

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the system of import and export licences and advance fixing certificates for agricultural products (Codified version) (repealed)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 IV

### SPECIAL PROVISIONS

#### *Article 42*

1 Products subject to a system of export licences or qualifying for a system of advance fixing of refunds or of other amounts applicable on exports may qualify for treatment as returned goods under Title VI, Chapter 2 of Regulation (EEC) No 2913/92 only where the following provisions have been complied with:

- a if export was effected without an export licence or advance-fixing certificate, then where the information sheet INF 3 as provided for in Article 850 of Regulation (EEC) No 2454/93 is used, it must bear in Section A one of the entries listed in Annex III, Part G, to this Regulation.
- b if export was effected under cover of an export licence or advance fixing certificate, Article 43 shall apply.

2 If the returned goods are reimported:

- a through a customs office in a Member State other than the exporting Member State, proof that Article 43(1)(a) or (b) has been complied with shall be furnished by means of the information sheet INF 3 provided for in Article 850 of Regulation (EEC) No 2454/93;
- b through a customs office situated in the same Member State, proof that the provisions of paragraph 1(a) or Article 43(1)(a) or (b) have been complied with shall be furnished in accordance with the procedure determined by the competent authorities of the Member State in question.

3 Paragraph 1(a) shall not apply in the cases provided for in Article 844(2)(b) of Regulation (EEC) No 2454/93.

#### *Article 43*

1 Where the obligation to export is not complied with, in the cases referred to in Article 42, the Member States shall take the following measures:

- a if export was effected under cover of an export licence or advance fixing certificate and such licence or certificate has not expired on the date on which the party concerned declares his intention to avail himself of the returned-goods provisions of Article 42:
  - (i) the entry on the licence or certificate relating to the export in question shall be cancelled;
  - (ii) the security relating to the licence or certificate shall not be released in respect of the export in question or, if it has been released, it must be furnished anew in proportion to the quantities concerned to the body which issued the licence or certificate, and
  - (iii) the export licence or advance fixing certificate shall be returned to the titular holder;

- b if export was effected under cover of an export licence or advance fixing certificate, and the licence or certificate has expired on the date on which the party concerned declares his intention to avail himself of the returned goods provisions of Article 42, then:
  - (i) where the security relating to the licence or certificate has not been released in respect of the export in question, the security shall be forfeit, subject to the rules applicable in the particular case,
  - (ii) where the security has been released, the titular holder of the licence or certificate shall provide the body which issued the licence or certificate with fresh security in respect of the quantities in question, and that security shall be forfeit, subject to the rules applicable in the particular case.

2 Paragraph 1 shall not apply if the goods have been returned owing to *force majeure*, or in the cases referred to in Article 844(2)(b) of Regulation (EEC) No 2454/93.

#### *Article 44*

1 Where the security relating to the licence or certificate used for the export of products which have been reimported under the returned-goods system should be forfeit pursuant to Article 43, that security shall be released at the requests of the parties concerned if reimport is followed by the export of equivalent products falling within the same subheading of the Combined Nomenclature.

2 The export operation:

- a must be one for which the declaration was accepted:
  - (i) within no more than 20 days following the date of acceptance of the reimport declaration for the returned goods; and
  - (ii) under a new export licence if the initial export licence has expired by the date of acceptance of the export declaration for the equivalent products;
- b must concern products:
  - (i) of the same quantity; and
  - (ii) addressed to the consignee indicated for the original export consignments, except in the cases referred to in Article 844(2)(c) or (d) of Regulation (EEC) No 2454/93.

The exporter must provide to the satisfaction of the customs office of export all necessary information on the product's characteristics and destination.

3 The security shall be released when proof is furnished to the body which issued the licence or certificate that the conditions laid down in this Article have been fulfilled. Such proof shall consist of the following documents:

- a the declaration of export of the equivalent products or a copy or photocopy thereof certified as such by the competent authorities and bearing one of the entries listed in Annex III, Part H; the entry must be authenticated by the stamp of the customs office concerned, applied directly to the document in question;
- b a document certifying that the products have left the Community's customs territory within 60 days of acceptance of the customs export declaration, except in case of *force majeure*.

#### Article 45

1 For the purposes of Article 896 of Regulation (EEC) No 2454/93, confirmation that measures have been taken to undo any effects of putting the goods into free circulation shall be provided by the authority that issued the licence or certificate, subject to paragraph 4 of this Article.

The importer shall inform the authority that issued the licence or certificate of:

- a the name and address of the decision-making customs authority referred to in Article 877(1) of Regulation (EEC) No 2454/93 to which confirmation should be sent;
- b the quantity and nature of the products in question, the date of import and the number of the licence or certificate concerned.

If the licence or certificate has not been returned to the issuing authority, the importer shall submit it to that authority.

Before sending the confirmation referred to in the first subparagraph, the authority which issued the licence or certificate must ensure that:

- a the security covering the quantities in question has not been and will not be released; or
- b if the security has been released, it has been relodged for the quantities in question.

However, the security shall not be required to be relodged for quantities in excess of the quantity at which the obligation to import is considered to have been met.

The licence or certificate shall be returned to the party concerned.

2 If repayment or remission of import duties is refused, the decision-making customs authority shall so inform the authority which issued the licence or certificate. The security covering the quantity in question shall be released.

3 If repayment or remission of the duties is granted, the entry on the licence or certificate for the quantity in question shall be cancelled, even if the licence or certificate is no longer valid. The interested party shall return the licence or certificate to the issuing body as soon as it is no longer valid. The security for the quantity in question shall be forfeit subject to the rules applicable to the case in question.

4 Paragraphs 1 and 2 shall not apply where:

- a for reasons of *force majeure* the products must be re-exported, destroyed or placed in a customs warehouse or free zone; or
- b the products are in the situation referred to in the second indent of Article 900(1)(n) of Regulation (EEC) No 2454/93; or
- c the licence or certificate on which the quantity imported has been entered has not yet been returned to the party concerned when the application for repayment or remission of duty is lodged.

5 The first sentence of paragraph 3:

- a shall not apply in the case referred to in paragraph 4(b);
- b shall apply only on the request of the party concerned in the case referred to in paragraph 4(a).

#### Article 46

1 Where the effects of putting goods into free circulation have been undone and the security for the licence or certificate becomes forfeit under Article 45, the security shall be

released at the request of the party concerned if the conditions set out in paragraph 2 of this Article are fulfilled.

2 The party concerned must prove to the satisfaction of the competent authorities that, within two months of the date of initial import, the same quantity of equivalent products falling under the same subheading of the Combined Nomenclature has been imported from the same exporting country and from the same supplier to replace products to which Article 238 of Regulation (EEC) No 2913/92 has been applied

#### *Article 47*

1 This Article shall apply to licences fixing the export refund in advance applied for in connection with an invitation to tender issued in an importing third country.

The expression ‘invitation to tender’ shall be understood to mean open invitations issued by public agencies in third countries, or by international bodies governed by public law, to submit by a given date tenders on which a decision will be taken by those agencies or bodies.

For the purposes of this Article, the armed forces referred to in Article 36(1)(c) of Regulation (EC) No 800/1999 shall be regarded as an importing country.

2 Exporters who have submitted or wish to submit a tender in response to an invitation to tender as referred to in paragraph 1 may, provided the conditions specified in paragraph 3 are fulfilled, apply for one or more licences, which will be issued subject to their being awarded a contract.

3 This Article shall apply only if the following particulars at least are specified in the invitation to tender:

- a the importing third country and the agency issuing the invitation to tender;
- b the closing date for the submission of tenders;
- c the specific quantity of products covered by the invitation to tender.

The party concerned shall communicate those particulars to the issuing body when applying for the licence.

An application for a licence may not be lodged more than 15 days before the closing date for the submission of tenders but must be lodged at the latest by 1 p.m. on that closing date.

The quantity in respect of which the licence or licences are applied for may not exceed the quantity specified in the invitation to tender. No account shall be taken of tolerances or options provided for in the invitation to tender.

Member States shall immediately inform the Commission of the particulars referred to in the first subparagraph.

4 Notwithstanding Article 14(2), the security need not be lodged when the licence is applied for.

5 Within 21 days of the closing date for submitting tenders, except in the case of *force majeure*, the applicant shall inform the issuing body by letter or by written telecommunication, to reach the issuing body no later than the date of expiry of the 21-day time limit, either:

- a that he has himself been awarded a contract;
- b that he has not been awarded a contract;
- c that he has not submitted a tender;

- d that he is not in a position to know the outcome of the invitation to tender within the time limit specified for reasons which may not be ascribed to him.

6 Applications for licences shall not be accepted where, during the period of issue to which applications for licences for certain products are subject, a special measure has been taken which prevents the issue of licences.

No special measure taken subsequent to the expiry of the said period may prevent the issue of one or more licences issued in respect of the invitation to tender in question where the applicant has fulfilled the following conditions:

- a the information referred to in the first subparagraph of paragraph 3 are evidenced by the appropriate documents;
- b proof is furnished of the applicant's having been awarded a contract;
- c the security required for the issue of the licence is lodged; and
- d the contract is presented; or
- e where the absence of the contract is justified, documentation is submitted attesting the obligations entered into with the other contracting party or parties, including confirmation from his or their bank of the opening of an irrevocable letter of credit by the purchaser's financial institution to the agreed delivery.

The licence or licences shall be issued only for the country referred to in point (a) of the first subparagraph of paragraph 3. The invitation to tender shall be mentioned thereon.

The total quantity for which the licence or licences are issued shall be the total quantity for which the applicant was awarded the contract and has presented the contract or documentation referred to in point (e) of the second subparagraph of this paragraph; such quantity may not exceed the quantity applied for.

Moreover, where several licences are applied for, the quantity for which the licence or licences are issued may not exceed the quantity initially requested for each licence.

For the purposes of determining the period of validity of the licence, Article 22(1) shall apply.

No licence may be issued for a quantity for which the applicant has not been awarded a contract or has failed to comply with any of the conditions specified in points (a), (b), (c), (d) or (a), (b), (c), (e) of the second subparagraph of this paragraph.

The holder of the licence or licences shall be held primarily liable for the repayment of any refund incorrectly paid where it is established that the licence or licences was or were issued on the basis of a contract or obligation, specified in point (e) of the second subparagraph of this paragraph, not corresponding to the invitation to tender opened by the third country.

7 In the cases referred to in paragraph 5(b), (c) and (d), no licence shall be issued in connection with the application referred to in paragraph 3.

8 Where the applicant for a licence fails to comply with paragraph 5, no licence shall be issued.

However, where the applicant furnishes proof to the issuing body that the closing date for the submission of tenders has been deferred:

- a by no more than 10 days, the application shall remain valid and the period of 21 days for notifying the particulars specified in paragraph 5 shall run with effect from the new closing date for the submission of tenders;

b by more than 10 days, the application shall no longer be valid.

9 The following conditions shall apply to the release of the security:

- a If the successful tenderer demonstrates to the satisfaction of the competent authority that the agency that issued the invitation to tender has cancelled the contract for reasons which are not attributable to the tenderer and are not considered to constitute *force majeure*, the competent authority shall release the security in cases where the rate of the refund fixed in advance is higher than or equal to the rate of the refund valid on the last day of the validity of the licence.
- b If the successful tenderer demonstrates to the satisfaction of the competent authority that the agency that issued the invitation to tender has obliged him to accept changes to the contract for reasons that are not attributable to him and are not considered to constitute *force majeure*, the competent authority may:
- where the rate of the refund fixed in advance is higher than or equal to the rate of the refund valid on the last day of the validity of the licence, release the security for the balance of the quantity not yet exported,
  - where the rate of the refund fixed in advance is lower than or equal to the rate of the refund valid on the last day of the validity of the licence, extend the validity of the licence by the period required.

However, where special rules governing certain products provide that the period of validity of a licence issued under this Article may exceed the normal period of validity of such a licence and the successful tenderer finds himself in the situation referred to in the first indent of the first subparagraph, the issuing body may extend the period of validity of the licence provided it does not exceed the maximum period of validity permitted under those rules.

- c If the successful tenderer furnishes proof that the invitation to tender or the contract concluded following the award provided for a downward tolerance or option of more than 5 % and that the agency that issued the invitation to tender is invoking the relevant clause, the obligation to export shall be deemed to have been fulfilled where the quantity exported is not more than 10 % less than the quantity for which the licence was issued, on condition that the rate of the refund fixed in advance is higher than or equal to the rate of the refund valid on the last day of validity of the licence. In such cases the rate of 95 % referred to in Article 34(2) shall be replaced by 90 %.
- d In comparing the rate of the refund fixed in advance with that of the refund valid on the last day of validity of the licence, account shall be taken, where applicable, of other amounts provided for under Community rules.

10 In special cases, exceptions to the rules provided for in paragraphs 1 to 9 may be laid down following the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007 or, as appropriate, in the corresponding Articles of the other Regulations on the common organisation of markets.

#### Article 48

1 Where imports of a product are subject to presentation of an import licence and where that licence also serves to determine eligibility under preferential arrangements, the quantities imported within the tolerance in excess of the quantity shown on the import licence shall not qualify under the preferential arrangements.

Save where the regulations in particular sectors require special wording, Section 24 of licences and certificates shall indicate one of the entries listed in Annex III, Part I.

2 Where licences as referred to in paragraph 1 also serve to administer a Community tariff quota, the term of validity of licences may not extend beyond the date on which the quota expires.

3 Where the product in question cannot be imported outside the quota or where import licences for the product in question are issued subject to special conditions, the import licences shall not provide for any tolerance concerning quantities in excess.

The figure '0' (zero) shall be shown in Section 19 of the licence.

4 Where imports of a product are not subject to presentation of an import licence and where an import licence serves to administer preferential arrangements covering that product, import licences shall not provide for any tolerance for quantities in excess.

The figure '0' (zero) shall be shown in Section 19 of the licence.

5 The customs office accepting the declaration of release for free circulation shall keep a copy of the licence or extract presented giving entitlement to a preferential arrangement. On the basis of a risk analysis, copies of at least 1 % of licences presented, and at least two licences per year and per customs office, shall be sent to the issuing bodies indicated on the licences so that their authenticity can be verified. This paragraph shall not apply to electronic licences or licences for which another means of verification is laid down by Community rules.