

COMMISSION REGULATION (EC) No 1064/2009**of 4 November 2009****opening and providing for the administration of a Community import tariff quota for malting barley from third countries**

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 markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾, and in particular Article 144(1) and Article 148 in conjunction with Article 4 thereof,

Whereas:

- (1) Under the Agreement in the form of an Exchange of Letters between the European Community and the United States of America in accordance with Article XXIV:6 and Article XXVIII of the 1994 General Agreement on Tariffs and Trade (GATT) 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 as part of their accession to the European Union ⁽²⁾, approved by Council Decision 2006/333/EC ⁽³⁾, and the Agreement between the European Community and the Government of Canada on the conclusion of GATT Article XXIV:6 Negotiations ⁽⁴⁾, approved by Council Decision 2007/444/EC ⁽⁵⁾, the Community has undertaken to open, on an annual basis, an import tariff for malting barley of 50 000 tonnes.
- (2) The implementation rules relating to the administration of this quota are currently laid down by 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 ⁽⁶⁾.
- (3) The use of the first-come, first-served principle has proved to have been successful in other agricultural

sectors, and in the interest of administrative simplification, this quota should now be administered using the method indicated in Article 144(2)(a) of Regulation (EC) No 1234/2007. This should be done in accordance with Articles 308a, 308b and 308c(1) 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 ⁽⁷⁾.

- (4) Due to the particularities involved in the transfer from one management system to another, Article 308c(2) and (3) of Regulation (EEC) No 2454/93 should not apply to the tariff period from 1 January 2010 to 31 December 2010.
- (5) Article 166 of Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code) ⁽⁸⁾ provides for the customs supervision of goods released for free circulation at a reduced rate of duty on account of their specific use. It should be ensured that malting barley imported under this tariff quota is designed to be used for producing beer aged in vats containing beechwood, in accordance with the Community's international commitments.
- (6) Provision needs to be made for a high level of security in order to ensure the sound management of the tariff and to maintain such security throughout processing.
- (7) Taking into account the specific nature of the barley imported from the United States of America under this quota, the amount of the security in respect of imports which are accompanied by a compliance certificate agreed upon with the United States Government, in accordance with the administrative co-operation procedure provided for in Articles 63, 64 and 65 of Regulation (EEC) No 2454/93, should be reduced.
- (8) Regulation (EC) No 1215/2008 should therefore be repealed and replaced by a new Regulation. However, it would be expedient to continue to apply Regulation (EC) No 1215/2008 to the import licences issued for the import quota periods prior to those covered by this Regulation.

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 124, 11.5.2006, p. 15.

⁽³⁾ OJ L 124, 11.5.2006, p. 13.

⁽⁴⁾ OJ L 169, 29.6.2007, p. 55.

⁽⁵⁾ OJ L 169, 29.6.2007, p. 53.

⁽⁶⁾ OJ L 328, 6.12.2008, p. 20.

⁽⁷⁾ OJ L 253, 11.10.1993, p. 1.

⁽⁸⁾ OJ L 145, 4.6.2008, p. 1.

(9) 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

1. This Regulation opens a tariff import quota of 50 000 tonnes for malting barley falling under CN code 1003 00 to be used for the production of beer aged in vats containing beechwood. The order number for the quota shall be 09.0076.

2. The quota referred to in paragraph 1 above shall be administered in accordance with Articles 308a, 308b and 308c(1) of Regulation (EEC) No 2454/93. Article 308c(2) and (3) of that Regulation shall not apply to the tariff period from 1 January 2010 to 31 December 2010.

3. The tariff quota referred to in paragraph 1 above shall be opened on an annual basis from 1 January to 31 December ('import quota period'). Duties on imports within the tariff quota shall be levied at a rate of EUR 8 per tonne.

Article 2

For the purposes of the application of this Regulation:

- (a) 'damaged grains' shall mean 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' shall mean barley grains or pieces of grain that are not damaged, as defined in a), except grains damaged by frost or fungus.

Article 3

1. The tariff quota referred to in Article 1 may only apply if the barley imported meets the following criteria:

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

2. Compliance with the quality criteria set out in paragraph 1 above 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 4

1. In accordance with Article 166 of Regulation (EC) No 450/2008, the barley imported under this tariff shall be the subject of customs monitoring, to ensure that:

- (a) it is malted within six months from the date of release for free circulation; and
- (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.

Processing of the imported barley into malt shall be deemed to have taken place when the malting barley has undergone steeping.

2. Importers shall lodge a security with the competent customs authorities to ensure that the requirement referred to in paragraph 1 above is complied with and that unpaid duties are collected where that requirement is not met. The security shall be EUR 85 per tonne. If the malting barley consignments are accompanied by a certificate of conformity issued by the Federal Grain Inspection Service (FGIS), the security is reduced to EUR 10 per tonne.

3. The securities provided for in paragraph 2 shall be released immediately where proof is presented to the customs authorities concerned that:

- (a) the quality of the barley, established on the basis of the certificate of conformity or the analysis certificate, meets the criteria laid down in Article 3(1),
- (b) the processing obligation referred to in paragraph 1 has been complied with within the timeframe specified.

Article 5

Certificates issued by the Federal Grain Inspection Service (FGIS) for malting barley to be used in the production of beer aged in vats containing beechwood, a model version of which can be found in the Annex to this Regulation, shall be officially recognised by the Commission under the administrative cooperation procedure referred to in Articles 63, 64 and 65 of Regulation (EEC) No 2454/93. If the analytical parameters entered in the certificate of conformity issued by the FGIS indicate conformity with the malting barley quality standards established in Article 3, samples shall be taken of at least 3 % of the cargoes arriving at each entry port during the marketing year in question. A copy of the stamps authorised by the United States Government is to be provided to the Member States by the most appropriate means.

Article 6

Regulation (EC) No 1215/2008 is hereby repealed. However, it shall continue to apply to import licences issued before 1 July 2009 up to the time they expire.

Article 7

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2010.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 4 November 2009.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

ANNEX

Model certificate of conformity issued by the Government of the United States of America for malting barley designed for use in the manufacture of beer aged in vats containing beechwood.



UNITED STATES DEPARTMENT OF AGRICULTURE
FEDERAL GRAIN INSPECTION SERVICE
U.S. GRAIN STANDARDS ACT
OFFICIAL EXPORT INSPECTION CERTIFICATE

Approved OMB No. 0580-0013

ORIGINAL
US-XXXX-X-XXXX
NOT NEGOTIABLE

LEVEL OF INSPECTION: **ISSUED AT:** **DATE OF SERVICE:**
IDENTIFICATION: **LOCATION:** **QUANTITY:** (this is NOT a weight certificate)

GRADE AND KIND:
RESULTS:
REMARKS:



APPLICANT NAME:
ISSUING OFFICE:

I CERTIFY THAT THE SERVICES SPECIFIED ABOVE WERE PERFORMED WITH THE RESULTS STATED.
NAME OR SIGNATURE:

This certificate is issued under the authority of the United States Grain Standards Act, as amended (7 U.S.C. 71 et seq.), and the regulations thereunder (7 CFR 800.0 et seq.). It is issued to show the kind, class, grade, quality, condition, or quantity of grain; or the condition of a car 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 shall not be considered representative of the lot if the grain is transhipped or is otherwise transferred from the identified car 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 falsify, 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 conduct of all services and the licensing of personnel under the regulations governing such services shall be accomplished without discrimination as to race, color, religion, sex, national origin, age, or handicap.
According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information is 0580-0013. The time required to disclose this recordkeeping requirement is to average 39.027 hours per recordkeeper annually, including the time to retain such records, and to notify, disclose, and report to third parties such recordkeeping requirements.