

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the system of import and export licences and advance fixing certificates for agricultural products (Codified version) (repealed)

COMMISSION REGULATION (EC) No 376/2008

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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(Codified version) (repealed)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals⁽¹⁾, and in particular Article 9(2), Article 12(1) and (4) and Article 18 thereof, and the corresponding Articles of the other Regulations on the common organisation of markets in agricultural products,

Whereas:

- (1) Commission Regulation (EC) No 1291/2000 of 9 June 2000 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products⁽²⁾ has been substantially amended several times⁽³⁾. In the interests of clarity and rationality the said Regulation should be codified.
- (2) The Community Regulations which introduced import and export licences provide that all imports into the Community and all exports from it of agricultural products are to be subject to the production of such a licence. The scope of such licences should therefore be defined, with the express stipulation that they are not required for operations which do not constitute imports or exports in the strict sense.
- (3) Where products are subject to inward-processing arrangements, the competent authorities may, in some cases, allow products to be put into free circulation either with or without further processing. In such cases, to ensure that the market is properly managed, an import licence should be required for products actually put into free circulation. However, where a product put into free circulation has been obtained from basic products some of which have been imported from third countries and some of which have been purchased in the Community, only those basic products imported from third countries or obtained from the processing of basic products from third countries need to be taken into consideration.
- (4) The object of import and export licences and advance fixing certificates is the sound administration of the common market organisation. Some operations relate to small quantities and, in the interests of simplifying administrative procedures, import

Status: Point in time view as at 04/09/2014.

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and export licences and advance-fixing certificates should not be required for such operations.

- (5) Export licences are not required for the victualling of vessels and aeroplanes in the Community. Since the justification is similar, this provision should also apply to deliveries to platforms and naval vessels and to victualling in third countries. For the same reasons, licences should not be required for the operations covered by Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty⁽⁴⁾.
- (6) In view of international trade practice in respect of the products or goods in question, certain tolerances should be allowed with regard to the quantity of products imported or exported as compared with the quantity indicated on the licence or certificate.
- (7) So that several operations can be carried out at the same time under one licence or certificate, provision should be made for extracts of licences and certificates to be issued which have the same effect as the licences and certificates from which they are extracted.
- (8) Under the Community rules governing the various sectors covered by the common organisation of agricultural markets, import and export licences and advance fixing certificates are applicable to operations effected in the Community. This arrangement requires common rules to be adopted for drawing up and using such licences or certificates and Community forms and methods to be established for administrative cooperation between Member States.
- (9) The use of computerised procedures is gradually replacing the manual input of data in the different areas of administrative activity. It should therefore also be possible to use computerised and electronic procedures when issuing and using licences and certificates.
- (10) The Community Regulations which introduced those licences and certificates provide that they are to be issued subject to the lodging of a security so as to guarantee that the undertaking to import or export will be fulfilled during the period of their validity. It is necessary to define when the undertaking to export or import is fulfilled.
- (11) In the case of licences with advance fixing of the refund, the licence to be used depends on the tariff classification of the product. In the case of certain mixtures, the rates of refund do not depend on the tariff classification of the product but on special rules laid down for that purpose. Therefore, where the component on which the refund applicable to the mixture is calculated does not correspond to the tariff classification of the mixture, such imported or exported mixtures should not qualify for the rate fixed in advance.
- (12) Import licences are sometimes used to administer quantitative import arrangements. This is possible only where knowledge of the imports effected under the licences issued is available within a fairly short period. In such cases, the requirement to produce evidence that licences have been used is not merely in the interest of sound administration but becomes essential for administering these quantitative arrangements. The evidence in question is supplied by producing copy No 1 of the licence and, where appropriate, the extracts therefrom. It is possible to supply such evidence within a

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fairly short period. Such a time limit should therefore be fixed for cases where the Community rules on the licences used to administer quantitative arrangements make reference thereto.

- (13) In some cases the amount of security required for a licence or certificate may be extremely small. In order to reduce the administrative load, no security should be required in such cases.
- (14) Since in practice the person using a licence or certificate may not be the holder or transferee, in the interests of legal certainty and administrative efficiency it should be specified which persons are authorised to use the certificate or licence. The necessary link between the titular holder and the person making the customs declaration should be established to this end.
- (15) An import or export licence confers the right to import or export and so it must be presented at the time when the import or export declaration is accepted.
- (16) When simplified import or export procedures are used, the requirement to present the licence to the customs authorities may be waived or the licence may be presented subsequently. However, the importer or exporter must be in possession of the licence on the date considered to be that on which the import or export declaration is accepted.
- (17) In the interests of simplification, the rules may be made more flexible so as to allow Member States to introduce a simplified procedure for the administrative handling of licences, under which licences are kept by the issuing body or, where applicable, the paying agency in the case of export licences with advance fixing of the refund.
- (18) In the interest of sound administration, licences or certificates and extracts therefrom may not be amended after issue. However, in cases of doubt relating to an error attributable to the issuing body or to obvious inaccuracies and concerning the items appearing on the licence, certificate or extract, a procedure should be introduced whereby inaccurate licences, certificates or extracts may be withdrawn and corrected documents issued.
- (19) Where a product is placed under one of the simplified arrangements provided for in Articles 412 to 442a 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⁽⁵⁾, or in Title X, Chapter I of Appendix I to the Convention of 20 May 1987 on a common transit procedure, no formalities need to be carried out at the customs office of the frontier station in cases where transit begins inside the Community and is to end outside it. In the interests of administrative simplicity, where one of these procedures is applied, special arrangements should be adopted for the release of the security.
- (20) It can happen that, for reasons outside the control of the party concerned, the document constituting proof of departure from the Community's customs territory cannot be produced although the product has left the said territory or, in the case of operations as specified in Article 36 of Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds

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on agricultural products⁽⁶⁾, reached its destination. Such a situation may impede trade. In such circumstances other documents should be recognised as being equivalent.

- (21) The Community Regulations which introduced the licences and certificates concerned provide that the security is to be forfeit in whole or in part if import or export is not carried out, or only partly carried out, during the period of validity of the licence or certificate. The action to be taken in such circumstances should be specified in detail, in particular for cases where non-fulfilment of undertakings is due to *force majeure*. In such cases the obligation to import or export may be considered cancelled or the period of validity of the licence or certificate may be extended. However, in order to prevent possible disruption of the market, that extension should in any case be limited to a maximum of six months calculated from the end of the original period of validity.
- (22) In order to simplify administrative procedures, the security should be returned in full when the total amount to be forfeit is very small.
- (23) The security lodged at the time of the issue of the licences or certificates is to be released provided proof is supplied to the competent bodies that the goods concerned have left the Community's customs territory within 60 days from the date on which the export declarations are accepted.
- (24) It can happen that the security is released for various reasons without the obligation to import or export actually having been fulfilled. In such cases, the wrongly released security should be relodged.
- (25) In order to make full use of export possibilities for agricultural products eligible for refunds, a mechanism should be introduced to encourage operators to return quickly any licences and certificates which they will not be using to the issuing body. A mechanism should also be introduced to encourage operators to return certificates to the issuing body promptly after their expiry date so that the unused quantities can be reused as quickly as possible.
- (26) Under Article 3(4) of Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits⁽⁷⁾, where the last day of a period is a public holiday, Sunday or Saturday the period ends with the expiry of the last hour of the following working day. In certain cases, that provision results in the period of use of licences or certificates being extended. Such a measure, which is designed to facilitate trade, must not have the effect of changing the economic conditions of the import or export operation.
- (27) In some sectors of the common organisation of the agricultural markets there is provision for a period of reflection before export licences are issued. The purpose of this period is to allow the market situation to be assessed and, where appropriate, in particular where there are difficulties, to allow pending applications to be suspended, which amounts to rejecting those applications. It should be specified that such suspension is also possible in the case of licences applied for under Article 47 of this Regulation and that once the period of reflection has elapsed the licence application cannot again be suspended.

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- (28) Under Article 844(3) of Regulation (EEC) No 2454/93, products exported under a licence or advance-fixing certificate may qualify for treatment as returned goods only where the Community rules on licences and certificates have been complied with. Special rules should be laid down for applying the system of licences and certificates for products likely to qualify under these arrangements.
- (29) Under Article 896 of Regulation (EEC) No 2454/93, goods which are put into free circulation under an import licence or advance-fixing certificate are eligible for the system of repayment or remission of import duties only where it is established that the necessary steps have been taken by the competent authorities to cancel the effects of putting those goods into free circulation as regards the licence or certificate.
- (30) Article 880 of Regulation (EEC) No 2454/93 lays down certain detailed rules for applying Article 896 of that Regulation, in particular that the authorities responsible for issuing licences and certificates must provide confirmation.
- (31) This Regulation should lay down all the rules necessary for implementing Article 896 of Regulation (EEC) No 2454/93. In some cases it should be possible to comply with Regulation (EEC) No 2454/93 without recourse to the confirmation referred to in Article 880 thereof.
- (32) When import licences are used to determine the preferential import duty under tariff quotas, there is a danger that forged licences may be used, in particular in cases where there is a large difference between the full duty and the reduced or zero duty. To reduce this danger of fraud, there should be a mechanism for verifying the authenticity of the licences submitted.
- (33) Where an import licence covering an agricultural product is also used to administer a tariff quota to which preferential arrangements apply, such preferential arrangements are to apply to importers by virtue of the licence or certificate which must, in some cases, be accompanied by a document from a third country. To avoid any overrun in the quota, the preferential arrangements must apply up to the quantity for which the licence or certificate was issued. However, in order to facilitate imports, the tolerance provided for in Article 7(4) should be permitted, provided that it is specified at the same time that the part of the quantity exceeding that shown on the licence or certificate but within the tolerance does not qualify under the preferential arrangements and full duty is payable thereon on import.
- (34) The measures laid down in this Regulation are in accordance with the opinions of all the management committees concerned,

HAS ADOPTED THIS REGULATION:

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- (1) OJ L 270, 21.10.2003, p. 78. Regulation as last amended by Regulation (EC) No 735/2007 (OJ L 169, 29.6.2007, p. 6). Regulation (EC) No 1784/2003 will be replaced by Regulation (EC) No 1234/2007 (OJ L 299, 16.11.2007, p. 1) as from 1 July 2008.
- (2) OJ L 152, 24.6.2000, p. 1. Regulation as last amended by Regulation (EC) No 1423/2007 (OJ L 317, 5.12.2007, p. 36).
- (3) See Annex IV.
- (4) OJ L 105, 23.4.1983, p. 1. Regulation as last amended by Regulation (EC) No 274/2008 (OJ L 85, 27.3.2008, p. 1).
- (5) OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 214/2007 (OJ L 62, 1.3.2007, p. 6).
- (6) OJ L 102, 17.4.1999, p. 11. Regulation as last amended by Regulation (EC) No 159/2008 (OJ L 48, 22.2.2008, p. 19).
- (7) OJ L 124, 8.6.1971, p. 1.

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