

Commission Regulation (EC) No 828/2009 of 10 September 2009 laying down detailed rules of application for the marketing years 2009/2010 to 2014/2015 for the import and refining of sugar products of tariff heading 1701 under preferential agreements

## CHAPTER II

### IMPORT LICENCES

#### *Article 3*

#### **Applicability of Regulation (EC) 376/2008**

Regulation (EC) No 376/2008 shall apply save as otherwise provided for in this Regulation.

#### *Article 4*

#### **Import licence applications and import licences**

1 Import licence applications shall be submitted each week, from Monday to Friday, starting on the second Monday of September prior to the marketing year for which they are applied.

No applications may be lodged from Friday 11 December 2009 1 p.m. (Brussels time) till Friday 1 January 2010 1 p.m. (Brussels time).

2 Article 5 of Regulation (EC) No 1301/2006 shall apply mutatis mutandis. However, the submission of proof provided for in that Article may not be required for operators approved in accordance with Article 7 of Regulation (EC) No 952/2006.

3 Import licence applications and import licences shall contain the following entries:  
a in box 8: the country of origin (one of the countries listed in Annex I to this Regulation).

The word 'yes' being marked with a cross;

- b in box 16, a single eight digit CN code;
- c in boxes 17 and 18: the quantity of sugar in white sugar equivalent;
- d in box 20:

(i) 'sugar intended for refining' or 'sugar not intended for refining';

(ii) at least one of the entries listed in part A of Annex V;

(iii) the marketing year to which they are related;

- e in box 24: at least one of the entries listed in part B of Annex V.

4 Import licence applications shall be accompanied by:

- a proof that the applicant has lodged a security of EUR 20 per tonne of the quantity of sugar indicated in box 17 of the licence;

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- b the originals of the export licences issued by the competent authorities of the exporting third country in accordance with the model set out in Annex III, for a quantity equal to that mentioned in the licence applications;
- c in the case of sugar for refining, the undertaking by the applicant to refine the quantities of sugar in question before the end of the third month following that in which the import licence concerned expires;
- d for the marketing years 2009/2010, 2010/2011, 2011/2012, the applicant's pledge to purchase the sugar at a price not lower than 90 % of the reference price (on a c.i.f. basis) set in Article 8(c) of Regulation (EC) No 1234/2007 for the relevant marketing year as well as a binding document relating to the transaction and signed by both the buyer and the supplier.

The export licences referred to in point (b) may be replaced by certified copies, issued by the competent authorities of the exporting third country, of the proof of origin provided for in Article 14 of Annex II to Regulation (EC) No 1528/2007 for countries listed in Annex I to that Regulation or Articles 67 to 97 of Commission Regulation (EEC) No 2454/93<sup>(1)</sup> for countries not listed in Annex I of Regulation (EC) No 1528/2007 but listed in Annex I to Regulation (EC) No 732/2008.

[<sup>F1</sup>Electronic or facsimile copies of the export licences referred to in point (b) of the first subparagraph, or of the certified copies referred to in the second subparagraph, may be submitted in place of the originals in support of import licence applications provided that the originals are submitted by the applicant to the competent authorities of the Member States at the point of customs clearance of the import licence prior to customs clearance of the goods covered by the import licence issued on the strength of the electronic or facsimile copies.]

5 The originals of the export licences referred to in paragraph 4, point (b) or the certified copies referred to in the second subparagraph of paragraph 4 shall be kept by the competent authority of the Member State.

6 Where it is found that [<sup>F2</sup>an original, electronic, or facsimile document] submitted by an applicant in accordance with paragraph 4 provides false information and where such information is decisive for the attribution of preferential import licences, the competent authorities of the Member States shall exclude the applicant from the licence application system for the current and following marketing year, unless the applicant proves, to the satisfaction of the competent authority, that this is not due to his gross negligence or that it is due to *force majeure* or to obvious error.

[<sup>F17</sup> Article 48(1) and (4) of Regulation (EC) No 376/2008 shall not apply where the quantity of sugar imported under this Regulation is greater by not more than 5 % of the quantity indicated in the import licence. The additional quantity shall be considered to have been imported under that licence.]

#### Textual Amendments

- F1** Inserted by Commission Implementing Regulation (EU) No 1278/2014 of 1 December 2014 amending Regulations (EC) No 967/2006, (EC) No 828/2009, (EC) No 891/2009 and Implementing Regulation (EU) No 75/2013.
- F2** Substituted by Commission Implementing Regulation (EU) No 1278/2014 of 1 December 2014 amending Regulations (EC) No 967/2006, (EC) No 828/2009, (EC) No 891/2009 and Implementing Regulation (EU) No 75/2013.

## Article 5

### **Transitional Safeguard mechanism for sugar**

1 When the total quantity resulting from the licence applications for reference numbers 09.4231 to 09.4247 exceeds 3,5 million tonnes and the total quantity resulting from the licence applications for reference numbers 09.4241 to 09.4247 exceeds the quantity referred to in Annex II for the marketing year concerned, the Commission shall fix an allocation coefficient for the reference numbers 09.4241 to 09.4247 which the Member States shall apply to the quantities covered by each application for these reference numbers.

The allocation coefficient for a reference number is calculated in proportion to the available quantity of the regional safeguard threshold for that reference number and marketing year concerned.

If, after applying the allocation coefficients to the weekly applications, the quantity resulting from the licence applications for reference numbers 09.4231 to 09.4247 are less than 3,5 million tonnes or the quantity resulting from the licence applications for reference numbers 09.4241 to 09.4247 are less than the quantity referred to in Annex II for the marketing year concerned, the greater difference is distributed between the reference numbers 09.4241 to 09.4247 with an allocation coefficient less than 100 % in proportion to the weekly quantity not allocated for that reference number. For those reference numbers, the allocation coefficient is recalculated taking account of this increased allocation.

The algorithm used for the calculation of the allocation coefficient is laid down in Annex IV.

2 In case allocation coefficients are fixed pursuant to paragraph 1, the Commission shall suspend the submission of applications for licences until the end of the marketing year for the reference numbers for which the regional safeguard threshold has been reached. However, the Commission shall withdraw the suspension and readmit applications when quantities become available again according to the notifications referred to in Article 9(3).

3 The Commission shall present before 31st March 2013 a report on the functioning of the transitional safeguard mechanism for sugar, and, if necessary, make appropriate proposals. The report shall take account of sugar trade flows from third countries referred to in Annex I to this Regulation.

## Article 6

### **Issue of import licences**

1 On Thursday or Friday at the latest of each week, Member States shall issue licences for the applications submitted the preceding week and notified as provided for in Article 9(1), as the case may be taking account of the allocation coefficient fixed by the Commission in accordance with Article 5(1).

Import licences shall not be issued for quantities that had not been notified.

2 Licences shall be valid as from their date of issue or 1 October of the marketing year for which they are issued whatever is the latest.

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Licences shall be valid to the end of the third month following their start validity date without exceeding 30 September of the marketing year for which they are issued.

#### Article 7

### Extension of validity of import licences

For import licences with a validity ending on 30 September of a marketing year and at the request of the import licence holder, the competent body of the Member State of issue shall extend the period of validity of the import licence to 31 October if the titular holder submits proof, such as the bill of lading; acceptable to that competent body of the Member State of issue, that the sugar was loaded at the latest by 15 September of that marketing year. Member States shall notify this to the Commission not later than the first working day of the week following the extension of the validity.

#### Article 8

### Release for free circulation

Import licences containing in box 20 the entry 'sugar intended for refining' may be used for the import of CN codes [<sup>F2</sup>1701 13 10, 1701 14 10], 1701 91 00, 1701 99 10 or 1701 99 90.

Import licences containing in box 20 the entry 'sugar not intended for refining' may be used for the import of CN codes [<sup>F2</sup>1701 13 90, 1701 14 90], 1701 91 00, 1701 99 10 or 1701 99 90.

#### Textual Amendments

- F2** Substituted by [Commission Implementing Regulation \(EU\) No 1278/2014 of 1 December 2014 amending Regulations \(EC\) No 967/2006, \(EC\) No 828/2009, \(EC\) No 891/2009 and Implementing Regulation \(EU\) No 75/2013.](#)

#### Article 9

### Notifications to the Commission

1 Member States shall notify the Commission, between Friday 1 p.m. (Brussels time) and the following Monday 6 p.m. (Brussels time), of the quantities of sugar, including nil returns, for which import licence applications have been submitted in accordance with Article 4.

2 Member States shall notify the Commission, between Friday 1 p.m. (Brussels time) and the following Monday 6 p.m. (Brussels time), the quantities of sugar, including nil returns, for which import licences have been issued as from the preceding Thursday in accordance with Article 6.

3 Member States shall notify the Commission, between Friday 1 p.m. (Brussels time) and the following Monday 6 p.m. (Brussels time), of the quantities, including nil returns, covered by unused or partly used import licences and corresponding to the difference between the quantities entered on the back of the import licences and the quantities for which they were issued.

4 The quantities mentioned under paragraphs 1, 2 and 3 shall be broken down by reference number, country of origin, the eight-digit CN code, the marketing year concerned and whether or not they involve sugar intended for refining. They shall be expressed in kilograms white sugar equivalent.

[<sup>F3</sup>Member States shall notify the Commission before 1 March and for the previous marketing year of the quantities of sugar which has actually been imported, broken down by reference number and country of origin and expressed in kilograms white sugar equivalent.]

5 Member States shall notify the Commission before 1 March and for the previous marketing year of the quantities of sugar which has actually been refined, broken down by reference number and country of origin and expressed in kilograms 'tel quel' weight and in white sugar equivalent.

[<sup>F26</sup> The notifications referred to in this Regulation shall be made in accordance with Commission Regulation (EC) No 792/2009<sup>(2)</sup>.]

7 Member States shall forward details of the quantities of products released for free circulation in accordance with Article 308d of Regulation (EEC) No 2454/93.

#### **Textual Amendments**

- F2** Substituted by Commission Implementing Regulation (EU) No 1278/2014 of 1 December 2014 amending Regulations (EC) No 967/2006, (EC) No 828/2009, (EC) No 891/2009 and Implementing Regulation (EU) No 75/2013.
- F3** Inserted by Commission Regulation (EU) No 703/2010 of 4 August 2010 amending Regulation (EC) No 828/2009 laying down detailed rules of application for the marketing years 2009/10 to 2014/15 for the import and refining of sugar products of tariff heading 1701 under preferential agreements.

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- (1) [OJ L 253, 11.10.1993, p. 1.](#)
- (2) [<sup>F2</sup>Commission Regulation (EC) No 792/2009 of 31 August 2009 laying down detailed rules for the Member States' notification to the Commission of information and documents in implementation of the common organisation of the markets, the direct payments' regime, the promotion of agricultural products and the regimes applicable to the outermost regions and the smaller Aegean islands ([OJ L 228, 1.9.2009, p. 3.](#))]

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#### **Textual Amendments**

- F2** Substituted by [Commission Implementing Regulation \(EU\) No 1278/2014 of 1 December 2014 amending Regulations \(EC\) No 967/2006, \(EC\) No 828/2009, \(EC\) No 891/2009 and Implementing Regulation \(EU\) No 75/2013.](#)

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