt.

2. Applications for import licences under the tariff quota shall be accepted only if they are accompanied by:

(a) the proof or proofs provided for in Article 5 of Regulation (EC) No 1301/2006;

(b) proof that the applicant has lodged a security of EUR 85 per tonne with the competent authority of the Member State of release for free circulation. In case the malting barley consignments are accompanied by a certificate of conformity issued by the Federal Grain Inspection Service (FGIS) as referred to in Article 7, the security shall be reduced to EUR 10 per tonne;

(c) a written undertaking by the applicant that all the imported goods will be processed, within six months from the date of acceptance of entry for free circulation, into malt for use in the manufacture of beer aged in vats containing beechwood within 150 days following the date on which the barley was processed into malt. He shall specify the processing location by stating either a processing firm and Member State or a maximum of five processing plants. Before the goods are consigned for processing a control copy T5 shall be made out of the office of customs clearance in accordance with Regulation (EEC) No 2454/93. The information required in the first sentence of this point (c) and the name and location of the processing plant shall be given in Box 104 of the T5.

3. Processing of the imported barley into malt shall be deemed to have taken place when the malting barley has undergone steeping. The use of the malt to manufacture beer aged in vats containing beechwood within no more than 150 days following the date on which the barley is processed into malt shall be subject to verification by the competent authority.

Article 6

1. The security provided for in Article 5(2)(b) shall be released provided the following conditions are fulfilled:

(a) the quality of the barley, established on the basis of the certificate of conformity or analysis certificate, meets the criteria laid down in Article 4(1);

(b) the certificate applicant provides proof of the specific final use referred to in Article 5(1), certifying that this use has taken place within the time limit provided for in the written undertaking referred to in Article 5(2)(c). That proof,

possibly in the form of the T5 control copy, must demonstrate to the satisfaction of the competent authorities of the Member State of importation that all the quantities imported have been processed into the product referred in Article 5(2)(c).

2. Where the quality criteria and/or the conditions relating to processing set out in Articles 4 and 5 of this Regulation are not fulfilled, the security for import licences referred to in Article 12(a) of Regulation (EC) No 1342/2003 and the additional security referred to in Article 5(2)(b) of this Regulation shall be forfeited.

Article 7

A blank specimen of the certificates to be issued by the FGIS is given in Annex I. Certificates issued by the FGIS for malting barley destined to be used in the manufacture of beer aged in vats containing beechwood shall be officially recognised by the Commission under the administrative cooperation procedure as provided for in Articles 63, 64 and 65 of Regulation (EEC) No 2454/93. When the analytical parameters entered in the certificate of conformity issued by FGIS show conformity with the malting barley quality standards established in Article 4 of this Regulation samples shall be taken of at least 3 % of the cargoes arriving at each entry port during the marketing year. Reproduction of the stamp and signatures authorised by the Government of the United States of America shall be published in the C series of the *Official Journal of the European Union*.

Article 8

1. Notwithstanding Article 6(1) of Regulation (EC) No 1301/2006, applicants may not submit more than one licence application per month. Where applicants lodge more than one application, none of those applications shall be admissible and the securities lodged when the applications were submitted shall be forfeited to the Member State concerned.

Import licence applications shall be lodged with the competent authorities of the Member States no later than the second Friday of each month at 13.00 (Brussels time).

2. Each licence application shall indicate a quantity in kilograms (whole numbers).

3. No later than 18:00 (Brussels time) on the Monday following submission of the licence application, the competent authorities shall send the Commission, by electronic means, a notification showing each application with the quantity applied for, including 'nil' notifications.

4. Licences shall be issued on the fourth working day following the deadline for the notification referred to in paragraph 3.

Member States shall communicate to the Commission, by electronic means, on the day of issue of the import licences, the information on the licences issued as referred to in Article 11(1)(b) of Regulation (EC) No 1301/2006, with the total quantities for which import licences have been issued.

Article 9

Import licences shall be valid for 60 days from the day of issue. In accordance with Article 22(2) of Regulation (EC) No 376/2008, the period of validity of the licence shall be calculated from the actual date of issue.

Article 10

Section 20 of the import licence application and the import licence shall contain the name of the processed product to be made from the cereals concerned.

Article 11

Regulation (EC) No 2377/2002 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex III.

Article 12

This Regulation shall enter into force on the 20th day following 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, 5 December 2008.

For the Commission
The President
José Manuel BARROSO

ANNEX I

Blank certificate of conformity authorised by the Government of the United States of America for malting barley destined to be used in the manufacture of beer aged in vats containing beechwood

FGIS FORM 909-L FEB 90		UNITED STATES DEPARTMENT OF AGRICULTURE FEDERAL GRAIN INSPECTION SERVICE U.S. GRAIN STANDARDS ACT OFFICIAL EXPORT GRAIN INSPECTION CERTIFICATE		APPROVED OMB NO. 0580-0013 ORIGINAL NOT NEGOTIABLE	
		INSPECTED AT _____		DATE OF SERVICE _____	
I certify that I am licensed or authorized under the United States Grain Standards Act (7 U.S.C. 71 <i>et seq.</i>) to inspect the kind of grain covered by this certificate and that on the above date the following identified grain was inspected under the Act, with the following results:					
<input type="checkbox"/> Original Inspection		<input type="checkbox"/> Reinspection		<input type="checkbox"/> Appeal Inspection	
				<input type="checkbox"/> Board Appeal Inspection	
QUANTITY (This is NOT a Weight Certificate)					
LOCATION			IDENTIFICATION OF CARRIER		
GRADE AND KIND (in accordance with the Official Grain Standards of the United States)					
STOWAGE					
REMARKS Damaged Grains: Sound and fair merchantable barley: Test weight (kg/hl): Moisture:					
APPEAL NO. (if applicable)		APPLICANT		NAME AND SIGNATURE	
<small> This certificate is issued under the authority of the United States Grain Standards Act, as amended (7 U.S.C. 71 <i>et seq.</i>), and the regulations thereunder (7 CFR 800.10 <i>et seq.</i>). It is issued to show the kind, class, grade, quality, condition, or quantity of grain, or the condition of a carrier or container for the storage or transportation of grain, or other facts relating to grain as determined by official personnel. The statements on the certificate are considered true at the time and place the inspection or weighing service was performed. The certificate is not considered representative of the lot if the grain is transhipped or is otherwise transferred from the identified carrier or container or if grain or other material is added to or removed from the total lot. If this certificate is not canceled by a superseding certificate, it is receivable by all officers and all courts of the United States as prima facie evidence of the truth of the facts stated therein. This certificate does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal law. WARNING: Any person who shall knowingly falsely make, issue, alter, forge, or counterfeit this certificate, or participate in any such actions, or otherwise violate provisions in the U.S. Grain Standards Act, the U.S. Warehouse Act, or related Federal laws is subject to criminal, civil, and administrative penalties. The receipt of all services and the licensing of personnel under the regulations governing such services shall be accomplished without discrimination on the basis of race, color, religion, sex, national origin, age, or handicap. </small>					
EXPORT					

ANNEX II

Repealed Regulation with list of its successive amendments

Commission Regulation (EC) No 2377/2002 (OJ L 358, 31.12.2002, p. 95)	
Commission Regulation (EC) No 159/2003 (OJ L 25, 30.1.2003, p. 37)	
Commission Regulation (EC) No 626/2003 (OJ L 90, 8.4.2003, p. 32)	
Commission Regulation (EC) No 1112/2003 (OJ L 158, 27.6.2003, p. 23)	
Commission Regulation (EC) No 777/2004 (OJ L 123, 27.4.2004, p. 50)	Only Article 13
Commission Regulation (EC) No 2022/2006 (OJ L 384, 29.12.2006, p. 70)	Only Article 2
Commission Regulation (EC) No 1456/2007 (OJ L 325, 11.12.2007, p. 76)	Only Article 3

ANNEX III

Correlation table

Regulation (EC) No 2377/2002	This Regulation
Articles 1 and 2	Articles 1 and 2
Article 4	Article 3
Article 5	Article 4
Article 6	Article 5
Article 7	Article 6
Article 8	Article 7
Article 9	Article 8
Article 10	Article 9
Article 13	Article 10
—	Article 11
Article 14, first paragraph	Article 12
Article 14, second paragraph	—
Annex I	Annex I
—	Annex II
—	Annex III