

**Comments on the Proposed Rule for
the Dairy Import Licensing Program**

No.	Name	Date
1	Christopher Franco, Finlandia	10/04/2007
2	Thomas W. May, Trugman-Nash, Inc.	10/16/2007
3	Thomas Gellert, Atalanta	10/17/2007
4	Robert Castellano, Tipico Products Co., Inc.	10/17/2007
5	Leonard G. Epstein, Empire Foods	10/19/2007
6	Marilyn J. Fletcher, Flemco Trading Co.	10/24/2007
7	Richard Warsack	10/29/2007
8	European Commission	10/30/2007
9	Meyer Thurm, World Cheese Co., Inc.	10/31/2007
10	Mort Rogoff, M.H. Rogoff Company	11/01/2007
11	Elchanan Frankenthal, Trans World Foods, Ltd.	11/01/2007
12	Ruth Larabee, Women Involved in Farm Economics	11/02/2007
13	Joseph C. Zuercher, Jr., C.E. Zuercher & Co., Inc.	11/03/2007
14	George Lyden, Peterson Company	11/04/2007
15	Dan Lynch, Jana Foods LLC, Jana Dairy Imports LLC	11/05/2007
16	Jaime Castaneda, National Milk Producers Federation	11/05/2007
17	Richard H. Koby, Cheese Importers Association of America	11/05/2007
18	Flemming Soderlund, Bonita Import Co.	11/05/2007
19	Jens Bang Pedersen, B&S Dairy, Inc.	11/05/2007
20	Paul Schilt, Emmi (USA) Inc.	11/05/2007
21	Eiler Ebbesen, J.P. Hansen USA, Inc.	11/05/2007

22	Daniel R. Culligan, Dairyfood USA, Inc.	Undated

Updated 11/06/2007

From: Chris Franco
Sent: Thursday, October 04, 2007 11:58 AM
To: Ronald.Lord@usda.gov
Subject: 6.25(b) suspension

Dear Ron,

Thank you for your work on this matter. As an active cheese importer I want to comment with my overwhelming support for the 5 year suspension of rule 6.25(b) of the Dairy Import Regulations.

Christopher M. Franco
President / Chief Executive Officer
2001 Route 46, Suite 303
Parsippany, NJ 07054
Tel: 973-316-6699 ext. 1400



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19 WEST 44TH STREET, NEW YORK, NY 10036 ■ TELEPHONE: 212-869-6910 ■ FAX: 212-869-6844 ■ FAX: 212-869-6177

October 16, 2007

Mr. Ron Lord
Branch Chief
Sugar and Dairy Branch
Import and Trade Support Program Division
Foreign Agricultural Service
1400 Independence Avenue S.W.
Washington, DC 20250

Dear Sir:

This is in response to the Federal Register Notice of October 4, 2007 outlining the proposed rule to suspend for five years the reduction of historical licenses for non-usage.

Trugman-Nash, Inc. greatly appreciates the work that your department has done on this issue and is grateful for the five-year suspension. Nevertheless, we believe that fairness dictates that the penalty be eliminated for good.

In a Federal Register notice dated October 15, 1997 (Attachment 1) the Foreign Agricultural Service asked for comments on possible options for the implementation of Section 6.25 penalties, the first of which being rescinding the penalty provision entirely. Approximately 90% of the industry and all Congressional comment favored rescission. Senators Kohl (Attachment 2) Roberts (Attachment 3), Kerrey (Attachment 4) and Lautenberg (Attachment 5), all wrote to the Department asking for the elimination of the penalty provision. In his letter Senator Kohl noted that in respect to Section 6.25(b)(1) and (2):

"I am concerned that these provisions will result in the loss of licenses by historical importers, and could result in an increase of import market share being controlled by foreign suppliers....." He went on to add, "I fear that more power in the hands of fewer market participants will have anti-competitive results.

Given the rapidly changing economic conditions governing the dairy product importing business current quota licensees should be given more flexibility."

But despite the fact that rescission was the overwhelming choice of the industry and Members of Congress, the Department decided for reasons that were never adequately explained to penalize historical licensees for non-usage.

This is the second time this rule has been suspended. In the Federal Register of March 20, 1998 (Attachment 6) the Department noted:

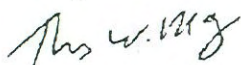
"The Department of Agriculture has determined that provisions of the Dairy Tariff-Rate Import Quota Licensing Regulation with respect to the issuance of reduced historical import licenses

based on license surrenders of more than 50 percent will be suspended, in light of market conditions, and shall not apply for a period of five years."

Once again USDA is suggesting a suspension. Clearly, price relationships between the domestic and world markets have changed drastically. The economics that existed when the rule was instituted no longer exist. Clearly, USDA should recognize the new fundamentals and stop penalizing those American companies who have for many years built up the imported cheese business in the United States.

Once again, let me congratulate you on airing this issue. The suspension goes some way towards ameliorating the problem but elimination would cure it for good.

Sincerely,
Trugman-Nash, Inc.



Thomas W. May
President
Encl:

WAIS Document Retrieval

Attachment 1

(Federal Register: October 15, 1997 (Volume 62, Number 199))
[Proposed Rules]
[Page 53580-53581]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr15oc97-16]

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Proposed Rules

Federal Register

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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[[Page 53580]]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Dairy Tariff-Rate Import Quota Licensing

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Advanced notice of proposed rulemaking on Dairy Tariff-Rate Import Quota Licensing.

SUMMARY: This document requests public comments on possible options for the implementation of the Dairy Tariff-Rate Import Quota Licensing regulation's requirement to permanently reduce certain historical licenses based on surrenders, including possible rescission, suspension, or delay of this requirement.

DATES: Comments should be submitted on or before 5 p.m. on November 28, 1997 to be assured of consideration.

ADDRESSES: Interested parties may mail their comments to: Diana Wanamaker, Group Leader, Import Policies and Programs Division, Foreign Agricultural Service, 1400 Independence Avenue, SW., Stop 1021, Washington, DC 20250-1021. They may also fax their comments to 202-720-0876. All comments received will be available for public inspection in room 5541-S at the above address. Summaries of comments will be made available via our fax retrieval system by calling (202) 720-0876 after December 5, 1997.

WAIS Document Retrieval

FOR FURTHER INFORMATION CONTACT: Diana Wanamaker, Group Leader, Import Policies and Programs Division, Foreign Agricultural Service, 1400 Independence Avenue, SW, Stop 1021, Washington, DC 20250-1021 or telephone (202) 720-2916.

SUPPLEMENTARY INFORMATION: The Foreign Agricultural Service (FAS) under the authority of 7 CFR 2.43 is requesting comments concerning possible implementation of Sec. 6.25(b) of the Department's Dairy Tariff-Rate Import Quota Licensing Regulation ("the Regulation"). Section 6.26(b)(2) provides that prior to 1999, a determination may be made, in light of market conditions, to eliminate the requirement in Secs. 6.25(b)(1)(i) and 6.25(b)(1)(ii) to permanently reduce the quantity of a historical license based on consecutive years of license surrender. Specifically, Sec. 6.25(b)(1)(i) states that beginning in 1999, if a licensee has surrendered to the Department more than 50 percent of a historical license in each of three prior years, that license will be permanently reduced to the average amount entered during those three years (the "three-year rule"). Section 6.25(b)(1)(ii) provides that beginning in 2001, if a licensee surrenders to the Department more than 50 percent of a historical license in three of the five prior years, that license will be permanently reduced by the average amount entered during those five years (the "five-year" rule).

Section 6.25(b)(2) is under review by the Department and we are seeking comments, views, and recommendations with respect to methods and timing of the implementation of this section. At this time, all options are under consideration, including but not limited to the following:

- A. Issue an immediate determination that Secs. 6.25(b)(1)(i) and 6.25(b)(1)(ii) shall not apply in light of market conditions, effectively rescinding the provision;
- B. Revise the regulation to advance the effective date of Sec. 6.25(b)(1)(i) from 1999 to 2003, the effective date of Sec. 6.26(b)(ii) from 2001 to 2005, and the determination date from prior to 1999 to prior to 2003; and
- C., D. Revise the regulation to eliminate either the three-year rule (section 6.25(b)(1)(i)) or the five-year rule (section 6.26(b)(1)(ii)) to provide that one but not both of these provisions remain in effect with existing or modified requirements.

FAS also invites comments as to whether current dairy import market conditions are such that FAS should implement Sec. 6.25(b)(2) immediately.

Background

Rationale for Section 6.26(b)(2)

Revision 8 of the Regulation, issued on October 6, 1996, amended the previous rule so that a historical license that is being consistently underutilized will be permanently reduced. Under the previous rule, there was no consequence for surrendering license amounts. In light of the small amount of license available to new entrants or others who wish to increase imports of a certain dairy product, the Department determined that it was sound public policy to reallocate licenses amounts that are consistently not being used. Therefore, the amount by which a historical license is permanently reduced is to be converted to a nonhistorical license.

How Section 6.25(b) May Be Implemented

WAIS Document Retrieval

Section 6.25(b)(2) of the Regulation permits the Secretary of Agriculture to determine that Sec. 6.25(b)(1) "does not apply in light of market conditions." Authority for administration of tariff-rate quotas (TRQs) for dairy products was delegated to the FAS Administrator under 7 CFR 2.43.

Requests for Public Comments on Section 6.25(b)

FAS requests comments on any of the following options and any other views, comments or recommendation for action that commentors wish to submit on this matter.

A. Using Section 6.25(b)(2) To Permanently Cancel Section 6.25(b)(1)

Under this option, FAS would use its determination authority to find that market conditions in 1997 are such that FAS would invoke Sec. 6.25(b)(2) to permanently void Sec. 6.25(b)(1). If FAS implemented this option, licensees would not be subsequently penalized for having surrendered more than 50 percent of their historical, licensed amounts in 1996 or 1997 or in future years. However, the problems concerning repeated license surrenders and limited access to licenses to import inquota TRQ amounts would remain.

B. Postponing Implementation of Section 6.25(b)(1)

Under this option, FAS would amend the Sec. 6.25(b)(1)(i) to delay its implementation from 1999 to a future date. This delay would give licensees time to adjust to changing market conditions which have resulted from the implementation of the Uruguay Round Trade Agreement with respect to market access and export subsidies. FAS invites comments on the concept of delaying implementation of Secs. 6.25(b)(1)(i) and

[[Page 53581]]

6.25(b)(1)(ii) 96, and welcomes proposals as to future implementation dates.

C. Eliminate the Three-Year Rule, While Retaining the Five-Year Rule

Under this option, FAS would amend the Regulation to delete Sec. 6.25(b)(1)(i). This action would eliminate the three-year rule, while retaining the five-year rule, which appears in Sec. 6.25(b)(1)(ii). Per the five-year rule, a licensee could surrender more than 50 percent of its historical licensed amount for two of five consecutive years without penalty. The five-year rule may be viewed as giving licensees two years in which to adjust to changed market conditions.

D. Eliminate the Five-Year Rule, While Retaining the Three-Year Rule

Under this option, FAS could amend the Regulation to delete Sec. 6.25(b)(1)(ii). This action would eliminate the five-year rule, while retaining the three-year rule, which appears in Sec. 6.25(b)(1)(i). Per the three-year rule, a licensee could surrender more than 50 percent of a historical license amount for two years without penalty and not be subjected to license reduction if more than 50 percent of that license were surrendered in the next two years. This also may be viewed as giving licensees time to adjust to changed market conditions.

Signed at Washington, DC, on October 3, 1997.

Christopher E. Goldthwait,

Acting Administrator.

[FR Doc. 97-26928 Filed 10-14-97; 8:45 am]

BILLING CODE 3410-10-M

10:11A

P.01 E

HERBERT KOHL
WISCONSIN

WASHINGTON OFFICE:
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WASHINGTON, DC 20510
(202) 224-5463
T.O.D. (202) 724-4464

Attachment 2
United States Senate
WASHINGTON, DC 20510-4903

COMMITTEES:
APPROPRIATIONS
JUDICIARY
SPECIAL COMMITTEE
ON AGING

March 18, 1996

Mr. Richard Warsack, Dairy Import Quota Manager
Import Policies and Programs Division -Room 5531-S
Foreign Agriculture Service/U.S. Department of Agriculture
14th and Independence Avenue, S.W.
Washington D.C. 20250

RE: Dairy Tariff-Rate Import Quota Licensing

Dear Mr. Warsack:

Thank you for your proposed rule on dairy tariff-rate import quota licensing. Given the significant Wisconsin interest in this rule, I wanted to take the opportunity to make some comments.

In general, it is very important to the U.S. dairy industry that dairy product imports into this country are conducted on as competitive a basis as possible. When imports from an individual country are controlled in a monopolistic or oligopolistic fashion, it provides greater opportunities for domestic market distortions. It is with this general view of the need to maximize competition between dairy product importers that I offer the following specific comments:

1) Section 6.25(b)(1) and (2)-

I am concerned that these provisions will result in the loss of licenses by historical importers, and could result in an increase of import market share being controlled by foreign suppliers, some of which operate as subsidiaries of foreign export monopolies. I fear that more import power in the hands of fewer market participants will have anti-competitive results.

Given the rapidly changing economic conditions governing the dairy product importing business, current quota licensees should be given greater flexibility.

2) Section 6.23(c)(1)(ii) -

I appreciate the fact that this provision recognizes many of the concerns that I have been raising about the unfair trade advantages enjoyed by foreign government-sanctioned export monopolies, such as the New Zealand Dairy Board. In that regard, I believe that the sentence which states "[t]he Licensing Authority may publish a notice in the Federal Register indicating which countries export an article or articles through such a monopoly, and revise it as necessary," should be revised to say "[t]he Licensing Authority shall..."

MILWAUKEE OFFICE:
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(414) 277-4451

MADISON OFFICE:
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SUITE 312
MADISON, WI 53703
(608) 281-6328

EAU CLAIRE OFFICE:
402 DANKAM AVENUE
SUITE 204
EAU CLAIRE, WI 54701
(715) 823-8404

APPLETON OFFICE:
4321 WEST COLLEGE AVENUE
SUITE 206
APPLETON, WI 54914
(414) 730-1000

3) Eligibility period for 1997 license—

Since this rule was proposed in January 1996, the effective date should begin with September 1, 1996, as opposed to the retroactive application date of September 1, 1995, as proposed in the rule.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads "Herb Kohl". The signature is written in a cursive style with a large, prominent "H" and "K".

Herb Kohl, U.S.S.

United States Senate

WASHINGTON, DC 20510-1605

Attachment 3

November 12, 1997

Ms. Diane Wanamaker
Group Leader, Import Policies & Programs Division
Foreign Agriculture Service
1400 Independence Ave., SW
Stop 1021
Washington, DC 20250-1021

Dear Ms. Wanamaker:

The USDA has requested comments on proposed rule changes in the administration of the Dairy Tariff-Rate Import Quota Licensing Program in 1999 and subsequent years. This letter responds to that request.

Current import requirements and limits were established during the Uruguay Round of the General Agreement on Tariffs and Trade (GATT). Under current rules, dairy product importers who voluntarily surrender TRQ license amounts for reallocation could be forced to surrender a portion of their license allotments. The sanctions will apply if an importer surrenders more than 50 percent of its quota in three consecutive years (beginning in 1999), or in three of five consecutive years (beginning in 2001).

Through sanctions required under the current rule, importers' historical licenses will be permanently reduced to the average amount imported in the three-year or five-year period, whichever is applicable. These sanctions will affect many importers who have made investments based upon their allotments in the dairy TRQ program.

Currently, surrendered license amounts are made available for reallocation to other importers, on a first-come, first-served basis. Therefore, surrendered license amounts are not lost to the industry or to the consuming public. Rather, they are distributed to qualified importers who can make use of them. These license amounts are often not met due to adverse market conditions.

For example, in some Countries of Origin, an adequate supply of the required dairy products has not been available to meet quota requirements. There have been changes in EU export-administration programs, occasional quality-control problems, and other market conditions that have forced surrender. These conditions cannot be anticipated or corrected by licensees.

In its proposed rulemaking, the Department has listed, as Option A, the permanent cancellation of sanctions for the voluntary surrender of license amounts in a timely fashion. This option recognizes that market conditions, not actions on the part of importers, creates the need to surrender license amounts in the dairy import program. This option acknowledges that there should be no penalty if failure to meet amounts is caused by market conditions.

Ms. Diana Waramaker

November 12, 1997

Page 2

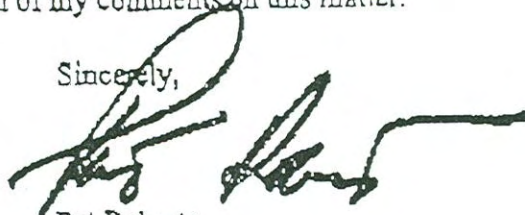
Attachment 3

Although free trade without restrictions is the ideal scenario in which to create trade agreements, I realize the present license requirements are outlined under the GATT agreement. Short of the complete removal of all barriers to trade, Option A provides for the administration of the current program with the least amount of government interference in this area.

I urge USDA to give serious consideration to adoption of Option A. This option will restore the policy of allowing surrender of unused dairy tariff-rate import quota amounts without sanction and preserves the ability of importers of cheese and other dairy products to participate in this market. Furthermore, I urge continued movement towards the elimination of all barriers to free trade.

Thank you for your consideration of my comments on this matter.

Sincerely,



Pat Roberts
U.S. Senator

ROBERT KERREY

United States Senate

WASHINGTON, DC 20510 2704

Attachment 4

November 12, 1997

The Honorable Dan Glickman
Secretary
United States Department of Agriculture
14th Street & Independence Avenue, S.W.
Washington D.C 20250

Dear Secretary Glickman:

I am writing this letter in response to the Department's notice inviting comments on a matter arising under the Dairy Tariff-Rate Import Quota Licensing Regulations. The notice indicates that the Department is seeking comments on the possible rescission, suspension, or delay of a requirement to permanently reduce certain historical licenses when the license is surrendered for reallocation to other importers.

The issue arises due to a quirk in the cheese import regulations. To the extent an importer cannot use eighty-five percent of his license in any year, he must surrender the unused portion of the license so that it can be allocated to other importers. Failure to do so results in the loss of the license in future years. However, to the extent that the importer surrenders his license, the regulation provisionally provides that effective in quota year 1998 if a licensee surrenders more than fifty percent of its quota in an immediate past period, the surrendering importer would suffer a permanent reduction in his license. The regulation recognizes that this provision may be too draconian by providing that the Secretary may determine not to apply the penalty provision "in the light of market conditions".

After reviewing the circumstances surrounding the surrender of these licenses, I believe that market conditions are such that the penalty provisions should be deleted from the regulation. Most historical license holders have been in business for decades and wish to make maximum use of their licenses. Unfortunately, despite the best efforts of license holders, in recent years they have been forced to surrender import licenses because cheese from the countries to which the licenses apply has not been available because of "market conditions". Specifically, the cheese was of poor quality or was not available at any price, or if available was at an high a price to be competitive in the United States market. These are not isolated incidents as demonstrated by the attached page that has been brought to my attention.

I appreciate this opportunity to comment and I hope that you will carefully consider eliminating the penalty provision.

Sincerely,


Bob Kerrey

Encl.

LEIBENBERG

COMMITTEES:
APPROPRIATIONS

BUDGET

ENVIRONMENT AND PUBLIC WORKS

INTELLIGENCE

HELSINKI COMMISSION

United States Senate

WASHINGTON, DC 20510-3002

Attachment 5

December 1, 1997

The Honorable Daniel Glickman
Secretary
U.S. Department of Agriculture
14th Street and Independence Avenue, S.W.
Washington, D.C. 20250

Dear Secretary Glickman:

I am writing to convey the interest of many of my constituents in the Department's request for comments on the question of whether you should exercise certain discretionary authority under existing Dairy Tariff-Rate Import Quota Licensing Regulations (Federal Register, October 15, 1997).

Specifically, my constituents are concerned about the Department's imposition of penalties effective in quota year 1999 against importers who voluntarily and in a timely manner surrender more than 50 percent of their quotas in three consecutive years, or in any three of five consecutive years. My constituents are concerned that these sanctions are unfair and too severe for importers who have complied with the surrender provisions.

I understand that under these penalties, surrendering importers would suffer a permanent reduction in future license authority. Yet, oftentimes importers must surrender their licenses for reasons beyond their control, such as non-availability, non-competitive price, or poor quality of country of origin products. Importers believe it would be unfair to penalize importers who comply with Department regulations, but are forced to surrender their licenses through no fault of their own.

I support your efforts to further improve the regulations of the dairy import industry and to assure more fairness in their application. Constituents who have contacted me urge that the Department exercise its discretion to eliminate these sanctions (Option A as described in the October 15th notice).

Sincerely,



Frank R. Lautenberg

REPLY TO:

505 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510-3002
202) 224-6744

Mail: frank.lautenberg@lautenberg.senate.gov
Internet: www.senate.gov/~lautenberg

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1201) 845-3020

BARRINGTON COMMONS
208 WHITE HORSE PIKE
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1609) 757-6353

Attachment 6

13481

Rules and Regulations

Federal Register
Vol. 63, No. 54
Friday, March 20, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Dairy Tariff-Rate Import Quota Licensing

AGENCY: Office of the Secretary, USDA.
ACTION: Determination on historical license reductions.

SUMMARY: The Department of Agriculture has determined that provisions of the Dairy Tariff-Rate Import Quota Licensing Regulation with respect to the issuance of reduced historical import licenses based on license surrenders of more than 50 percent will be suspended, in light of market conditions, and shall not apply for a period of five years.

DATES: Effective March 20, 1998, 7 CFR 6.25(b)(1)(i) and (b)(1)(ii) are suspended.

FOR FURTHER INFORMATION CONTACT:

Diana Wansmaker, Group Leader, Import Policies and Programs Division, Foreign Agricultural Service, 1400 Independence Avenue, SW., Stop 1029, Washington, DC 20250-1029 or telephone (202) 720-2916.

SUPPLEMENTARY INFORMATION:

Determination: The Foreign Agricultural Service (FAS), under a delegation of authority from the Secretary of Agriculture, 7 CFR 2.43, has determined pursuant to 7 CFR 6.25(b)(2), to suspend the historical license reduction provisions of 7 CFR 6.25(b)(1)(i) and 6.25(b)(1)(ii) for a five-year period, in light of U.S. import market conditions for cheese. At the end of the five-year suspension, beginning in quota year 2004, if more than 50 percent of a historical license is surrendered in each of the three prior quota years (i.e., 2001-2003), that license will be issued in an amount equal to the average amount entered in those years. Beginning in quota year 2006, if more

than 50 percent of a historical license is surrendered in at least three of the five prior quota years (i.e., 2001-2005), that license will be issued in an amount equal to the average amount entered in those years. FAS has determined that a principal underlying cause of changing U.S. import market conditions is the European Union's (the EU's) progressive implementation of its Uruguay Round export subsidy reduction commitment which, in quota year 1997, began to have a direct impact on trade flows of EU cheese to the U.S. market resulting in reduced U.S. imports and increased historical license surrenders. FAS has further determined that a five-year suspension of the historical license reduction requirement, until the Uruguay Round export subsidy reductions are completed in the year 2000, is warranted under § 6.25(b)(2) to allow time for historical licensees to adjust to changing U.S. import market conditions.

Background

The Dairy Tariff-Rate Import Quota Licensing Regulation at 7 CFR 6.25(b)(2) provides that prior to 1999, the Secretary of Agriculture may determine that the requirements in §§ 6.25(b)(1)(i) and 6.25(b)(1)(ii) to reduce permanently the quantity of historical license based on license surrenders of more than 50 percent in three consecutive quota years or three out of five quota years, "shall not apply in light of market conditions." The Department requested public comments in a notice of proposed rulemaking published on October 15, 1997 (62 FR 53580-81 and 62 FR 55184), on possible options for the implementation of the historical license reduction requirement, including possible rescission, suspension, or delay of this requirement, and requested comments on current dairy import market conditions that should be considered with respect to implementation of § 6.25(b)(2). Public comments were submitted by 37 entities during the comment period from October 15, 1997, to November 26, 1997.

Historical License Surrenders and Market Conditions: In 1997, surrenders of historical licenses for cheese, in which the quantity surrendered exceeded 50 percent of a license amount, reached 12,302 metric tons, compared to 1,960 metric tons in 1996, and 5,163 metric tons in 1995.

Surrenders of historical licenses for EU cheese accounted for over 60 percent of 1997 historical license surrenders of 12,302 metric tons. In previous years, historical license surrenders were based, in part, on supply shortages and currency situations. However, the 1997 increase in historical license surrenders can be attributed principally to the EU's implementation of its Uruguay Round commitment to reduce the quantity of cheese exported under subsidy.

Under Uruguay Round export subsidy disciplines, the EU's export subsidy ceiling for cheese is scheduled to decrease each fiscal year (FY) from 426,500 tons in FY 1995 (July-June) to 321,300 tons in FY 2000. The EU administers its export subsidy reduction program by setting monthly export subsidy allocations equal to prorated amounts of the annual export subsidy ceiling, and issuing export licenses for subsidized cheese shipments by destination. In October 1997, to avoid exceeding its export subsidy limit, the EU adjusted subsidies for various cheeses and lowered subsidies by 20 percent for cheese exports destined for the United States. EU subsidy cuts during the 1997 quota year were sufficient to raise EU prices of various cheeses to levels that impeded EU cheese sales to U.S. historical licensees. In particular, prices of EU industrial-grade cheeses rose above U.S. prices for comparable cheese (i.e., domestic barrel Cheddar cheese); thereby removing the economic incentive to import. In addition to EU export subsidy reductions, the 1998 merger of the license allocations for Austria, Finland, and Sweden into an EU-15 allocation added approximately 21,000 metric tons of EU historical licenses for cheese.

In view of rapid and significant changes in U.S. import market conditions for EU cheeses beginning in 1997, FAS has determined that temporary suspension of the historical license reduction requirement is justified through the year 2000. The overriding purpose of the five-year suspension is to provide adequate time for historical licensees of EU cheeses to adjust to changing market conditions, to find alternative suppliers of cheese in the EU, and to develop new markets to enable importers to fully utilize their historical licenses for EU cheese. The suspension is consistent with the intent of the U.S.-EU Uruguay Round bilateral

Federal Register / Vol. 63, No. 54 / Friday, March 20, 1998 / Rules and Regulations

agreement on maximizing utilization of U.S. licenses for EU cheese.

Summary of Public Comments:

Comments, views, and recommendations were submitted by 32 importers holding historical licenses; three members of Congress; and two trade associations. Submissions by most historical licensees stressed that substantial business investments rely on historical import licenses, and permanent reductions can cause significant harm to employees, distributors, customers, and the survival of many businesses. Most historical licensees supported immediate elimination of the historical license reduction requirement. Certain other historical licensees supported either: (1) the permanent reduction and reallocation of historical licenses in order to provide new entrants and growing businesses a greater opportunity to import cheese; or (2) postponement of the historical license reduction requirement to provide time for adjustment to and analysis of changing market conditions. Comments submitted by the members of Congress and trade associations favored elimination of the historical license reduction requirement based on market conditions.

With respect to market conditions, the members of Congress stated that, under current circumstances, surrenders of historical licenses result from market conditions beyond an importer's control. Historical licensees and the trade associations identified the following market conditions as causes of historical license surrenders: (1) lack of exportable supply; (2) non-competitive foreign prices (resulting in some cases from foreign export administration decisions, and currency fluctuations); (3) low-quality or high-priced foreign products; and (4) foreign export monopolies which can affect license utilization through supply and price controls.

Signed at Washington, D.C. on March 13, 1998.

Timothy J. Galvin,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 98-7171 Filed 3-19-98; 8:45 am]

BILLING CODE 3110-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 96-082-2]

Bamboo

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are consolidating the regulations pertaining to the importation of bamboo, contained in "Subpart—Bamboo Capable of Propagation," and the regulations pertaining to propagative material in general, contained in "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products." This change will simplify and clarify our regulations. We are also amending the regulations in "Subpart—Fruits and Vegetables" to add provisions allowing fresh bamboo shoots without leaves or roots to be imported into the United States from various countries for consumption. This action is based on assessments that indicate that bamboo shoots without leaves or roots may be imported into the United States from certain countries without a significant risk of introducing plant pests.

EFFECTIVE DATE: April 20, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. James Petit de Mange, Staff Officer, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1231, telephone (301) 734-6799; or e-mail jpdmange@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations at 7 CFR part 319 prohibit or restrict the importation of plants, plant parts, and related materials to prevent the introduction of foreign plant pests into the United States.

The importation into the United States of any variety of bamboo seed, bamboo plants, and bamboo cuttings capable of propagation, including all genera and species of the tribe *Bambuseae*, has been regulated under "Subpart—Bamboo Capable of Propagation," contained in 7 CFR 319.34. Section 319.34(a) provides that all varieties of bamboo seeds, bamboo plants, and bamboo cuttings capable of propagation are prohibited importation into the United States unless they are imported: (1) For experimental or scientific purposes by the United States Department of Agriculture; (2) for export, or for transportation and

exportation in bond, in accordance with 7 CFR part 352; or (3) into Guam, in accordance with § 319.37-4(b).

Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" (referred to below as "Subpart—Nursery Stock"), contained in 7 CFR 319.37 through 319.37-14, regulates the importation into the United States of most other propagative plant material. Regulated articles are designated as either prohibited or restricted.

On September 11, 1997, we published in the Federal Register (62 FR 47770-47772, Docket No. 96-082-1) a proposal to consolidate "Subpart—Bamboo Capable of Propagation" and "Subpart—Nursery Stock" by adding bamboo seed, bamboo plants, and bamboo cuttings capable of propagation, except those imported into Guam, to the list of prohibited articles in § 319.37(a). In conjunction with this action, we proposed to remove "Subpart—Bamboo Capable of Propagation" and all references to § 319.34 contained in part 319.

Under this proposal, bamboo seeds, bamboo plants, and bamboo cuttings capable of propagation would have continued to be eligible for importation into Guam as restricted articles. (The term *restricted article* is defined in § 319.37-1 of "Subpart—Nursery Stock" as any class of nursery stock or other class of plant, root, bulb, seed, or other plant product for, or capable of, propagation, excluding any prohibited articles listed in § 319.37-2 (a) or (b) of "Subpart—Nursery Stock" and excluding any articles regulated under other subparts of part 319.)

The importation of bamboo seeds, bamboo plants, and bamboo cuttings for experimental or scientific purposes by the United States Department of Agriculture also would not have been affected by this change. In "Subpart—Nursery Stock," § 319.37-2(c) provides that any article listed as a prohibited article in § 319.37(a) may be imported for experimental or scientific purposes by the Department of Agriculture.

In addition, bamboo seeds, bamboo plants, and bamboo cuttings capable of propagation would have continued to be eligible for movement through the United States for export, or for transportation and exportation in bond, in accordance with 7 CFR part 352. The regulations at 7 CFR part 352, "Plant Quarantine Safeguard Regulations," allow plants and plant parts that are not eligible for entry into the United States to move through the United States for export to other countries under safeguards intended to prevent the introduction of plant pests.

October 17, 2007

Mr. Ronald Lord
Branch Chief, Sugar & Dairy Branch
Import and trade Support Programs Division
Foreign Agricultural Services
Room 5531-S
STOP 1021
1400 Independence Avenue, S.W.
Washington, D.C. 20250

RE: Comments to Proposed Rule (72 Fed
Reg. 56677) published October 4, 2007

Dear Mr. Lord:

This letter is in response to the Department's request for public comments concerning the proposed five-year suspension of the historical license reduction provisions of the Dairy Tariff-Rate Quota Licensing regulation.

The business of Atalanta Corporation is built on dairy product imports and we have made a substantial investment in reliance upon a fair and even handed regulation of the dairy import licensing program.

Since the implementation of the historical license reduction provisions of 7 CFR §6.25(b)(1) in 2004, many, if not most, historical licensees have needed to surrender more than fifty percent of a historical license amount before the annual October 1st deadline as prescribed by the Department's regulation. These recent decisions to surrender historical license amounts have more often than not been based solely on prevailing market conditions, specifically, unavailability of the product or that prices were too high to be competitive.

The adverse market conditions which our company, as well as the rest of the dairy importing community, has been struggling with are not temporary obstacles, rather they are the long-term consequence of well-documented major economic and production trends. Most notably, there has been a sharp rise in world dairy prices due to strong growth in world demand while at the same time production growth has been constrained in the major exporting countries, including the European nation. During this same time period, our competitive position has been further weakened by the fact that the U.S. Dollar has continued to drop precipitously in value against the currencies of our trading partners.

ATALANTA CORPORATION, Atalanta Plaza, Elizabeth, NJ 07206 Telephone: (908) 351-8000
Chairman: Fax (908) 351-0761 Cheese: Fax (908) 351-0449 Finance: Fax (908) 351-1844 Grocery: Fax (908) 351-1693
Processed Meats: Fax (908) 351-1693 Seafood: Fax (908) 351-1940 Website: www.atalanta1.com



We believe that for the foreseeable future market conditions will continue to be unfavorable for U.S. dairy importers. We also support the Department's statement expressed in the proposed rule that historical licenses provide for orderly marketing of a wide variety of cheeses and permit dairy importers to invest in market development, including brand building, with some assurance of future availability of supply.

For all these reasons, Atalanta Corporation strongly supports the adoption of the five-year temporary suspension of the provisions of Section 6.25(b)(1). The five-year suspension period will give the Foreign Agricultural Service sufficient time to evaluate the changes in the market for our products and let the industry adjust to those changes.

Thank you for considering our views on this matter of the highest importance to Atalanta Corporation and our entire industry.

Very truly yours,



Thomas Gellert



TIPICO PRODUCTS CO., INC

October 17, 2007

Mr. Ronald Lord
Branch Chief, Sugar & Dairy Branch
Import and Trade Support Programs Division
Foreign Agricultural Services
Room 5531-S
STOP 1021
1400 Independence Avenue, S.W.
Washington, D.C. 20250

RE: Comments to Proposed Rule (72 Fed
Reg. 56677) published October 4, 2007

Dear Mr. Lord:

This letter is in response to the Department's request for public comments concerning the proposed five-year suspension of the historical license reduction provisions of the Dairy Tariff-Rate Quota Licensing regulation.

The business of Tipico Products Co., Inc. is built on dairy product imports and we have made a substantial investment in reliance upon a fair and even handed regulation of the dairy import licensing program.

Since the implementation of the historical license reduction provisions of 7 CFR §6.25(b)(1) in 2004, many, if not most, historical licensees have needed to surrender more than fifty percent of a historical license amount before the annual October 1st deadline as prescribed by the Department's regulation. These recent decisions to surrender historical license amounts have more often than not been based solely on prevailing market conditions, specifically, unavailability of the product or that prices were too high to be competitive.

The adverse market conditions which our company, as well as the rest of the dairy importing community, has been struggling with are not temporary obstacles, rather they are the long-term consequence of well-documented major economic and production trends. Most notably, there has been a sharp rise in world dairy prices due to strong growth in world demand while at the same time production growth has been constrained in the major exporting countries, including the European nation. During this same time period, our competitive position has been further weakened by the fact that the U.S. Dollar has continued to drop precipitously in value against the currencies of our trading partners.

TIPICO PRODUCTS CO., INC

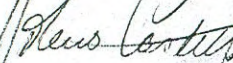
Page 2

We believe that for the foreseeable future market conditions will continue to be unfavorable for U.S. dairy importers. We also support the Department's statement expressed in the proposed rule that historical licenses provide for orderly marketing of a wide variety of cheeses and permit dairy importers to invest in market development, including brand building, with some assurance of future availability of supply.

For all these reasons, Tipico Products Co., Inc. strongly supports the adoption of the five-year temporary suspension of the provisions of Section 6.25(b)(1). The five-year suspension period will give the Foreign Agricultural Service sufficient time to evaluate the changes in the market for our products and let the industry adjust to those changes.

Thank you for considering our views on this matter of the highest importance to Tipico Products Co., Inc. and our entire industry.

Very truly yours,



Robert Castellano



Ronald Lord/Fas
10/19/2007 02:05 PM

To Jorge Martinez/Fas@Fas
cc
bcc
Subject Fw: Comments to Proposed Rule (72 Fed.Reg.56677)
published Oct. 4, 2007

another

Ron Lord
Branch Chief, Sugar & Dairy Branch
ITSPD/OTP/FAS
(202) 720-6939

----- Forwarded by Ronald Lord/Fas on 10/19/2007 02:05 PM -----



<jgoller@empirefoods.net>@i
nter2@FASNJAU
10/19/2007 02:00 PM

To Ronald Lord/Fas@Fas
cc
Subject Comments to Proposed Rule (72 Fed.Reg.56677) published
Oct. 4, 2007

Dear Mr. Lord,

Reference is made to the Department's request for public comments concerning the proposed five year suspension of the historical license reduction provisions of the Dairy Tarriff-Rate Quota Licensing Regulations. Our only business is importing dairy products.

There has been a sharp rise in world dairy prices due to strong growth in world demand and not in production growth. During this same period, our competitive position has been further weakened by the fact that the U.S. dollar has continued to drop precipitously in value against the currencies of our trading partners.

We believe that for the foreseeable future market conditions will continue to be unfavorable for U.S. dairy importers. We also support the Department's statement expressed in the proposed rule that historical licenses provide for orderly marketing of a wide variety of cheeses and permit dairy importers to invest in market development, including brand building, with some assurance of future availability of supply.

Empire Foods strongly supports the adoption of the five year temporary suspension of the provisions of Section 6.25 (b) (1).

Thank you.

Very truly yours,

Leonard G. Epstein



<mflmco@yahoo.com>@in
ter2@FASNJAU
10/24/2007 12:24 PM

To Ronald Lord/Fas@Fas
cc
bcc
Subject Proposed Rule for Import Licensing Program

Dear Mr. Lord:

In regard to the Proposed Rule for Import Licensing Program (7 CFR Part 6) which would suspend the historical license reduction provisions for a period of 5 years beginning with quota year 2012, Flemco Trading Company is in full support of this proposed rule. This ruling, in particular, would affect our historical EU - Swiss/Emmental license which we have been unable to utilize due to market conditions. Therefore, we strongly support this Proposed Rule.

Thank you for your attention to our comments.

Marilyn J. Fletcher
Flemco Trading Co.
38 Avalon Drive
Middlebury, CT 06762
Control #08375

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"r & j warsack"
<warsack@embarqmail.com>

10/29/2007 01:43 PM


To "ron lord" <Ronald.Lord@usda.gov>

cc "jorge martinez" <Jorge.Martinez@fas.usda.gov>

bcc

Subject RESPONSE TO FEDERAL REGISTER NOTICE

History:

 This message has been replied to.



fed reg reply to lord.doc

By E-mail (Ronald.Lord(usda.gov))

Mr. Ronald Lord
Branch Chief, Sugar and Dairy Branch
Import and Trade Support Programs Division
Foreign Agricultural Service
Room 5531-S
STOP 1021
1400 Independence Avenue, S.W.
Washington, D.C. 20250

RE: Comments to Proposed Rule (72 Fed.Reg. 56677) published October 4, 2007

Dear Mr. Lord:

I read with interest the first eight responses that you received. Three entities responded with support for the proposal but gave no reasons. The other five entities gave basically the same reason—market conditions. It appears the verbiage was identical in these five responses and obviously written by the same person or legal representative.

As a licensee and former Licensing Authority, maybe I can give you some insight as to why I feel that this provision should not be rescinded **at the present time.**

If you go back and study the original Regulation, historical licenses were set up for importers that had a history of importing during a base representative period. After a few years into the original Regulation, it was found that new entrants wanted to import dairy products, but had no base. Nonhistorical licenses were set up to accommodate this new group of importers. One of the major problems that was never addressed in years past was how to systematically increase nonhistorical license size. The current regulation was the first attempt to increase the size of nonhistorical licenses and restore some equity in the system for small business licensees, and the provisions listed under 6.25 **is working and should be left alone.** The provision for the transfer of unused historical licenses to the nonhistorical pool occurred during the time that I was the Licensing Authority, and it was deemed to be a fair proposal because it was observed at that time that many of the historical licensees would not release unused portions of their TRQ at the end of the year. With the exception of the 85 percent rule, historical licensees have little incentive for abiding by the surrender rules as it only temporally affects the license size for any given article.

It was never the intention of the Department to allow one group of licensees to dominate (monopolize) the TRQ's for cheese and non-cheese, but unfortunately that is exactly what has occurred over the years. The Department's main objective concerning license use is to **maximize** use of all TRQ's to the fullest extent possible. By rescinding these provisions, the Department it is not living up to its mandate. If you still have a copy of "Changes in Licensing for Certain Dairy Imports" in the office, please look at page 21 and the other supporting pages that go along with this page. The so-called "concentration curve" is as relevant today as it was then—which group is dominate?

You mention in your Executive Order that the proposed rule is non-significant. Well, for historical licensees this would be true because it bestows a significant benefit to that license group. If you look at the second group, nonhistorical licensees, it significantly impacts on the future of TRQ availability. Therefore, the rule should be considered significant, or the change significant enough to warrant more than a cursory review of this problem.

You also state that under the Regulatory Flexibility Act the proposed rule will not impact small businesses. It most certainly does. The nonhistorical class of licensee is one of the smallest groups of small businesses that participate in this program and as such will suffer if the provisions are rescinded.

The Department also cites market conditions as a reason for rescinding these provisions for historical licensees and that by eliminating these two provisions will improve program administration. Since all of this is done by the computer, the effect on program administration is little if any. You make the case in support for historical licensees, but doesn't market conditions apply to **all classes of licenses, historical, nonhistorical and designated licenses, and aren't all affected equally?**

It is interesting to note that right after the new regulation was implemented, historical licensees lobbied against the change, citing market conditions, and an exception was made to shelf these provisions for about 5 years. It was finally fully implemented in 2004. Now the Department is being lobbied once again for another suspension of five years. **Market conditions are constantly changing**; therefore I don't see this as a valid argument to change the regulation by rescinding these two provisions for five years. I believe that in this case a shorter time period, such as one year, may be more appropriate and should be seriously considered.

What will rescinding these provisions do? It will once again give the dominate group of licensees a means to prevent a small part of their license from being transferred to the nonhistorical side when it is not being used. It will also prevent increases in TRQ availability for nonhistorical licensee from occurring in the future. The proposed rule addresses only one concern for historical licensees and ignores the consequences caused by rescinding these provisions for nonhistorical licensees. To be fair, the Department must examine the consequences that result from trying to fix a problem.

I would recommend leaving the provisions as is, and consider a total rule change so all issues related to both historical and nonhistorical licensees can be addressed.

If you must rescind these provisions, then the following should be implemented at the same time to offset the loss of TRQ availability that would have occurred for nonhistorical licensees in the future.

Since historical licensees indicate market conditions are affecting the availability of cheese and cheese products for the next five years, then it appears to me that an excess of license TRQ exists for historical licensees. If such an excess exists, I don't see any real need for historical licensees to participate in the lottery for nonhistorical licenses. Therefore, as long as (b)(i) and (b)(ii) are rescinded for historical licensees, then historical licensees should be barred from participation in the lottery for nonhistorical

licenses for the same time frame in much the same way as 6.23(c)(6) applies to designated licenses. This would level the playing field for both classes of licensees.

I also feel that the large cost burden associated with small nonhistorical licenses as indicated in my earlier memo to you should be considered as part of this package.

Please consider my comments before a decision is made, and if you have any questions, please feel free to contact me.



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Washington DC, October 30, 2007

Subject: Comments from the European Commission on proposed regulations for dairy import licensing program

Ref: Federal Register, Proposed Rules, vol.72, N.192 of Thursday, October 4, 2007

Summary

Since the non use of some of the licences is likely due to changes in cheese production and consumption, the European Commission can understand the USDA proposal to not reduce the licence amounts for the licensees concerned. On the other hand, the proposal may result in those licences continuing not being fully used in the years to come, or worse even, the non used quantities may increase if the trends on cheese consumption and production keep declining. The European Commission would therefore kindly suggest that USDA adjusts the quota quantities of the different cheese groups (types) while maintaining the total quota quantity unchanged.

1- Trade data analysis

In relation to the proposed regulations, the European Commission services extracted trade data on EU exports of cheese to the US and compared them with the different sub-quotas. The table attached shows the exports of EU cheese to the US for 2005 and 2006 compared to the quotas available broken down by group of cheeses.

As indicated in the table, these figures do not include the quantities of the "preferred importers" quotas which are always used at 100% and which therefore do not need any adjustment. The table also reflects the extent to which the quotas have been used in relation to the 2006 exports.

While the 'preferred importers quotas' have always been used at 100%, some underuse is noticeable for other European cheese quotas in the US (historical and non historical). More specifically, most of the sub-quotas are largely exceeded except groups 20, 22 and especially 25 where an important underuse is noticed.

2- European Commission's suggested arrangement for cheese quotas in the US

From the European Commission's point of view, the following combination of measures would be highly appreciated:

- the quota for group 25 (historical and non-historical) would be decreased from 16 476 t to 8 000 t, and
- the 8 476 t of difference would be spread over the quotas 16, 17, 18 and 21 in proportion to their overuse in 2005 and 2006.

Such a move would generate important benefits:

- it would maximise quota use (general objective aimed at by both Parties, in conformity with WTO provisions on quotas);
- the problem where import licences are not entirely used would be solved, since it would lead to US licensees obtaining licence amounts for cheeses for which the demand is more important or increasing.

END

Appendix: EU 25 Cheese exports to the USA compared to quotas available



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

EU25 Cheese Exports to USA compared to Quotas available

(exports under preferred importers quota EXCLUDED)

Produced: 25/10/2007
DECLARANT(C): EU-25
PARTNER(C): USA
FLOW(C): Export
STAT_REGIME(C): Total Trade
INDICATORS(C): QUANTITY_TON

		EU25 Exports minus Pref. Imp. Quotas		EU Cheese Quota into US (not incl. Pref. Imp. Quota)	Total Exports / Quota (%)	Overshoot or underuse, compared to 2006 exports
		2005	2006			
16 + 23	NSPF (other cheese)	58,960	59,014	27,822	212%	+ 31,200
17	Blue Cheeses	4,609	5,432	2,479	219%	+ 3,000
	040640					
18	Cheddar	403	766	263	291%	+ 500
	04069021					
20	Edam & Gouda	5,071	5,600	5,289	106%	+ 300
	04069023					
	04069078					
21	Italian Type	10,682	11,299	3,382	334%	+ 7,900
	04069061					
	04069069					
	04069073					
	04069075					
22	Swiss Processed	7,601	5,856	5,152	114%	+ 700
	040630					
25	Swiss Cheese	8,129	7,088	16,476	43%	- 9,400
	04069013					
	04069037					
TOTAL		95,455	95,054	60,863		



<worldcheese178@yahoo.com>
@inter2@FASNJAU
10/31/2007 12:59 PM

To Ronald Lord/Fas@Fas
cc
bcc

Subject Proposed Rule for Historical License Reduction

Dear Mr. Lord:

In reference to the proposed rule to suspend the historical license reduction provision for the dairy import licensing program for a period of 5 years, World Cheese Co., Inc. is strongly in agreement with this proposal. Under the prior ruling, World Cheese Co. may lose our EU - Swiss license and our Argentine - Edam & Gouda license because we have been unable to import products utilizing these licenses because of current market conditions. We strongly recommend that this ruling be adopted. We also strongly urge that licenses that would be reduced for the 3 to 5 year period from 2003 through 2007 not be lost.

We hope that you give due consideration to our comments and that they help to aid in the passage of this proposal and the suspension of license reduction for the upcoming year.

Thank you for your consideration.

Sincerely,
Meyer Thurm
World Cheese Co., Inc.
178 28th St.
Brooklyn, NY 11232

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**M.H.ROGOFF CO.
24812 ALBERT LA.
BEACHWOOD, OHIO 44122**

Mr. Ronald Lord, Branch Chief,
Sugar and Dairy Branch,
Import and Trade Program Support Division,
Foreign Agricultural Service
1400 Independence Ave., SW
Room 5531-S, STOP 1021
Washington, DC 20250

Dear Mr. Lord:

Objection to Proposed Rule (72 Federal Register Vol. 72 No 192, Thursday October 4, 2007)

The above notice in the Federal Register invites public comments to the proposed revision of section 6.25 of the Dairy Tariff-Rate Import Quota Licensing Regulation in effect since October 9, 1996. As the owner of M. H. Rogoff Co. and a non-historical licensee, I **strongly oppose this proposed revision.**

The suspension of the historical license reduction provision of the regulation is just another example of USDA's attempt to favor historical licensees and to limit new companies and non-historical licensee's access to dairy import licenses.

In 2004 my company was one of 13 non-historical dairy importers who were discriminated against by USDA. In the fall of 2002 we had all applied for reallocated cheese import licenses, paying the required fee and these were then issued to us by the Licensing Authority of the Dairy Import License Program. We used these importations to apply for cheese as well as non-cheese import licenses for 2004 in accordance with Sections 6.23 & 6.24 of the regulation. However, in the spring of 2004 the Licensing Authority at that time, Mr. Michael Hankin, changed the department's and his predecessor's interpretation of the regulation retroactively and without notifying the dairy import trade, and would not allow the reallocated licenses to qualify for 2004 cheese import licenses. Consequently no import licenses were issued to my company in 2004. Licenses for 2005 were issued based on import of non licensed cheese. It is a known fact that Mr. Hankin, in the fall of 2003, expressed his misgivings for new, non-historical importers.

The non-historical licensees will again be treated unfairly, in the event that the Licensing Authority decides to implement the proposed suspension. If a historical licensee cannot utilize the issued licenses, then it is only natural that they be made available to other licensees, who may have another and better chance to source products.

According to section 6.23 © a historical licensee must import at least 85% of the balance after possible surrender. Since the surrender date is October 1 of any given year, this means that large quantities of licenses are not available for use until the latter part of October of the quota year. USDA is mandated to seek the utmost utilization of the TRO quotas, and this is not done by the suspension of section 6.25 (b) (1) (I) & (ii) of the regulation. If the historical licensees continuously cannot use the licenses issued to them, then they should loose them.

I trust that you will seriously consider the above comments before making your decision in favor of one specific group of licensees.

Respectfully submitted,

M. H. Rogoff Company

Mort Rogoff

A handwritten signature in black ink that reads 'Mort Rogoff'. The signature is written in a cursive, somewhat stylized script.

Cc: Senator Sherrod Brown



<transworldfoods@yahoo.com>
@inter2@FASNJAU
11/01/2007 04:37 PM

To Ronald Lord/Fas@Fas
cc
bcc

Subject Comments on Proposed Rule

Dear Mr. Lord:

I am in agreement with the Proposed Rule to suspend the historical reduction provision to the dairy import licensing program, 7 CFR part 6, for a period of 5 years. However, I feel that this suspension should apply to any licenses that would be reduced by the 3 out of 5 prior quota years pertaining to the year ended 2007.

I sincerely hope that you take the above comments into consideration in determining the adoption of this rule.

Thank you for allowing our comments regarding this proposal.

Elchanan Frankenthal
Trans World Foods, Ltd.
Control #21430
9508 Winona Ave.
Schiller Park, IL 60176

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WIFE Women Involved In Farm Economics

November 2, 2007

Mr. Ronald Lord, Branch Chief
 Sugar and Dairy Branch
 Import and Trade Support Programs Division
 Foreign Agricultural Service
 Room 5531-S
 STOP 1021
 1400 Independence Avenue, S.W.
 Washington, DC 20250

Via Fax

Re: Comments to Proposed Rule (72 Fed. Reg. 56677) published October 4, 2007

Dear Mr. Lord:

On behalf of Women Involved In Farm Economics (Alaska, California and New York State Chapters) and as members of the American Trade Coalition, we are writing to urge you to rescind the proposed rule permanently. Attached you will find the American Trade Coalition's September 2006 memorandum ("USDA Dairy Import Regulation Fosters Unfair Trade Practices") outlining the facts upon which we base our recommendation to you.

Thanking you for your consideration of our views, we remain

Sincerely,

Ruth Laribee
 Trade Chairman
 New York WIFE
 7639 East Road
 Lowville, NY 13367

Ilona Riepley
 President
 Alaska WIFE
 7700 Chaimi Loop
 Anchorage, AK 99504

Jill Pedrozo
 California WIFE
 7713 County Road #24
 Orland, CA 95963



Memorandum

USDA Dairy Import Regulation Fosters Unfair Trade Practices

September, 2006

General Statement:

The U.S. Department of Agriculture's ("USDA") Dairy Tariff-Rate Import Quota Licensing Regulation, Sections 6.25(b) (1) (i) and (b) (1) (ii), facilitates unfair trade practices.¹ Promulgated in 1996, and suspended for several years, the Section does not take into account the trade distorting impact of new global business relationships (e.g., mergers, acquisitions, etc.) and recent European Union monopolistic dairy trade initiatives that favor large monopolistic foreign operators.

Summary of Sections 6.25(b) (1) (i) and (b) (1) (ii):

USDA, under Section 6.25(b), has the ability to permanently reduce the amount of cheese that historical licensees can import if they fail to import more than half of their allocated quota over a given period of time.² Prior to the Uruguay Round, historical license holders were allowed to return the unused portion of their licenses without penalty. USDA's "use it or lose it" rules ignore market conditions, i.e., weather, currency exchange rate fluctuations, and foreign corporate mergers that can utilize transfer-pricing schemes to minimize market competition.

USDA implemented section 6.25(b) against the advice of key Members of Congress, i.e., U.S. Senators Herb Kohl, Pat Roberts, Frank Lautenberg, and others. These officials foresaw that the implementation of this Section could facilitate unfair trade practices. Specifically, U.S. Senator Herb Kohl wrote to USDA on March 18, 1996 that, "I am concerned that these provisions will result in an increase of import market share being controlled by foreign suppliers, some of which operate as subsidiaries of foreign export monopolies. I fear that more import power in the hands of fewer market participants will have anti-competitive results."³

Echoing Congressional concerns, the nation's largest dairy federation urged that import licensing be administered in a "manner that will encourage value-added dairy product imports as opposed to commodity-type dairy product imports."⁴ USDA's implementation of Section 6.25(b) ignored Congressional and industry concerns consequently increasing the opportunities for unfair trade practices.

Justification for Rescission of Section 6. 25(b):

John M. Nannes, Deputy Assistant Attorney General of the Antitrust Division of The U.S. Department of Justice ("Justice") on September 28, 2000, in testimony to the Subcommittee on Antitrust, Business Rights, and Competition, affirmed Justice's commitment "to antitrust enforcement in the agricultural marketplace" in order to address farmers concerns "about the level of competitiveness in agriculture markets."⁵ Nannes stated that Justice shares farmers' concerns "about the potential impact of mergers and acquisitions that could result in a

Page 2

¹ Dairy Tariff-Rate Import Quota Licensing Regulation, Federal Register, 7 CFR, Part 6, October 9, 1996.

² Permanent loss of license occurs if a historical licensee surrenders more than 50% in three consecutive quota years or more than 50% in three out of five years.

³ U.S. Senator Herb Kohl, letter of March 18, 1996 to Mr. Richard Warsack, Dairy Import Quota Manager, FAS, USDA.

⁴ National Milk Producers Federation, Comments to USDA, March 10, 1995, "Changes to the U.S. Tariff-Rate Quota Import Licensing Regulation on Dairy Imports."

⁵ Statement of John M. Nannes, Dep. Assistant Attorney General, Antitrust Division, on "Agriculture Concentration, September 28, 2000, before the Subcommittee on Antitrust, Business Rights, and Competition, Senate Judiciary Comm.

The American Trade Coalition

~The Congressional Cheese Guild - The Congressional Cheese Gazette~
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Memorandum: USDA Dairy Import Regulation Fosters Unfair Trade Practices
September, 2006

"substantial increase in concentration in a market that is already highly concentrated," such as the U.S. dairy industry. An industry valued at \$13.7 billion in 2002.

Mergers often limit the number of sellers. Allowing a few to possibly manipulate prices, supplies, terms of delivery, allocation of customers, and to engage in transfer-pricing schemes. These practices can, according to Nannes' testimony, subvert "the operation of free markets" and "can cause serious economic harm." Nannes avowed that Justice would investigate situations that "include strategic alliances between agribusiness companies, [and] joint ventures among suppliers . . ."

A situation in the U.S. dairy import business, directly the consequence of Section 6.25(b), requires an immediate remedy. U.S. dairy import licenses are, increasingly, controlled by a few, large preferred licensees that are designated by a foreign country to export their dairy products to the U.S.⁶ As a result, dairy import concentration is occurring at the expense of "historical licensees."⁷ Historical licensees tend to be smaller, American-owned firms engaged in importing value-added specialty cheeses. They restrain imports when domestic market conditions (e.g., excess cheese production, reduced demand, etc.) are unfavorable. This may not be the case with some preferred licensees whose primary allegiance is to the foreign country and shipper on whom they rely for licenses. In some cases, the principal concern of these shippers is to move commodity-type dairy products out their countries, thereby depressing domestic dairy prices.⁸

Section 6.25(b) Fosters Anti-Competitive Trade:

1. It favors foreign company owned subsidiaries over American business interests. The European Union (EU) announced in its *Official Journal of the European Union* (9/16/05), Commission Regulation (EC) No 1513/2005, pages 241-245 that, "in order to prevent a loss of market share for the Community and to maximize the value of certain quotas, . . . restrict access to those quotas to operations whose designated importer is a subsidiary." Essentially, the EU has declared that all preferred licensees must be subsidiaries of EU companies as of 2007. The European Union directive favors EU-owned U.S. importers over independent American companies because EU shippers will provide product to their own subsidiaries before supplying historical licensees that are not EU subsidiaries. Section 6.25 will allow the EU to gain from its monopolistic edict because as American historical licensees lose quota share, preferred EU-owned importers will benefit with additional tonnage.
2. It contravenes the WTO's *Agreement on Import Licensing Procedures, Article 3, Provision 5(j), Non-Automatic Import Licensing*. Specifically, the Provision states, "in allocating licenses, the Member should consider the import performance of the applicant (such as American historical importers)." And, "In cases where licenses have not been fully utilized, the Member shall examine the reasons for this and take these reasons into consideration when allocating new licenses." USDA has failed to meet the spirit and letter of the noted WTO Article by its continued enforcement of the offending Section.

Conclusion:

Section 6.25(b) is archaic and should be rescinded.

⁶ Preferred Licensees are importers designated by foreign governments to receive licenses post Tokyo and Uruguay Rounds.

⁷ Historical licensees received licenses based on historical importation of product prior to quotas being introduced in 1953

⁸ Preferred licensees are exempt from Section 6.25(b) because they cannot lose licenses for non-use.

Ron Lord
Chief, Sugar and **Dairy** Branch
Import and Trade Support Programs Division
Foreign Agricultural Service
Room 5531-S, STOP 1021
1400 Independence Avenue, SW.
Washington, DC 20250

November 3, 2007

Re: Proposed Rule Change – Revision of Historical License Reduction Provisions

Quotas on the import of Dairy Products were first introduced as one of the pedestals upon which the support programs for domestic dairy farmers are upheld. The reasoning is that it would do no good to raise the price levels of domestically produced dairy products, if these augmented levels could be easily undermined by the unchecked flow of dairy imports.

Once the decision had been made to impose quotas on the import of dairy products, the next question to be answered was how to do it. That is, by what mechanism would quota be allocated, and to whom.

The first allocation of import license was a relatively straightforward and equitable task. At the time of the first allocation, there were no artificial barriers to the import of dairy products, and all the players then participating were operating in a free market. As a consequence, the quota was allocated to those firms that had actually imported dairy products. The licenses by which these quotas were allocated were “historical.” That is, if the firm who held the historical license adhered to the regulations by which the quotas were administered, that firm could renew said license indefinitely.

As time passed, and more (tariff rate) quotas came into existence, the validity of granting licenses on a historical basis became more and more debatable. New competitors were barred from entry into the import market under the old quota system, and effectively barred on an economic basis under the later tariff-rate quota system. Existing importers were insulated from fresh competitive pressures. Because of this, the rationale for giving additional license to an already privileged set of firms, namely historical importers, grew less defensible.

In order to address this concern, supplementary licenses were developed. Supplementary licenses are allocated by lottery. An applicant has no surety of receiving any given supplementary license, and even less of receiving it again in the subsequent year. Any new entrant to the dairy import industry has little hope of constructing a sustainable business plan based on the receipt of supplementary licenses, and has little to no incentive for investing in plant, equipment or employees. Nonetheless, new dairy import firms do enter the market and must compete for supplementary licenses with entities and individuals that have little or nothing to do with the dairy import business, entities and individuals who spend nothing on infrastructure or employment, and individuals as

tangential to the industry as former employees, relatives, in-laws, friends, medical professionals, consultants and spouses.

The allocation of licenses on a historical basis is not without its faults. However, the typical historical license holder has an office; has a warehouse; holds inventory; pays employees; actively engages in sales and marketing; and, most importantly, actually takes possession of the product it imports. In order to do all of these things, an importer must invest. In order to take on the risk of investment, an importer needs to know that it can count on receiving a given license on an ongoing business.

The argument might be made that no importer should be entitled to a license indefinitely. Theoretically this argument seems sound, but on a practical basis it is not so. Because the import market for quota cheese is fixed, an importer cannot change its import volume freely. When sales conditions are good, an importer cannot expand shipments beyond a fixed amount. When conditions are bad, an importer cannot expand shipments beyond a return to their investment in their business. In addition, the importer cannot freely move to more useful import categories. The importer cannot abandon import categories that are yielding a low return for fear that they will have lost their license when the market comes back. Years ago, the economic prospects of dairy importers were harmed by the imposition of quotas. Any subsequent reduction of quotas would only cause further harm to a handicapped business sector.

At this point, we would like to note that C.E. Zuercher & Co., Inc. is a relative latecomer to the import market, and that we have economic interests quite divergent from the importers who hold the lion's share of historical quota. If and when the time comes to revamp the mechanisms by which tariff-rate import licenses are allocated, we will weigh in with great relish. In the mean time, given the existing system of quota allocation, we must state that we are against any regulations, existing or contemplated, that lead to the reduction of historical import licenses. Accordingly, we urge the USDA to implement the proposed rule suspending the historical license reduction provisions of the **dairy** import licensing program, 7 CFR part 6, for a period of 5 years.

C.E. ZUERCHER & CO., INC.

Joseph C. Zuercher Jr.
President

November 4, 2007

Mr. Ronald Lord
Branch Chief, Sugar and Dairy Branch
Import and Trade Support Programs Division
Foreign Agricultural Service
Room 5531-S
STOP 1021
1400 Independence Avenue, S.W.
Washington, DC 20250

RE: Comments to Proposed Rule (72 Fed. Reg. 56677) published October 4, 2007

Dear Mr. Lord,

I am responding to the Department's request for comments concerning the proposed five-year suspension of the historical license reduction provisions of the Dairy Tariff-Rate Quota Licensing regulation.

The regulations were written to level the playing field for companies like ourselves that were not in business at the inception of the regulations or fortunate enough to have obtained large historical licenses. Other than buying companies to obtain historical licenses section 6.25(b) (1) provides an equitable means to redistribute license poundage on a fair basis. The suspension currently on the table is a roadblock to legitimate businesses that are growing and gaining market share. There are always good and bad times in business. Now many world conditions, like currency fluctuations, product availability, prevailing high prices and the inability of exporting countries to keep up with demand contribute to a very difficult import climate. Efforts to now change 6.25 (b) (1) protect weak companies and reward those not able to compete. Ultimately this weakens our national economy. We encourage maintaining section 6.25 (b) (1) as is. We feel it very unfair to suspend the rule just when it is designed to do its intended work.

Thank you for considering our view on this matter. It is of the highest importance to the Peterson Company and our entire industry.

Very truly yours,
George Lyden
Chairman of the Board

PETERSON  N

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November 5, 2007

Mr. Ronald Lord
Branch Chief, Sugar and Dairy Branch
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Foreign Agricultural Service
Room 5531-S
STOP 1021
1400 Independence Avenue, S.W.
Washington, DC 20250

Re: Comments to proposed rule published Oct 4, 2007

Dear Mr. Lord:

Thank you for the opportunity to comment on the proposed rule which would effectively suspend the so called "surrender penalty" described in section 6.25(b)(1) of the import regulations for five years. We agree with, and fully support, the Cheese Importers Association of America's position as stated in their recent submissions to the Department. Further, we wish to point out a few issues from our company's perspective.

We are strongly in favor of the adoption of the proposed rule's five year suspension of the provision of section 6.25 (b) (1). We applaud the USDA for its recognition that the "surrender penalty" was not added during the last re-write of the regulations to penalize importers who are using their best efforts to fulfill their historical TRQ allocations.

Having been personally involved in the business of importing cheese for more than 20 years, I can honestly say that the recent convergence of several factors makes the current market environment truly unique and unprecedented. The combination of a weak USD with the surging milk prices worldwide, as well as greatly reduced availability of dairy products from the majority of dairy exporting countries, creates extremely difficult market conditions for US importers of all dairy products. Our costs for some products that we import have nearly doubled since the start of 2007, and others are simply not available at any price.

The Department of Agriculture rightly points out the administrative burden created by the surrender penalty has affected the USDA's ability to allocate all of the TRQ's in a timely manner. The continued reduction of the historical license amounts will have the effect of creating a larger quota share in certain Appendix 2 categories than can likely be allocated

to applicants. A previous comment suggests that this is not an issue, but the writer does not take into account our obligations under previously negotiated trade agreements.

Since 1999, total Appendix 2 TRQs have increased nearly 5 million kilograms, or more than 34%, yet the fill rates for these TRQs hit an all-time low last year. This would hardly indicate that small businesses are being disadvantaged.

The continued reduction in Appendix 1 TRQ's will lead to less new product introductions and long term brand development, and will promote quota utilization by commodity-type products that sell only when pricing is advantageous when compared with the US domestic dairy market. This is quite contrary to the intent of the import regulations, which are written to foster orderly marketing while at the same time fulfilling our country's trade obligations. There are many examples which show that the development of high-end product lines from overseas have resulted in the successful introduction of domestically produced specialty cheese. These products help increase dairy consumption and serve to strengthen our domestic producers.

Any reference to "historical licensees" as a group of similar companies is an oversimplified description of these companies. Many historical license holders also rely on their non-historical allocations in order to run their businesses. To exclude these companies from the lottery system by virtue of their historical holdings would be discriminatory, especially as some historical license holders are indeed the small businesses that Appendix 2 is written to benefit, and would effectively cap the volumes these firms can import.

In summation, we encourage the Department to promulgate the proposed regulation as written. We further suggest that implementation of this five year 'hiatus' should be followed by commencement of a formal rule making process leading to a revision of the Import Regulation, irregardless of the success or failure of the ongoing Doha Round. That process will be the appropriate forum within which an open and in-depth debate regarding not only 6.25b but other aspects of the long-standing dairy import quota system can be reviewed in a careful manner by all interested parties.

Thank you for your kind consideration.

Very truly yours,
JANA FOODS LLC
JANA DAIRY IMPORTS LLC

Dan Lynch
Vice President

November 5, 2007

Mr. Ron Lord
Branch Chief, Sugar and Dairy Branch
Import and Trade Support Programs Division
Room 5531-S, STOP 1021
Foreign Agricultural Service
1400 Independence Avenue, SW.
Washington, DC 20250

Re: Proposed Rule Regarding the Dairy Import Licensing Program

Dear Mr. Lord:

This is in response to the notice of request for public comments concerning a proposal to suspend the historical license reduction provisions of the dairy import licensing program, which appeared in the Federal Register on October 4, 2007 (Volume 72, Number 192). The National Milk Producers Federation (NMPF) appreciates the opportunity to present its views on this proposed change.

NMPF represents America's dairy industry. That industry is the second largest agricultural commodity sector in the United States, measured by farm cash receipts. There are 70,000 dairy producers in the U.S. farming in every state, from Vermont to California, Oregon to Florida plus Alaska and Hawaii.

The proposed rule would revise the Dairy Tariff-Rate Import Quota Licensing regulation (7 CFR, part 6), which has been in effect since October 9, 1996, by suspending provisions that provide for the reduction of historical licenses based on non-use in prior years. This proposed change would suspend the license reduction provisions for five years, in effect reinstating until 2012 a previous five-year suspension of these same provisions that had expired in 2004. Since 2004, historical license holders have had an incentive to avoid non-use of half of their licenses for three straight years and for three out of any five straight years.

NMPF opposes this proposed rule change. The suspension of the historical license reduction provisions of the dairy import licensing program for a second five-year period would undermine the original intent of the regulation, which is to provide a strong incentive for companies with historical licenses to utilize their licenses. If the proposed rule is implemented, and the permanent license reduction provisions are suspended, historical license holders will be under less pressure to fill their licenses and more will be reallocated each year in connection with the annual temporary license reallocation process.

The perceived short-term gains would be more than offset by the long-term harm done by maintaining a system in which historical license-holders are essentially

guaranteed rights to licenses that they may, in large part, not use. The justifications offered by the Department in support of the proposal are insufficient, in our view, to merit renewal of the suspension of the historical license use requirement in the original regulation. Moreover, we do not believe that the temporarily reallocated licenses are limited to the country named in the license itself.

The National Milk Producers Federation thanks the Department for taking these views into account and urges the Department to reject this proposed rule change.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Castaneda', with a stylized flourish at the end.

Jaime Castaneda
Senior Vice President, Government Relations and Trade



**CHEESE IMPORTERS
ASSOCIATION OF AMERICA**

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November 5, 2007

By E-mail (Ronald.Lord@usda.gov)

Mr. Ronald Lord
Branch Chief, Sugar and Dairy Branch
Import and Trade Support Programs Division
Foreign Agricultural Service
Room 5531-S
STOP 1021
1400 Independence Avenue, S.W.
Washington, DC 20250

Re: Comments to Proposed Rule (72
Fed. Reg. 56677) published October 4, 2007

Dear Mr. Lord:

This statement is submitted by the Cheese Importers Association of America, Inc. in response to the above-referenced proposed rule ("Proposed Rule") issued by the Foreign Agricultural Service ("FAS") of the United States Department of Agriculture ("USDA" or the "Department"). The Proposed Rule invites interested persons to submit written comments on the Department's proposal to temporarily suspend for five years the Dairy Tariff-Rate Quota Licensing regulation's requirement to permanently reduce certain historical licenses based on surrenders of unused amounts.

The Cheese Importers Association of America, Inc. (the "Association") is a non-profit trade association formed more than sixty years ago whose membership comprises the vast majority of the firms engaged in the business of importing, selling, promoting and distributing cheese, cheese products and butter in the United States. Our membership includes holders of historical import licenses as well as many firms that do not hold historical import licenses. This letter expresses the Association's view, on behalf of its members, that FAS should temporarily suspend section 6.25(b)(1) of Import Regulation 1, Revision 8 (the "Import Regulations"), for a period of five years to improve program administration and to take into account adverse changes in the market for cheese and other dairy products subject to import licensing requirements.

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To appreciate our members' concerns regarding this severe penalty, it is necessary to understand the interplay between two provisions of the Import Regulations, namely 7 CFR §6.23(c) and 7 CFR §6.25(b)(1), which were adopted on October 9, 1996. First, under 7 CFR §6.23(c) an applicant will not be eligible to receive a dairy import license for an article of cheese from a particular country which it received in the previous year if the applicant failed to enter at least 85% of the amount of that article permitted under the license. For these purposes, the "amount of an article permitted under the license" is defined, in applicable part, as the original license amount, less any amount of that license which is surrendered. Thus, in order to avoid loss of the dairy import license (permanently in the case of historical licenses) for failure to satisfy the 85% use test, it is incumbent upon licensees to timely surrender license amounts which they do not believe can be utilized. Yet, while under regulatory pressure to surrender historical licenses, and only historical licensees, face a potential penalty for surrendering dairy import licenses under 7 CFR §6.25(b)(1), which provides that the amount of a historical license will be reduced if a licensee surrenders more than 50% of a historical license in each of three consecutive years or in any three out of five consecutive years. Specifically, section 6.25(b)(1)(i) provides that if a licensee surrenders more than 50% of a historical license in each of the three prior years, that license will be permanently reduced to the average amount entered during those three years. Section 6.25(b)(1)(ii) provides that if a licensee surrenders more than 50% of a historical license in at least three out of five prior years, that license will be permanently reduced to the average amount entered during those five years.

In 1998, FAS, under a delegation of authority from the Secretary of Agriculture, determined under 7 CFR §6.25(b)(2), to suspend the historical license reduction provisions of 7 CFR §6.25(b)(1)(i) and §6.25(b)(1)(ii) for five years thereby delaying implementation until 2004. The principal rationale for this suspension was to provide adequate time for historical licenses of cheeses from the European Union ("EU") to adjust to changing market conditions, to find alternative suppliers of cheese in the EU, and to develop new markets to enable importers to fully utilize their historical licenses. (63 Fed. Reg. 13481). However, in the intervening years market conditions have not improved and because of EU expansion to 27 member countries almost 60% of the cheese quotas subject to licensing requirements are now allocated to the EU.

Since the implementation of the historical license reduction provisions of section 6.25(b)(1)(i) in 2004 and section 6.25(b)(1)(ii) in 2006, market conditions have generally deteriorated. Import volumes of cheeses subject to licensing requirements declined in both 2005 and 2006 and are continuing this downward trend in 2007. These market conditions have caused the amount of licenses surrendered by importers to actually increase every year. In 2007, the total amount of tariff-rate quota ("TRQ") shares for cheese surrendered totaled 21,441,352 kilograms, a 34% increase over 2006 when 16,001,977 kilograms of cheese TRQs were surrendered. The amount surrendered in 2006 was, in turn, a 41% increase over 2005 when 11,375,552 kilograms were surrendered. Similarly, the amount surrendered in 2005 represented a 40% increase over 2004

Mr. Ronald Lord
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when the amount of cheese TRQs surrendered was only 8,081,827 kilograms. The percentage of the total U.S. dairy TRQs for cheese which importers were forced to surrender has grown from 6.0% in 2004, to 8.4% in 2005, to 11.8% in 2006, and to 15.8% in 2007.

It is important to bear in mind that section 6.25(b)(1) was designed to trigger historical license reductions due to an importer's lack of involvement in or commitment to the importing business. However, as FAS is keenly aware, in the vast majority of cases over the past several years the decision to surrender historical license amounts was based solely on prevailing market conditions, specifically, unavailability of the product, changes in consumer preferences, or that export prices were too high to be competitive in the U.S. market. The decision to surrender a portion of one's import license, as FAS has come to recognize, is not due to an importer's lack of involvement in or commitment to the business but rather is dictated by market and other economic forces which are beyond the licenseholder's ability to control. Moreover, the Department's own records demonstrate that shifting historical import licenses to non-historical import licenses has not resulted in any increase of TRQ fill rates. Under these circumstances, there is no compelling public policy purpose served by continued implementation of the provisions of §6.25(b)(1) and §6.25(b)(1)(ii) during the proposed suspension period.

The adverse market conditions which dairy product importers have been struggling with are not temporary obstacles, rather they are the long term consequence of well documented major economic and production trends which will continue for the foreseeable future. Most notably, there has been a sharp rise in world dairy prices due to strong growth in world demand while at the same time production growth has been constrained in the major exporting countries. This has been especially true in the 27 member European Union where the existence of milk production quotas has exacerbated the supply problem and driven up the price of dairy products available for export. During this same time period, our competitive position has been further weakened by the fact that the U.S. dollar has continued to drop precipitously in value to record lows against the currencies of our major trading partners. In the case of the EU, the U.S. dollar slid last week to a record low against the Euro of less than .70 of a Euro.

The Association believes that the five year suspension will improve program administration. In this context, it is likely that, without a suspension and with the substantial transfer of TRQ volumes from historical licenses to non-historical lottery licenses under section 6.25(b)(1) in the next few years, FAS will have great difficulty in placing all the lottery licenses with eligible importers. This could have the perverse effect of further reducing the level of imports and would be inconsistent with our nation's commitment to maximize the use of TRQ licenses under trade agreements. Furthermore, even if the amount available for non-historical lottery licenses is fully allocated by FAS, there is absolutely no reason to expect that these non-historical license holders will be able to substantially utilize their quota shares given the current and projected market and supply conditions which caused the transfer from historical licenses to non-historical licenses in the first place.

Mr. Ronald Lord
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The Association also supports the Department's statement expressed in the Proposed Rule that historical licenses provide for orderly marketing of a wide variety of cheeses and permit dairy importers to invest in market development, including building brands, with some assurance of future availability of supply. Years of experience have demonstrated the distinct advantages of a TRQ licensing system which gives bona fide importers consistent access over a period of years to quota shares in quantities large enough to build a viable business. Such certainty of supply is absolutely necessary for efficient business operations, planning and investment which, in turn, fosters orderly marketing of dairy products throughout the quota year, brand and product development, and the formation of long term relationships with suppliers and customers alike.

For all these reasons, the Association strongly supports the adoption of the five year temporary suspension of the provisions of Section 6.25(b)(1).


The five year suspension period will give the Foreign Agricultural Service sufficient time to evaluate the changes in the market for our products, let the industry adjust to those changes, and provide the time needed to work with the importing community to develop a permanent regulatory correction of the historical license reduction provisions. This will, it is hoped, ensure that the penalty is implemented fairly and equitably.

Finally, as a technical matter, it is recommended that, in proposed new section 6.25(b)(1)(i), as set out in 72 Fed. Reg. 56678, "2012" be changed to "2013". Similarly, in proposed new section 6.25(b)(1)(ii), also set out in 72 Fed. Reg. 56678, "2014" should be changed to "2015". These changes will ensure that the suspension of the historical license reduction provisions is effective for the full five years intended by FAS.

Thank you for considering our views on this matter of the highest importance to the members of our Association.

Very truly yours,

CHEESE IMPORTERS ASSOCIATION
OF AMERICA, INC.

By: 
Richard H. Koby, General Counsel

BONITA IMPORT CO.

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November 5, 2007

Mr. Ron Lord, Branch Chief
SUGAR & DAIRY BRANCH
IMPORT & TRADE SUPPORT PROGRAMS DIVISION
FOREIGN AGRICULTURAL SERVICE
U.S. DEPARTMENT OF AGRICULTURE
Room 5531-S, STOP 1021
1400 Independence Avenue, SW
Washington, DC 20250

Dear Mr. Lord:

PROPOSED RULE TO SUSPEND PART OF SEC. 6.25 OF THE DAIRY IMPORT REGULATIONS.

Notice Vol. 72, No. 192 in the Federal Register dated October 4, 2007 invites comments to the proposed rule to suspend the historical licenses reduction provisions of the dairy import licensing program.

As the owner of BONITA IMPORT CO. and a non-historical licensee, ***I vigorously oppose the proposed suspension of the historical license reduction provisions of the dairy import licensing program.***

In November of 1957 I experienced the dairy import regulation for the first time. For half a century I have been an executive in various import companies affected by the regulation. Over time I have gained some valuable expertise by working with the dairy import programs on a daily basis. I have witnessed the Dairy import program grow from import licenses for Blue, Edam/Gouda, Cheddar and Italian Type Cheeses to the present regulation encompassing import licenses for nearly all type of cheeses with the exception of Sheep & Goat Milk Cheeses and Soft Ripened Cheeses.

Issuance of import licenses for the first 4 types of cheeses were based on actual imports in the early 1950's. The persons who qualified their companies for historical licenses are long gone. Their companies are now managed by third or fourth generations or their companies/dairy products divisions have been sold often several times at high prices. Qualifying importations took place at a time, when products were shipped in wooden boxes on bulk carriers, when containerized cargo was unheard of, when communications with suppliers were by telegrams or telephone calls placed through overseas operators and when foreign travel was by ocean liners, and air travel was in its infancy by prop planes with several stop to reach the destination.

The old historical licensees organized themselves early in The Cheese Importers Association of America (CIAA). It is interesting to observe that only approx. 14% of 511 total licensees in 2007 are members of CIAA. Their members are a mixture of old historical licensees and smaller importers with non-historical licenses and in some cases small quantities of historical licenses. Therefore they have opposing views of the dairy import regulation. CIAA has over the years successfully lobbied the department for the protection of the privileged status of the old historical licensees. In the past almost 6 decades the old historical importers have made enormous profits from this import license monopoly.

Access to import licenses was limited for new importers. It was not until the implementation of the present regulation on October 9, 1996 that automatic transfers of reduced historical license to non-historical licenses were enacted. Much to the detriment of the non-historical licensees the Secretary of Agriculture in 1998 published a notice in the Federal Register announcing a suspension for five years of the historical license reduction provisions of the dairy import licensing program. Now the old historical importers are pushing for yet another suspension, which is not warranted. The reason given for the suspension is market conditions. How can anyone in their right mind predict the market conditions for the next five years. A suspension should not be given for more than 1 year at a time.

Eight responses to the proposed suspension were published in the Federal Register as of 10/19/07. One letter came from a firm who is **not even** a dairy importer or licensee, and 5 companies sent their comments, which were completely identical to the last comma and period. One can only guess that the text was initiated by the same old historical importer or lobbyist.

If anything should be suspended, temporarily or permanently, it should be the requirements for TRQ import licenses for Gruyere Process Cheese, Swiss/Emmenthaler Cheese and Low Fat Cheeses. In 2006 only 64.41% of Gruyere Process, 73.43% of Swiss/Emmenthaler, and 12.85% of Low fat quota was used. For the first 3 quarters of 2007 the figures are: 45.16%, 54.69% and 15.33% respectively. Import Licenses for the 3 types of cheese were the last to be implemented in the late 1960's and early 1970's. The volumes imported today does not warrant import licenses for these types of cheeses. The advantage of suspending licensing for the 3 types is:

1. It will eliminate any need for suspension of the historical license reduction provisions, as the major reductions have occurred within these 3 cheese types.
2. It will reduce the program administration burden and costs
3. It will make importations easier and save the actual importers unnecessary costs.

USDA could always reintroduce licenses for one or more of the above types, in the unlikely event that imports should exceed the present quota quantities, and base such licenses on actual imports in the 20th century with a reasonable allocation to new non-historical importers.

If the final result is that the USDA adopts the proposed suspension of the historical license reduction provisions, then I would like to recommend that the annual license fee be changed from a flat fee per license to a fee per kg. At least this will restore some fairness to the non-historical licensees, and at the same time make the historical licensees pay for the privileges they have by not utilizing the licenses issued to them. Section 6.33 mandates the Licensing Authority to assess a fee, but does not specify whether this should be per license or per quantity. Therefore this adjustment can be done administratively.

In closing I repeat my strong objections to the implementation of the proposed suspension of the historical license reduction provisions, and I hope that the department will seriously consider the above recommendations as a fair and unbiased treatment of the non-historical licensees.

Sincerely

BONITA IMPORT CO>


Flemming Soderlund,
Owner.

CHEESE IMPORT LICENSE UTILIZATION

License Type	Total Quota in kg.	2002		2003		2004		2005		2006		9 months 2007	
		kg	%	kg	%	kg	%	kg	%	kg	%	kg	%
Blue Cheese	2,911,000	2,810,668	96.55%	2,877,907	98.86%	2,863,039	98.35%	2,834,604	97.38%	2,864,906	98.42%	1,773,117	60.91%
Cheddar Cheese	12,422,889	12,131,391	97.65%	12,260,270	98.69%	12,394,671	99.77%	12,257,290	98.67%	12,303,925	99.04%	9,555,033	76.91%
Edam/Gouda Cheese	6,816,402	6,651,201	97.58%	6,449,295	94.61%	6,562,896	96.28%	6,598,161	96.80%	6,707,356	98.40%	4,299,506	63.08%
Italian Type Cheese	13,481,064	13,388,906	99.32%	13,203,864	97.94%	13,319,208	98.80%	13,335,717	98.92%	13,351,162	99.04%	6,777,707	50.28%
American Type Cheese	3,522,556	3,479,454	98.78%	3,287,859	93.34%	3,402,462	96.59%	3,392,163	96.30%	3,064,927	87.01%	2,136,074	60.64%
Other Cheese NSPF Cheese	48,626,859	48,093,903	98.90%	46,409,604	95.44%	47,196,464	97.06%	46,767,911	96.18%	46,524,719	95.68%	30,789,826	63.32%
Gruyere Process Cheese	7,854,833	6,768,907	86.18%	6,433,923	81.91%	6,819,412	86.82%	6,286,238	80.03%	5,033,772	64.09%	3,547,525	45.16%
Swiss/Emmenthaler Cheese	34,475,276	28,537,309	82.78%	27,529,396	79.85%	29,317,672	85.04%	27,622,765	80.12%	25,313,698	73.43%	18,854,276	54.69%
Other Cheese Low Fat	5,474,907	3,531,895	64.51%	3,084,836	56.34%	3,525,008	64.38%	1,687,155	30.82%	703,404	12.85%	839,540	15.33%
TOTAL	135,585,786	125,393,634	92.48%	121,536,954	89.64%	125,400,832	92.49%	120,782,004	89.08%	115,867,869	85.46%	78,572,604	57.95%

under 85% usage
 under 75% usage
 under 65% usage
 under 35 usage
 under 25% usage



"Jens Bang Pedersen"
<jens@bang-soderlund.com
>

11/05/2007 04:51 PM

To Ronald.Lord@fas.usda.gov

cc jorge.martinez@usda.gov

bcc

Subject Comments to Proposed rule - Fed. Reg. Volume 72 NO. 192
- dated 10/4/07

Mr. Ron Lord, Branch Chief
Sugar and Dairy Branch
Import and Trade Support Program Division
Foreign Agriculture Service
U.S. Department of Agriculture
Room 5531-S Stop 1021
1400 Independence Avenue, SW
Washington, DC 20250

Dear Ron Lord,

This is in response to the request for comments to the proposed rule change of the dairy import regulations, as published in the Federal Register dated October 4th, 2007.

Historical license holders have an obligation to utilize the grand fathered licenses or adjustments will be made. This was addressed in the regulation section 6.25 dated October 9th, 1996.

The argument to suspend section 6.25 (b), (1) (i) and (ii) in the Federal Register notice is the current market conditions. It is correct that the world market prices are quite strong and that the U.S. dollar is weak. However, at the same time U.S. consumption is strong with imported and domestic specialty cheeses continuing to show increased demands. This situation may change and nobody can predict that conditions will remain the same for the next 5 years.

We are opposed to make any change in the regulation at this time.

If the proposed rule is implemented we suggest this to be for a period one (1) year only and that the surrender of 50% of historical licenses in 2007 and prior years to be counted when figuring out the deductions.

Kindest regards,

Jens

Jens Bang Pedersen
President
jens@bang-soderlund.com

B & S Dairy, Inc.

an international dairy products' trading company

9240 BONITA BEACH ROAD, SUITE 1101, BONITA SPRINGS, FL 34135

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MAILING ADDRESS: P. O. BOX 2727, BONITA SPRINGS, FL 34133-2727



November 5, 2007

By E-mail (Ronald.Lord@usda.gov)

Mr. Ronald Lord
Branch Chief, Sugar and Dairy Branch
Import and Trade Support Programs Division
Foreign Agricultural Service
Room 5531-S
STOP 1021
1400 Independence Avenue, S.W.
Washington, DC 20250

Re: Comments to Proposed Rule (72
Fed. Reg. 56677) published October 4, 2007

Dear Mr. Lord:

This letter is in response to the Department's request for public comments concerning the proposed five year suspension of the historical license reduction provisions of the Dairy Tariff-Rate Quota Licensing regulation.

The business of **Emmi (USA) Inc.** is built on dairy product imports and we have made a substantial investment in reliance upon a fair and even handed regulation of the dairy import licensing program.

Since the implementation of the historical license reduction provisions of 7 CFR §6.25(b)(1) in 2004, many, if not most, historical licensees have needed to surrender more than fifty percent of a historical license amount before the annual October 1st deadline as prescribed by the Department's regulation. These recent decisions to surrender historical license amounts have more often than not been based solely on prevailing market conditions, specifically, that prices were too high to be competitive.

The adverse market conditions which our company, as well as the rest of the dairy importing community, has been struggling with are not temporary obstacles, rather they are the long term consequence of well documented major economic and production trends. Most notably, there has been a sharp rise in world dairy prices due to strong growth in world demand while at the same time production growth has been constrained in the major exporting countries, including the European Union. During this same time period, our competitive position has been further weakened by the fact that the U.S. dollar has continued to drop precipitously in value against the currencies of our trading partners.

Mr. Ronald Lord
[Date]
Page 2



We believe that for the foreseeable future, market conditions will continue to be unfavorable for U.S. dairy importers. We also support the Department's statement expressed in the proposed rule that historical licenses provide for orderly marketing of a wide variety of cheeses and permit dairy importers to invest in market development, including brand building, with some assurance of future availability of supply.

For all of these reasons, **Emmi (USA) Inc.** strongly supports the adoption of the five year temporary suspension of the provisions of Section 6.25(b)(1). The five year suspension period will give the Foreign Agricultural Service sufficient time to evaluate the changes in the market for our products and let the industry adjust to those changes.

Thank you for considering our views on this matter of the highest importance to **Emmi (USA) Inc.** and our entire industry.

Very truly yours,

PAUL SCHILT, CEO



JP HANSEN USA, INC.
700, Plaza Drive
Secaucus, NJ 07094

November 5, 2007

Mr. Ronald Lord
Branch Chief, Sugar and Dairy Branch
Import and Trade Support Programs Division
Foreign Agricultural Service
Room 5531-S
STOP 1021
1400 Independence Avenue, S.W.
Washington, DC 20250

Re: Comments to proposed rule published Oct 4, 2007

Dear Mr. Lord,

I am writing today to voice my support for the proposed regulation suspending section 6.25(b)(1) of the import quota regulations. My company feels strongly that historical import license holders should not be penalized when persistent market conditions and changing consumer preferences preclude them from fulfilling 50% or more of their historical TRQ.

Historical TRQs are most critical in the development and sustainability of imported consumer cheese brands. Without the potential for long-term stable access to the US market, our company (and I can well imagine others) would not be interested in selling and promoting our products in the USA. The quota we receive as a designated importer is not sufficient to establish good long-term business.

Thank you for the opportunity to share these thoughts.

Respectfully yours,
JP Hansen USA, Inc.

Eiler Ebbesen
Vice-President

J. P. HANSEN USA, INC.
700, Plaza Drive
Secaucus, NJ / USA



Mr. Ronald Lord
Branch Chief, Sugar and Dairy Branch
Import and Trade Support Programs Division
Foreign Agriculture Service
Room 5531-S
STOP 1021
1400 Independence Avenue, S.W.
Washington, DC 20250

Re: Comments to Proposed Rule (72 Fed. Reg. 56677)
Published October 4, 2007

Dear Mr. Lord,

This letter is in response to the Department's request for public comments concerning the proposed five year suspension of the historical license reduction provisions of the Dairy Tariff-Rate Quota Licensing regulation.

A significant portion of our business, Dairyfood USA, Inc. (formerly Lactoprot USA, Inc.), is based on dairy product imports. As such, we have made significant financial investments relying on a fair and even-handed regulation of the dairy import licensing program.

Since the implementation of the historical license reduction provisions of 7 CFR 6.25(b)(1) in 2004, many historical licensees have needed to surrender more than fifty percent of a historical license amount before the annual October 1st deadline as prescribed by the Department's regulation. These recent decisions to surrender historical license amounts have more often than not, been based solely on prevailing market conditions, specifically, unavailability of product or that prices were too high to be competitive.

From a historical standpoint, 2007 has been by far the most difficult of years. We have had events occur that have been nothing short of catastrophic. We have had multiple producers of Swiss Cheese that have either stopped producing Swiss Cheese entirely (Arla Foods) or have had countries (Hungary) that have suspended Swiss Cheese exports until the end of the year, due to milk shortages. In all cases we were made aware of the respective situations only within several weeks (and sometimes days) before shipment was expected. These situations affected approximately 10 containers scheduled for shipment prior to the end of the year, and as a result, have had a dramatic negative impact on the overall business of our company.



Due to these events, we were subsequently forced to surrender the majority of our Swiss license. In addition, because of the upward movement of the International market, we were also forced to surrender Butter license. It is important to note that this has never happened before in the history of this company.

The adverse market conditions which our company, as well as the rest of the dairy importing community, has been struggling with are not temporary obstacles; rather they are the long-term consequence of well documented major economic and production trends. Most notably, there has been a sharp rise in world dairy prices due to strong growth in world demand while at the same time production growth has been constrained in the major exporting countries, including the European Union. During this same time period, our competitive position has been further weakened by the fact that the U.S. Dollar has continued to drop precipitously in value against the currencies of our trading partners.

We believe that for the foreseeable future market conditions will continue to be unfavorable for U.S. dairy importers. We also strongly support the Department's statement expressed in the proposed rule that historical licenses provide for orderly marketing of a wide variety of cheeses and permit dairy importers to invest in market development, including brand building, with some assurances of future availability of supply.

For all of these reasons, Dairyfood USA, Inc. strongly supports the adoption of the five year temporary suspension of the provisions of Section 6.25(b)(1). The five year suspension period will give the Foreign Agriculture Service sufficient time to evaluate the changes in the market for our products and let the industry adjust to those changes.

Thank you for considering our views on this matter of the highest importance to Dairyfood USA and our entire industry.

Sincerely,

Dairyfood USA, Inc.

A handwritten signature in black ink that reads 'Daniel R. Culligan'. The signature is written in a cursive style with a long, sweeping underline.

Daniel R. Culligan
President