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COMMISSION REGULATION (EC) No 2377/2002

of 27 December 2002

**opening and providing for the administration of a Community tariff quota for malting barley
from third countries and derogating from Council Regulation (EC) No 1766/92**

(OJ L 358, 31.12.2002, p. 95)

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**COMMISSION REGULATION (EC) No 2377/2002
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**opening and providing for the administration of a Community
tariff quota for malting barley from third countries and derogating
from Council Regulation (EC) No 1766/92**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1666/2000 ⁽²⁾, and in particular Article 12(1) thereof,

Having regard to the Council Decision of 19 December 2002 concerning the conclusion of an Agreement in the form of an Exchange of Letters between the European Community and the United States of America, with a view to the modification of concessions with respect to cereals provided for in schedule CXL annexed to the General Agreement on Tariffs and Trade (GATT) ⁽³⁾ and in particular Article 2 thereof,

Having regard to the Council Decision of 19 December 2002 concerning the conclusion of an Agreement in the form of an Exchange of Letters between the European Community and Canada pursuant to Article XXVIII of the General Agreement on Tariffs and Trade (GATT), with a view to the modification of concessions with respect to cereals provided for in EC schedule CXL annexed to the GATT ⁽³⁾ and in particular Article 2 thereof,

Whereas:

- (1) Following trade negotiations, the Community has changed the conditions for the import of common wheat of low and medium quality and of barley by creating import quotas from 1 January 2003. For barley, the Community has decided to replace the 'margin of preference' system by two tariff quotas: one tariff quota of 50 000 tonnes for malting barley and one tariff quota of 300 000 for barley. This Regulation concerns the tariff quota of 50 000 tonnes of malting barley.
- (2) Under the Community's international commitments, malting barley for import must be intended for use in the manufacture of beer aged in vats containing beechwood. In this respect, provisions should be adopted relating to the quality criteria for barley and to processing requirements similar to those of Commission Regulation (EC) No 1234/2001 of 22 June 2001 laying down detailed rules for applying Council Regulation (EC) No 822/1999 and providing for the partial reimbursement of import duties levied on a quota of barley for malting ⁽⁴⁾.
- (3) The opening of this quota means that Regulation (EEC) No 1766/92 has to be adapted. In order to enable the quota to be opened on 1 January 2003, provision should be made to derogate from Regulation (EEC) No 1766/92, during a transitional period expiring on the date of entry into force of the amendment to that Regulation, but until 30 June 2003 at the latest.
- (4) To ensure that imports of the barley covered by this tariff quota are orderly and not speculative, they should be made subject to the issue of import licences. The licences will be issued, within the quantities set, at the request of the interested parties, subject where appropriate to the fixing of a reduction coefficient in respect of the quantities applied for.

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ Not yet published in the Official Journal.

⁽⁴⁾ OJ L 168, 23.6.2001, p. 12.

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- (5) To ensure the proper management of this quota, deadlines for the lodging of licence applications should be laid down and the information to be included in applications and licences should be specified.
- (6) To take account of supply conditions, a derogation should be made concerning the period of validity of the licences.
- (7) Taking account of the obligation to apply a high level of guarantee to insure adequate execution of the quota and that this guarantee would have to be in place during all the processing period, it is adequate to exempt importers whose consignments of malting barley are accompanied by a certificate of conformity agreed with the government of the United States of America according to the administrative cooperation procedure provided for in Articles 63 to 65 of Commission Regulation (EEC) No 2454/93 ⁽¹⁾, as amended by Commission Regulation (EC) No 444/2002 ⁽²⁾.
- (8) With a view to the sound management of the quota, provision should be made to derogate from 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 ⁽³⁾, as last amended by Regulation (EC) No 2299/2001 ⁽⁴⁾, as regards the transferable nature of the licences and the tolerance relating to the quantities released into free circulation.
- (9) To ensure sound management of this quota, the security on the import licences should be set at a relatively high level, notwithstanding Article 10 of Commission Regulation (EC) No 1162/95 of 23 May 1995 laying down special detailed rules for the application of the system of import and export licences for cereals and rice ⁽⁵⁾, as last amended by Regulation (EC) No 1322/2002 ⁽⁶⁾.
- (10) Rapid two-way communication should be established between the Commission and the Member States regarding the quantities applied for and imported.
- (11) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

Notwithstanding Article 10(1) and (2) of Regulation (EEC) No 1766/92, the import duty for malting barley falling in CN code 1003 00 shall be fixed in the framework of the quota opened by this Regulation.

Article 10(1) of Regulation (EEC) No 1766/92 shall apply to imports of the products referred to in this Regulation in excess of the quantity provided for in Article 2.

Article 2

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1. A tariff import quota of 50 000 tonnes of malting barley falling within HS code (ex) 1003 00 to be used in the manufacture of beer aged in vats containing beechwood is hereby opened.

⁽¹⁾ OJ L 253, 11.10.1993, p. 1.

⁽²⁾ OJ L 68, 12.3.2002, p. 11.

⁽³⁾ OJ L 152, 24.6.2000, p. 1.

⁽⁴⁾ OJ L 308, 27.11.2001, p. 19.

⁽⁵⁾ OJ L 117, 24.5.1995, p. 2.

⁽⁶⁾ OJ L 194, 23.7.2002, p. 22.

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2. The tariff quota shall be opened on 1 January each year. Duties on imports within the tariff quota shall be levied at a rate of EUR 8 per tonne.

Article 3

All imports under the quota referred to in Article 2(1) shall be conditional upon the production of an import licence issued in accordance with Regulation (EC) No 1291/2000, subject to the provisions of this Regulation.

Article 4

For the purposes of applying this Regulation:

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

Article 5

1. The benefit of this tariff quota shall be granted provided the imported barley meets the following criteria:

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

2. Compliance with the quality criteria set out in paragraph 1 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 6

1. The benefit of access to this quota shall be granted provided the following conditions are fulfilled:

- (a) the imported barley must be malted within six months from the date of release for free circulation;
- (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.

2. Applications for import licences under this tariff quota shall be accepted only if they are accompanied by:

- (a) proof that the applicant is a natural or legal person who has carried out a commercial activity in the cereals sector for at least 12 months and is registered in the Member State in which the application is submitted,
- (b) proof that the applicant has lodged a security of EUR 85 per tonne with the competent authority of the Member State of release for free circulation. In case the malting barley consignments are accompanied by a certificate of conformity issued by the Federal Grain Inspection Service (FGIS) as referred to in Article 8, the security is reduced to EUR 10 per tonne
- (c) a written undertaking by the applicant that all the imported goods will be processed, within six months from the date of acceptance of entry for free circulation, into malt for use in the manufacture of

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beer aged in vats containing beechwood within 150 days following the date on which the barley was processed into malt. He shall specify the processing location by stating either a processing firm and Member State or a maximum of five processing plants. Before the goods are consigned for processing a control copy T5 shall be made out of the office of customs clearance in accordance with Commission Regulation (EEC) No 2454/93. The information required in the first paragraph and the name and location of the processing plant shall be given in box 104 of the T5.

3. Processing of the imported barley into malt shall be deemed to have taken place when the malting barley has undergone steeping. The use of the malt to manufacture beer aged in vats containing beechwood within no more than 150 days following the date on which the barley is processed into malt shall be subject to verification by the competent authority.

Article 7

1. The security provided for in Article 6(2)(b) shall be released provided the following conditions are fulfilled:

- (a) the quality of the barley, established on the basis of the certificate of conformity or analysis certificate, meets the criteria laid down in Article 5(1),
- (b) the certificate applicant provides proof of the specific final use referred to in Article 5(1), certifying that this use has taken place within the time limit provided for in the written undertaking referred to in Article 6(2)(c). That proof, possibly in the form of the T5 control copy, must demonstrate to the satisfaction of the competent authorities of the Member State of importation that all the quantities imported have been processed into the product referred in Article 6(2)(c).

2. Where the quality criteria and/or the conditions relating to processing set out in Articles 5 and 6 of this Regulation are not fulfilled, the security for import licences referred to in Article 10(a) of Regulation (EC) No 1162/95 and the additional security referred to in Article 6(2)(b) of this Regulation shall be forfeit unless the importer is able to produce a new import licence drawn on the quota administered by Commission Regulation (EC) No 2376/2002⁽¹⁾. In that case the security of EUR 30 for that licence shall be released only in an amount equal to EUR 22.

Article 8

A blank specimen of the certificates to be issued by the Federal Grain Inspection Service (FGIS) is given in Annex I. Certificates issued by the Federal Grain Inspection Service (FGIS) for for malting barley destined to be used in the manufacture of beer aged in vats containing beechwood shall be officially recognised by the Commission under the administrative cooperation procedure as specified in Articles 63 to 65 of Regulation (EEC) No 2454/93. When the analytical parameters entered in the certificate of conformity issued by Federal Grain Inspection Service (FGIS) show conformity with the malting barley quality standards established in Article 5 samples shall be taken of at least 3 % of the cargoes arriving at each entry port during the marketing year. Reproduction of the stamp and signatures authorised by the Government of the United States of America shall be published in the C series of the *Official Journal of the European Communities*.

Article 9

1. Applications for import licences shall be lodged with the competent authorities of the Member States no later than 13.00 (Brussels time) on the second Monday of each month.

⁽¹⁾ See page 92 of this Official Journal.

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Each licence application must be for a quantity that may not exceed the quantity available for the import of the product concerned in the year concerned.

2. No later than 18.00 Brussels time on the day of lodging of licence applications, the competent authorities shall forward to the Commission by fax a notification in accordance with the model established in Annex II, and the total quantity resulting from the sum of all quantities indicated on the import licence applications. If the day for lodging the licence applications is a national holiday, the Member State concerned shall send the said notification on the working day preceding the national holiday no later than 18.00 Brussels time.

That information must be communicated separately from the information on other import licence applications for cereals.

3. If the total of the quantities since the start of the year and the quantity referred to in paragraph 2 exceeds the quota for the year concerned, the Commission shall set, no later than the third working day after the applications are lodged, a single reduction coefficient to be applied to the quantities requested.

4. Without prejudice to paragraph 3, licences shall be issued on the fourth working day following the day on which the application was lodged. No later than 18.00 Brussels time on the day the licences are issued, the competent authorities shall fax the Commission, at the number mentioned in Annex II, the total quantity resulting from the sum of the quantities for which import licences has been issued that same day.

Article 10

Import licences shall be valid for 60 days from the day of issue. In accordance with Article 23(2) of Regulation (EC) No 1291/2000, the period of validity of the licence shall be calculated from the actual date of issue.

Article 11

Notwithstanding Article 9 of Regulation (EC) No 1291/2000, the rights resulting from the import licences shall not be transferable.

Article 12

Notwithstanding Article 8(4) of Regulation (EC) No 1291/2000, the quantity released into free circulation may not exceed that indicated in sections 17 and 18 of the import licence. The figure '0' shall be entered to that effect in section 19 of the licence.

Article 13

The import licence application and the import licence shall contain the following information:

(a) in section 20, the processed product to be made from the cereals and one of the following entries:

- Reglamento (CE) n° 2377/2002
- Forordning (EF) nr. 2377/2002
- Verordnung (EG) Nr. 2377/2002
- Κανονισμός (ΕΚ) αριθ. 2377/2002
- Regulation (EC) No 2377/2002
- Règlement (CE) n° 2377/2002
- Regolamento (CE) n. 2377/2002
- Verordening (EG) nr. 2377/2002
- Regulamento (CE) n.º 2377/2002
- Asetus (EY) N:o 2377/2002
- Förordning (EG) nr 2377/2002

(b) in section 24, the words 'EUR 8/tonne'.

▼B*Article 14*

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

It shall apply from 1 January 2003.


It shall apply until the date of entry into force of the Regulation amending Article 10 of Regulation (EEC) No 1766/92, but until 30 June 2003 at the latest.

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

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ANNEX I

Blank certificate of conformity authorised by the Government of the United States of America for malting barley destined to be used in the manufacture of beer aged in vats containing beechwood

FGIS FORM 909-L FEB 90		UNITED STATES DEPARTMENT OF AGRICULTURE FEDERAL GRAIN INSPECTION SERVICE U.S. GRAIN STANDARDS ACT OFFICIAL EXPORT GRAIN INSPECTION CERTIFICATE		APPROVED OMS NO. 0580-0013 ORIGINAL NOT NEGOTIABLE	
		_____ MONTH AT		_____ DATE OF SERVICE	
I certify that I am licensed or authorized under the United States Grain Standards Act (7 U.S.C. 71 <i>et seq.</i>) to inspect the kind of grain covered by this certificate and that on the above date the following identified grain was inspected under the Act, with the following results:					
<input type="checkbox"/> <i>Original Inspection</i>		<input type="checkbox"/> <i>Reinspection</i>		<input type="checkbox"/> <i>Appeal Inspection</i>	
<input type="checkbox"/> <i>Board Appeal Inspection</i>					
QUANTITY (This is NOT a Weight Certificate)					
LOCATION			IDENTIFICATION OF CARRIER		
GRADE AND KIND (in accordance with the Official Grain Standards of the United States)					
STOWAGE					
REMARKS Damaged Grains: Sound and fair merchantable barley: Test weight (kg/hl): Moisture:					
APPEAL NO. (if applicable)		APPLICANT		NAME AND SIGNATURE	
<p><small>This certificate is issued under the authority of the United States Grain Standards Act, as amended (7 U.S.C. 71 <i>et seq.</i>), and the regulations thereunder (7 CFR 900.0 <i>et seq.</i>). It is issued to show the kind, class, grade, quality, condition, or quantity of grain, or the condition of a carrier 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 is not considered representative of the lot if the grain is transhipped or is otherwise transferred from the identified carrier 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.</small></p> <p>WARNING: Any person who shall knowingly falsely make, issue, alter, forge, or counterfeit this certificate, or participate in any such act, 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.</p> <p><small>The condition 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.</small></p>					
EXPORT					

▼B*ANNEX II***MODEL FOR NOTIFICATION REFERRED TO IN ARTICLE 9(2) (*)**
Import quotas for malting barley opened by Regulation (EC) No 2377/2002

Month: ...

Quota/Product	Operator No	Quantity requested (tonnes)

(*) Notification to be sent by fax to number (32-2) 295 25 15.