

Commission Regulation (EC) No 376/2008 of 23 April 2008 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products (Codified version) (repealed)

## CHAPTER III

### GENERAL PROVISIONS

#### SECTION 6

#### **Force majeure**

##### *Article 39*

1 Where, as a result of an event which the operator regards as constituting *force majeure*, import or export cannot be effected during the period of validity of the licence or certificate, the titular holder shall apply to the competent body of the Member State of issue either for the period of validity of the licence or certificate to be extended or for the licence or certificate to be cancelled. Operators shall provide proof of the circumstance which they consider to constitute *force majeure* within six months of the expiry of the period of validity of the licence or certificate.

Where they are unable to produce proof within that time limit despite having acted with all due diligence to obtain and forward it, they may be granted further time.

2 Requests to extend the period of validity of a licence or certificate received more than 30 days after the expiry of such period of validity shall be refused.

3 Where the circumstances relied on as constituting *force majeure* relate to the exporting country and/or the country of origin, in the case of imports, or to the importing country, in the case of exports, such circumstances may be accepted as such only if the issuing body or another official agency in the same Member State was notified as to the countries concerned in good time and in writing.

Notification of the exporting country, country of origin or importing country shall be considered as having been made in good time if the circumstances relied upon as constituting *force majeure* could not have been foreseen by the applicant at the time of notification.

4 The competent body referred to in paragraph 1 shall decide if the circumstances relied upon constitute *force majeure*.

##### *Article 40*

1 Where the circumstances relied upon constitute *force majeure*, the competent body of the Member State in which the licence or certificate was issued shall decide either that the obligation to import or export be cancelled and the security released, or that the period of validity of the licence or certificate be extended for such period as may be considered necessary in view of all the circumstances of the case. Such extension shall not exceed six months following the expiry of the original period of validity of the licence or certificate. Such extension may take place after the expiry of the validity of the licence or certificate.

---

*Status:* This is the original version as it was originally adopted in the EU. This legislation may since have been updated - see the latest available (revised) version

---

2 The decision taken by the competent body may differ from the decision requested by the titular holder of the licence or certificate.

Where the titular holder requests the cancellation of a licence involving advance fixing, even if this request was submitted more than 30 days after expiry of the period of validity of the licence, the competent body may extend that period of validity if the rate fixed in advance plus any adjustments is less than the current rate in the case of amounts to be paid out or greater than the current rate in the case of amounts to be collected.

3 The decision to cancel or extend the licence shall relate only to the quantity of product which could not be imported or exported as a result of *force majeure*.

4 When the period of validity of a licence is extended, the issuing body shall endorse the licence and its extracts and shall make the necessary adjustments thereto.

5 Notwithstanding Article 8(1), where the period of validity of a licence involving advance fixing is extended, the rights arising from that licence shall not be transferable. However, where the circumstances of the case in question so warrant, such transfer shall be authorised when requested at the same time as the extension.

6 The Member State to which the competent body belongs shall advise the Commission of the case of *force majeure*; the Commission shall inform the other Member States thereof.

#### Article 41

1 Where, following a case of *force majeure*, an operator has applied for the period of validity of a licence involving advance fixing of the export levy or export refund to be extended and the competent body has not yet taken a decision on such application, the operator may apply to the body for a second licence. The second licence shall be issued on the terms applying at the time of application except that:

- a it shall be issued for no more than the unused quantity on the first licence for which extension has been applied for;
- b Section 20 thereof shall contain one of the entries listed in Annex III, Part F.

2 Where the competent body decides to extend the period of validity of the first licence:

- a the quantity for which the second licence was used shall be entered on the first licence provided that:
  - (i) the operator who is entitled to use the first licence has so used the second licence, and
  - (ii) such use has taken place during the extended period of validity;
- b the security for the second licence relating to quantity referred to in point (a) shall be released;
- c where applicable, the body which issued the licences shall inform the competent body of the Member State where the second licence was used so that the amount collected or paid out can be corrected.

3 Where the competent body concludes that there was no case of *force majeure* or where it decides, under Article 40, that the first licence should be cancelled, then the rights and obligations arising from the second licence shall stand.