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The proceedings at the hearing shall be transcribed verbatim.

(5) *Written arguments.* The presiding officer shall fix a time, not to exceed ten days from the close of the hearing, within which interested persons may file written arguments with the Hearing Clerk.

(d) *Preparation and issuance of determination*—(1) *Preparation of recommendation.* As soon as practicable after the close of the hearing, the presiding officer, or such employees of the Department as may be assigned for the purpose, shall review, consider, and weigh all evidence of probative value, views, and arguments which have been submitted, and may consider other pertinent information and data which is available in the Department of Agriculture, and shall submit a recommendation thereon to the Secretary.

(2) *Determination by the Secretary.* As soon as possible after receipt of the recommendation, the Secretary shall determine whether the parity price of such commodity computed in accordance with section 301(a)(1) appears to be seriously out of line with the parity prices of other agricultural commodities whether the facts require a revision of the method of computing the parity price of such commodity, and the revision, if any, which is required in the method of computing the parity price of such commodity. Such determination by the Secretary shall be final. The Secretary's determination shall be filed with the Hearing Clerk who shall cause the determination to be published promptly in the FEDERAL REGISTER. The Hearing Clerk shall also mail a copy of the determination to each producer and grower organization which participated in or is known to be interested in the hearing. Upon application to the Hearing Clerk, any person shall be entitled to a copy of the determination.

[23 FR 9252, Nov. 29, 1958]

PART 6—IMPORT QUOTAS AND FEES

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CROSS REFERENCE: For United States International Trade Commission regulations on investigations of effects of imports on agricultural programs, see 19 CFR part 204.

Subpart—General Provisions

AUTHORITY: Sec. 8, 65 Stat. 75; 19 U.S.C. 1365.

SOURCE: 17 FR 8287, Sept. 16, 1952; 19 FR 57, Jan. 6, 1954, unless otherwise noted.

§6.2 Responsibility for actions under section 22 and section 8(a).

The primary responsibility within the Department of Agriculture for action on matters for which the Secretary is responsible under section 22 of the Agricultural Adjustment Act of 1933, as amended, and section 8(a) of the Trade Agreements Extension Act of 1951 is assigned to the Administrator, Foreign Agricultural Service (referred to in this part as the ''Administrator''), but the other offices, agencies, and bureaus of the Department whose activities will be affected by any action under section 22 or section 8(a) shall be consulted by the Administrator in discharging his responsibility under this part.

§6.3 Requests by interested persons for action by Department of Agriculture.

(a) *Section 22.* A request for action under section 22 should be submitted in duplicate to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington 25, D.C. Such request shall include a statement of the reasons why action would be warranted under section 22 and shall be supported by appropriate information and data.

(b) *Section 8(a).* A request for action under section 8(a) should be submitted in duplicate to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington 25, D.C. Such request shall include a statement of the reasons why the commodity is perishable, and why, due to such perishability, a condition exists requiring emergency treatment, and shall be supported by appropriate information and data. A request under section 8(a) submitted in connection with a proposed section 7 (Trade Agreements Extension Act of 1951) investigation shall not be acted upon until a section 7 application has been properly filed by the person making the request with the Tariff Commission, and a copy of such application and supporting information and data are furnished the Administrator.

§6.4 Investigations.

(a) *Section 22.* The Administrator shall cause an investigation to be made whenever, based upon a request submitted pursuant to §6.3 or upon other information available to him, he determines that there is reasonable ground to believe that the imposition of import quotas or fees under section 22 may be warranted, or that the termination or modification of import quotas or fees in effect under section 22 may be warranted.

(b) *Section 8(a).* The Administrator shall cause an immediate investigation to be made whenever (1) a request is received for emergency treatment in connection with an application properly filed with the Tariff Commission under section 7; (2) a request is received for emergency treatment under section 22 if the Administrator determines that there is reasonable ground to believe that the imposition of import quotas or fees under section 22 may be warranted; or (3) the Administrator, upon the basis of other information available to him, has reasonable ground for believing that emergency treatment under section 8(a) is necessary. The Administrator shall expedite to the fullest practicable extent his attention to requests for emergency treatment under section 8(a), and such requests shall receive priority over requests for other action under section 22. The investigation shall cover (1) whether the commodity is a perishable agricultural commodity; (2) whether, due to the perishability of the commodity, a condition exists requiring emergency treatment as indicated by such factors as (i) the marketing season for the commodity, (ii) past and prospective domestic production, stocks, requirements, and prices, (iii) past and prospective imports; and (3) such other matters as the Administrator determines are relevant to a determination as to whether emergency treatment for the commodity is necessary. No public hearing shall be held in connection with investigations under this paragraph.

§6.5 Hearings under section 22.

The Administrator is authorized to provide for such public hearings as he deems necessary to discharge the responsibility for action under section 22 vested in him by §§6.2 and 6.4(a). In view of the need, however, for prompt

action on requests for action under section 22, public hearings shall be held in connection with investigations conducted under §6.4(a) only when the Administrator determines that a public hearing is necessary to obtain supplementary information not otherwise available. Any public hearing which is held shall be conducted by representatives designated for the purpose by the Administrator; shall be preceded by such public notice as, in the opinion of the Administrator, will afford interested persons reasonable opportunity to attend and present information; and minutes of the proceedings at such hearing shall be obtained. Hearings shall be informal and technical rules of evidence shall not apply. Such hearings are for the purpose of obtaining information for the assistance of the Secretary. However, in discharging his responsibilities under section 22, the Secretary is not restricted to the information adduced at the hearings.

§ 6.6 Submission of recommendations under section 22.

(a) The Administrator shall make a report to the Secretary upon the completion of each investigation made by him pursuant to §6.4(a). The report shall summarize the information disclosed by the investigation; shall contain the recommendations of the Administrator; and, in case action under section 22 is recommended, shall be accompanied by a suggested letter from the Secretary to the President recommending that the Tariff Commission be directed to conduct an investigation. Such report shall be submitted to the other offices, agencies, and bureaus of the Department of Agriculture whose activities would be affected, for concurrence or comment.

(b) The Secretary will recommend that the President direct the Tariff Commission to conduct an investigation under section 22 only if he has reason to believe, upon the basis of the information available to him, that import quotas or fees should be imposed.

§ 6.7 Submission of recommendations under section 8(a) (emergency treatment).

(a) *Section 22.* The Administrator's report submitted pursuant to §6.6 shall indicate whether or not emergency treatment is necessary. If emergency treatment is recommended, the report shall discuss the condition which requires emergency treatment and be accompanied by suggested letters from the Secretary to the President, to the Tariff Commission, and to the petitioner (if any) advising them of the Secretary's determination. The suggested letter from the Secretary to the President shall include a recommendation as to whether such emergency treatment should take the form of action by the President prior to receiving the recommendations of the Tariff Commission, or whether a decision by the President may appropriately be withheld until the recommendations of the Tariff Commission are received. If emergency treatment requested is not recommended, the report to the Secretary shall be accompanied by suggested letters from the Secretary to the petitioner and the Tariff Commission stating the action taken.

(b) *Section 7.* The Administrator shall make a report to the Secretary upon the completion of each investigation made by him pursuant to §6.4(b). The report shall summarize the information disclosed by the investigation, including the points listed in §6.4(b) which were considered in reaching the recommendation, and shall contain the recommendations of the Administrator as to whether or not emergency treatment is required. If emergency treatment is recommended, the report shall discuss the condition which requires emergency treatment and shall be accompanied by suggested letters from the Secretary to the President, to the Tariff Commission, and to the petitioner advising them of the Secretary's determination. The suggested letter from the Secretary to the President shall include a recommendation as to whether such emergency treatment should take the form of action by the President prior to receiving the recommendations of the Tariff Commission, or whether a decision by the President may appropriately be withheld until the recommendations of the Tariff Commission are received. If emergency treatment is not recommended, the report to the Secretary

shall be accompanied by suggested letters from the Secretary to the petitioner and to the Tariff Commission stating the action taken. Each such report shall be submitted to the other offices, agencies, and bureaus of the Department of Agriculture whose activities would be affected, for concurrence or comment.

§6.8 Representation at Tariff Commission hearings.

The Department of Agriculture shall be represented at all hearings conducted by the Tariff Commission under section 22 by persons designated by the Administrator, assisted by a representative of the Office of the General Counsel. Such representatives shall present the recommendations of the Department of Agriculture, shall submit such information and data in support thereof as are available, and shall exercise the right of examining other witnesses which is granted to the Secretary.

[17 FR 8287, Sept. 16, 1952; 20 FR 1830, Mar. 25, 1955]

§6.9 Information.

Persons desiring information from the Department of Agriculture regarding section 22 or section 8(a), or any action with respect thereto, should address such inquiries to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington 25, DC.

Subpart—Dairy Tariff-Rate Import Quota Licensing

AUTHORITY: Additional U.S. Notes 6, 7, 8, 12, 14, 16–23 and 25 to Chapter 4 and General Note 15 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), Pub. L. 97–258, 96 Stat. 1051, as amended (31 U.S.C. 9701), and secs. 103 and 404, Pub. L. 103–465, 108 Stat. 4819 (19 U.S.C. 3513 and 3601).

SOURCE: 61 FR 53007, Oct. 9, 1996, unless otherwise noted.

§6.20 Introduction.

(a) Presidential Proclamation 6763 of December 23, 1994, modified the Harmonized Tariff Schedule of the United States affecting the import regime for certain articles of dairy products. The Proclamation terminated quantitative restrictions that had been imposed pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624); proclaimed tariff-rate quotas for such articles pursuant to Pub. L. 103–465; and specified which of such articles may be entered only by or for the account of a person to whom a license has been issued by the Secretary of Agriculture.

(b) Effective January 1, 1995, the prior regime of absolute quotas for certain dairy products was replaced by a system of tariff-rate quotas. The articles subject to licensing under the new tariff-rate quotas are listed in Appendices 1, 2, and 3 of this subpart. Licenses will be issued pursuant to the provisions of this subpart for the 1997 and subsequent quota years. These licenses will permit the holder to import specified quantities of the subject articles into the United States at the applicable in-quota rate of duty. If an importer has no license for an article subject to a tariff-rate quota, such importer will, with certain exceptions, be required to pay the applicable over-quota rate of duty.

(c) The Secretary of Agriculture has determined that this subpart will, to the fullest extent practicable, result in fair and equitable allocation of the right to import articles subject to such tariff-rate quotas. The subpart will also maximize utilization of the tariff-rate quotas for such articles, taking due account of any special factors which may have affected or maybe affecting the trade in the articles concerned.

§6.21 Definitions.

As used in this subpart and the Appendices thereto, the following terms mean:

Article. One of the products listed in Appendices 1, 2, or 3 which are the same as those described in Additional U.S. Notes 6, 7, 8, 12, 14, 16–23 and 25 to Chapter 4 of the Harmonized Tariff Schedule.

Customs. The United States Customs Service.

Country. Country of origin as determined in accordance with Customs rules and regulations, except that ''EC 12'', ''EC 15'', and ''Other countries'' shall each be treated as a country.

Cheese or cheese products. Articles in headings 0406, 1901.90.34, and 1901.90.36 of the Harmonized Tariff Schedule.

Commercial entry. Any entry except those made by or for the account of the United States Government or for a foreign government, for the personal use of the importer or for sampling, taking orders, research, or the testing of equipment.

Dairy products. Articles in headings 0401 through 0406, margarine cheese listed under headings 1901.90.34 and 1901.90.36, ice cream listed under heading 2105, and casein listed under heading 3501 of the Harmonized Tariff Schedule.

Department. The United States Department of Agriculture.

EC 12. Belgium, Denmark, the Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom.

EC 15. Austria, Belgium, Denmark, the Federal Republic of Germany, Finland, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.

Enter or *Entry.* To make or making entry for consumption, or withdrawal from warehouse for consumption in accordance with Customs regulations and procedures.

Harmonized Tariff Schedule or *HTS.* The Harmonized Tariff Schedule of the United States.

Licensee. A person to whom a license has been issued under this subpart.

Licensing Authority. Any officer or employee of the U.S. Department of Agriculture designated to act in this position by the Director of the Division charged with managing the Dairy Tariff-Rate Import Quota Licensing System, currently the Import Policies and Programs Division of the Foreign Agricultural Service.

Other countries. Countries not listed by name as having separate tariff-rate quota allocations for an article in the Additional U.S. Notes to Chapter 4 of the Harmonized Tariff Schedule.

Person. An individual, firm, corporation, partnership, association, trust, estate or other legal entity.

Postmark. The postage cancellation mark or date applied by the United States Postal Service. This does not include the date on metered postage affixed by the applicant, or on mail delivered by private entities.

Process or *Processing.* Any additional preparation of a dairy product, such as melting, grating, shredding, cutting and wrapping, or blending with any additional ingredient.

Quota year. The 12-month period beginning on January 1 of a given year.

Tariff-rate quota amount or *TRQ amount.* The amount of an article subject to the applicable in-quota rate of duty established under a tariff-rate quota.

United States. The customs territory of the United States, which is limited to the 50 states, the District of Columbia, and Puerto Rico.

[61 FR 53007, Oct. 9, 1996, as amended at 65 FR 1298, Jan. 10, 2000]

§ 6.22 Requirement for a license.

(a) *General rule.* A person who seeks to enter, or cause to be entered, an article shall obtain a license, in accordance with this subpart, except as provided in paragraph (b).

(b) *Exceptions.* Licenses are not required if:

(1) The article is imported by or for the account of any agency of the U.S. Government;

(2) The article is imported for the personal use of the importer, provided that the net weight does not exceed five kilograms in any one shipment;

(3) The article imported will not enter the commerce of the United States and is imported as a sample for taking orders, for exhibition, for display or sampling at a trade fair, for research, for testing of equipment; or for use by embassies of foreign governments. Written approval of the Licensing Authority shall be obtained prior to entry, and the importer of record (or a broker or agent acting on its behalf) shall provide to the Licensing Authority, prior to the release of such articles, the appropriate Customs documentation identifying the article, quantity to be imported, its location, intended use, an entry number and the importer of record. The Licensing Authority may also require as a condition of import that the article be destroyed or re-exported after such use; or

(4) Such person pays the applicable over-quota rate of duty.

§6.23 Eligibility to apply for a license.

(a) *In general.* To apply for any license, a person shall have:

(1) A business office, and be doing business, in the United States, and

(2) An agent in the United States for service of process.

(b) *Eligibility for the 1997 and subsequent quota years*—(1) *Historical licenses (Appendix 1).* Any person issued a historical or nonhistorical license for the 1996 quota year for an article may apply for a historical license (Appendix 1) for the same article from the same country for the 1997 and subsequent quota years, if such person was, during the 12-month period ending August 31 prior to the quota year, either:

(i) Where the article is cheese or cheese product,

(A) The owner of and importer of record for at least three separate commercial entries of cheese or cheese products totaling not less than 57,000 kilograms net weight, each of the three entries not less than 2,000 kilograms net weight,

(B) The owner of and importer of record for at least eight separate commercial entries of cheese or cheese products, from at least eight separate shipments, totaling not less than 19,000 kilograms net weight, each of the eight entries not less than 450 kilograms net weight, with a minimum of two entries in each of at least three quarters during that period; or

(C) The owner or operator of a plant listed in Section II or listed in Section I as a processor of cheese of the most current issue of ''Dairy Plants Surveyed and Approved for USDA Grading Service'' and had processed or packaged at least 450,000 kilograms of cheese or cheese products in its own plant in the United States; or

(ii) Where the article is not cheese or cheese product,

(A) The owner of and importer of record for at least three separate commercial entries of dairy products totaling not less than 57,000 kilograms net weight, each of the three entries not less than 2,000 kilograms net weight;

(B) The owner of and importer of record for at least eight separate commercial entries of dairy products, from at least eight separate shipments, totaling not less than 19,000 kilograms net weight, each of the eight entries not less than 450 kilograms net weight, with a minimum of two entries in each of at least three quarters during that period;

(C) The owner or operator of a plant listed in the most current issue of ''Dairy Plants Surveyed and Approved for USDA Grading Service'' and had manufactured, processed or packaged at least 450,000 kilograms of dairy products in its own plant in the United States; or

(D) The exporter of dairy products in the quantities and number of shipments required under (A) or (B) above.

(2) *Certain butter.* A person issued a nonhistorical license for butter for the 1997 or 1998 quota year may annually apply for a historical license (Appendix 1) for the same quantity of butter for the subsequent quota year and each year thereafter, provided that such person has used at least 90 percent of the original license issued for the previous quota year and meets the requirements of paragraph (b)(1)(ii). However, if a person is issued a historical license pursuant to this paragraph, that person may not be issued a nonhistorical license for butter for any quota year in which that historical license is issued to that person, unless applicants who do not hold such a license have all been issued such a nonhistorical license.

(3) *Nonhistorical licenses for cheese or cheese products (Appendix 2).* A person may annually apply for a nonhistorical license for cheese or cheese products (Appendix 2) for the 1997 quota year and each quota year thereafter if such person meets the requirements of paragraph (b)(1)(i) of this section.

(4) *Nonhistorical licenses for articles other than cheese or cheese products (Appendix 2).* A person may annually apply for a nonhistorical license for articles other than cheese or cheese products (Appendix 2) for the 1997 quota year and each quota year thereafter if such person meets the requirements of paragraph (b)(1)(ii).

(5) *Designated license (Appendix 3).* A person may annually apply for a designated license (Appendix 3) for the 1997 quota year and for each quota year

thereafter, provided that such person meets the requirements of paragraph (b)(1)(i), of this section and provided further that the government of the country has designated such person for such license. The designating country shall submit its selection of designated importers in writing directly to the Licensing Authority not later than October 31 prior to the beginning of the quota year.

(c) *Exceptions.* (1) A licensee that fails in a quota year to enter at least 85 percent of the amount of an article permitted under a license, shall not be eligible to receive a license for the same article from the same country for the next quota year. For the purpose of this paragraph, the amount of an article permitted under the license will exclude any amounts surrendered pursuant to § 6.26(a), but will include any additional allocations received pursuant to § 6.26(b).

(2) Paragraph (c)(1) of this section will not apply where the licensee demonstrates to the satisfaction of the Licensing Authority that the failure resulted from breach by a carrier of its contract of carriage, breach by a supplier of its contract to supply the article, act of God or *force majeure.*

(3) Paragraph (c)(1) of this section may not apply in the case of historical or nonhistorical licenses, where the licensee demonstrates to the satisfaction of the Licensing Authority that the country specified on the license maintains or permits an export monopoly to control the dairy articles concerned and the licensee petitions the Licensing Authority to waive this requirement. The licensee shall submit evidence that the country maintains an export monopoly as defined in this paragraph. For the purposes of this paragraph ''export monopoly'' means a privilege vested in one or more persons consisting of the exclusive right to carry on the exportation of any article of dairy products from a country to the United States.

(4) The Licensing Authority will not issue a nonhistorical license (Appendix 2) for an article from a country during a quota year to an applicant who is affiliated with another applicant to whom the Licensing Authority is issuing a non-historical license for the same article from the same country for that quota year. Further, the Licensing Authority will not issue a nonhistorical license for butter to an applicant who is affiliated with another applicant to whom the Licensing Authority is issuing a historical butter license of 57,000 kilograms or greater. For the purpose of this paragraph, an applicant will be deemed affiliated with another applicant if:

(i) The applicant is the spouse, brother, sister, parent, child or grandchild of such other applicant;

(ii) The applicant is the spouse, brother, sister, parent, child or grandchild of an individual who owns or controls such other applicant;

(iii) The applicant is owned or controlled by the spouse, brother, sister, parent, child or grandchild of an individual who owns or controls such other applicant.

(iv) Both applicants are 5 percent or more owned or directly or indirectly controlled, by the same person;

(v) The applicant, or a person who owns or controls the applicant, benefits from a trust that controls such other applicant.

(5) The Licensing Authority will not issue a nonhistorical license (Appendix 2) for an article from a country during a quota year to an applicant who is associated with another applicant to whom the Licensing Authority is issuing a nonhistorical license for the same article from the same country for that quota year. Further, the Licensing Authority will not issue a nonhistorical license for butter to an applicant who is associated with another applicant to whom the Licensing Authority is issuing a historical butter license for 57,000 kilograms or greater. For the purpose of this paragraph, an applicant will be deemed associated with another applicant if:

(i) The applicant is an employee of, or is controlled by an employee of, such other applicant;

(ii) The applicant manages or is managed by such other applicant, or economically benefits, directly or indirectly, from the use of the license issued to such other applicant.

(6) The Licensing Authority will not issue a nonhistorical license for an article from a country, for which the applicant receives a designated license.

§6.24 Application for a license.

(a) Application for license shall be made on either paper or electronic forms, provided or designated by the Licensing Authority, and shall be submitted in accordance with §6.36(b). All parts of the application shall be completed. The application, if mailed, shall be postmarked no earlier than September 1 and no later than midnight October 15 of the year preceding that for which license application is made. The application, if submitted electronically, shall be transmitted no earlier than September 1 and no later than midnight October 15 of the year preceding that for which license application is made. The Licensing Authority will not accept incomplete applications or unpostmarked mailed applications.

(b)(1) Where the applicant seeks to establish eligibility on the basis of imports, applications shall include identification of entries (if submitted electronically) or Customs Form 7501 (if submitted by mail), sufficient to establish the applicant as the importer of record of entries required under §6.23, during the 12-month period ending August 31 prior to the quota year for which license is being sought.

(2) Where the applicant seeks to establish eligibility on the basis of exports, applications shall include:

(i) Census Form 7525 or a copy of the electronic submission of such form, and

(ii) The commercial invoice or bill of sale for the quantities and number of export shipments required under §6.23, during the 12-month period ending August 31 prior to the quota year for which license is being sought.

(c) However, if the applicant is applying on the basis of more than eight shipments, the application, if mailed, shall include:

(1) The required documentary evidence for eight shipments;

(2) A signed certification that the remaining required documents are on file at the applicant's premises; and

(3)(i) If the application is made on the basis of imports, a listing of the entry numbers, dates of entry and volumes on those remaining documents; or

(ii) If the application is made on the basis of exports, a listing of the dates of export and volumes on those documents.

(d) An applicant requesting more than one nonhistorical license must rank order these requests by the applicable Additional U.S. Note number. Cheese and cheese products must be ranked separately from dairy articles which are not cheese or cheese products.

[61 FR 53007, Oct. 9, 1996, as amended at 69 FR 59763, Oct. 6, 2004]

§6.25 Allocation of licenses.

(a) *Historical licenses for the 1997 quota year (Appendix 1).* (1) A person issued a historical license for the 1996 quota year will be issued a historical license for the 1997 quota year in an amount equal to the Basic Annual Allocation level used by the Licensing Authority for the 1996 quota year provided that such person meets the requirements of §6.23(b)(1) and §6.23(c).

(2) A person issued a nonhistorical license for the 1996 quota year will be issued a historical license for the 1997 quota year for the same quantity as the license for the 1996 quota year, provided that such person meets the requirements of §6.23.

(3) If a person was issued more than one historical license, or one or more historical licenses and a nonhistorical license, for the same article from the same country for the 1996 quota year, such person will be issued a single historical license for the 1997 quota year, the amount of which shall be determined in accordance with paragraphs, (a) (1) and (2) of this section.

(b) *Historical licenses for the 1998 and subsequent quota years (Appendix 1).* (1) A person issued a historical license for the 1997 quota year will be issued a historical license in the same amount for the same article from the same country for the 1998 quota year and for each subsequent quota year except that:

(i) Beginning with the 1999 quota year, a person who has surrendered more than 50 percent of such historical license in each of the prior three quota years will thereafter be issued a license

in an amount equal to the average annual quantity entered during those three quota years; and

(ii) Beginning with the quota year 2001, a person who has surrendered more than 50 percent of such historical license in at least three of the prior five quota years will thereafter be issued a license in an amount equal to the average annual quantity entered during those five quota years.

(2) However, prior to the beginning of the 1999 quota year, the Secretary of Agriculture may determine that the exceptions in paragraphs (b)(1) (i) and (ii) of this section shall not apply in light of market conditions.

(c) *Nonhistorical licenses (Appendix 2).* The Licensing Authority will allocate nonhistorical licenses on the basis of a rank-order lottery system, which will operate as follows:

(1) The minimum license size shall be:

(i) Where the article is cheese or cheese product:

(A) The total amount available for nonhistorical license where such amount is less than 9,500 kilograms;

(B) 9,500 kilograms where the total amount available for nonhistorical license is between 9,500 kilograms and 500,000 kilograms, inclusive;

(C) 19,000 kilograms where the total amount available for nonhistorical license is between 500,001 kilograms and 1,000,000 kilograms, inclusive;

(D) 38,000 kilograms where the total amount available for nonhistorical license is greater than 1,000,000 kilograms; or

(E) An amount less than the minimum license size established in paragraphs (c)(1)(i) (A) through (D) of this section, if requested by the licensee;

(ii) Where the article is not cheese or cheese product:

(A) The total amount available for nonhistorical license where such amount is less than 19,000 kilograms;

(B) 19,000 kilograms where the total amount available for nonhistorical license is between 19,000 kilograms and 550,000 kilograms, inclusive;

(C) 38,000 kilograms where the total amount available for nonhistorical license is between 550,001 kilograms and 1,000,000 kilograms, inclusive; and

(D) 57,000 kilograms where the total amount available for nonhistorical license is greater than 1,000,000 kilograms;

(E) An amount less than the minimum license sizes established in paragraphs (c)(1)(i) (A) through (D) of this section, if requested by the licensee.

(2) Taking into account the order of preference expressed by each applicant, as required by §6.24(c), the Licensing Authority will allocate licenses for an article from a country by a series of random draws. A license of minimum size will be issued to each applicant in the order established by such draws until the total amount of such article in Appendix 2 has been allocated. An applicant that receives a license for an article will be removed from the pool for subsequent draws until every applicant has been allocated at least one license, provided that the licenses for which they applied are not already fully allocated. Any amount remaining after the random draws which is less than the applicable minimum license size may, at the discretion of the Licensing Authority, be prorated equally among the licenses awarded for that article.

(d) *Designated licenses (Appendix 3).* (1) With respect to an article listed in Appendix 3, the government of the applicable country may, not later than October 31 prior to the beginning of a quota year, submit directly and in writing to the Licensing Authority:

(i) The names and addresses of the importers that it is designating to receive licenses; and

(ii) The amount, in percentage terms, of such article for which each such importer is being designated. Where quantities for designation result from both Tokyo Round concessions and Uruguay Round concessions, the designations should be made in terms of each.

(2) To the extent practicable, the Licensing Authority will issue designated licenses to those importers, and in those amounts, indicated by the government of the applicable country, provided that the importer designated meets the eligibility requirements set forth in §6.23. Consistent with the international obligations of the United States, the Licensing Authority may disregard a designation if the Licensing

Authority determines that the person designated is not eligible for any of the reasons set forth in §6.23(c) (1) or (2).

(3) If a government of a country which negotiated in the Uruguay Round for the right to designate importers has not done so, but determines to designate importers for the next quota year, it shall indicate its intention to do so directly and in writing to the Licensing Authority not later than July 1 prior to the beginning of such next quota year. Furthermore, if a government that has designated importers for a quota year determines that it will not continue to designate importers for the next quota year, it shall so indicate directly and in writing to the Licensing Authority, not later than July 1 prior to such next quota year.

EFFECTIVE DATE NOTE: At 63 FR 13481, Mar. 20, 1998, in §6.25, paragraphs (b)(1) (i) and (ii) were suspended indefinitely.

§6.26 Surrender and reallocation.

(a) If a licensee determines that it will not enter the entire amount of an article permitted under its license, such licensee shall surrender its license right to enter the amount that it does not intend to enter. Surrender shall be made to the Licensing Authority in writing by mail or electronic submission, postmarked or electronically submitted, in accordance with §6.36(b), no later than October 1. Any surrender shall be final and shall be only for that quota year, except as provided in §6.25(b). The amount of the license not surrendered shall be subject to the license use requirements of §6.23(c)(1).

(b) For each quota year, the Licensing Authority will, to the extent practicable, reallocate any amounts surrendered.

(c) Any person who has been issued a license for a quota year may apply to receive additional license, or addition to an existing license for a portion of the amount being reallocated. The application shall be submitted to the Licensing Authority by mail or electronic submission, in accordance with §6.36(b), no earlier than September 1 and not later than September 15, and shall specify:

(1) The name and control number of the applicant;

(2) The article and country being requested, the applicable Additional U.S. Note number and, if more than one article is requested, a rank-order by Additional U.S. Note number; and

(3) If applicable, the number of the license issued to the applicant for that quota year permitting entry of the same article from the same country.

(d) The Licensing Authority will reallocate surrendered amounts among applicants as follows:

(1) The minimum license size, or addition to an existing license, will be the total amount of the article from a country surrendered, or 10,000 kilograms, whichever is less;

(2) Minimum size licenses, or additions to an existing license, will be allocated among applicants requesting articles on the basis of the rank-order lottery system described in §6.25(c);

(3) If there is any amount of an article from a country left after minimum size licenses have been issued, the Licensing Authority may allocate the remainder in any manner it determines equitable among applicants who have requested that article; and

(4) No amount will be reallocated to a licensee who has surrendered a portion of its license for the same article from the same country during that quota year unless all other licensees applying for a reallocated quantity have been allocated a license;

(e) However, if the government of an exporting country chooses to designate eligible importers for surrendered amounts under Appendix 3, the Licensing Authority shall issue the licenses in accordance with §6.25(d)(2), provided that the government of the exporting country notifies the Licensing Authority of its designations no later than September 1. Such notification shall contain the names and addresses of the importers that it is designating and the amount in percentage terms of such article for which each importer is being designated. In such case the requirements of paragraph (c) of this section shall not apply.

(f) Except for paragraph (a), the provisions of §6.26 for surrendered and reallocated tariff-rate quota shares do not apply for the 1996 quota year. Reissued tariff-rate quota shares for licenses surrendered during 1996 will be

made pursuant to the provisions in effect for the 1996 quota year (§ 6.26(f)(2) as contained in 7 CFR subtitle A, revised as of January 1, 1996).

[61 FR 53007, Oct. 9, 1996, as amended at 69 FR 59764, Oct. 6, 2004]

§ 6.27 Limitations on use of license.

(a) A licensee shall not obtain or use a license for speculation, brokering, or offering for sale, or permit any other person to use the license for profit.

(b) A licensee who is eligible as a manufacturer or processor, pursuant to § 6.23, shall process at least 75 percent of its licensed imports in such person's own facilities and maintain the records necessary to so substantiate.

§ 6.28 Transfer of license.

(a) If a licensee sells or conveys its business involving articles covered by this subpart to another person, including the complete transfer of the attendant assets, the Licensing Authority will transfer to such other person the historical, nonhistorical or designated license issued for that quota year. Such sale or conveyance must be unconditional, except that it may be in escrow with the sole condition for return of escrow being that the Licensing Authority determines that such sale does not meet the requirements of this paragraph.

(b) The parties seeking transfer of license shall give written notice to the Licensing Authority of the intended sale or conveyance described in paragraph (a) of this section by mail as required in § 6.36(b). The notice must be received by the Licensing Authority at least 20 working days prior to the intended consummation of the sale or conveyance. Such written notice shall include copies of the documents of sale or conveyance. The Licensing Authority will review the documents for compliance with the requirements of paragraph (a) of this section and advise the parties in writing of its findings by the end of the 20-day period. The parties shall have the burden of demonstrating to the satisfaction of the Licensing Authority that the contemplated sale or conveyance complies with the requirements of paragraph (a) of this section. Within 15 days of the consummation of the sale or conveyance, the parties shall mail copies of the final documents to the Licensing Authority, in accordance with § 6.36(b). The Licensing Authority will not transfer the licenses unless the documents are submitted in accordance with this paragraph.

(c) The eligibility for a license of a person to whom a business is sold or conveyed will be determined for the next quota year in accordance with § 6.23. For the purposes of § 6.23(b)(1) the person to whom a business is sold or conveyed shall be deemed to be the person to whom the historical licenses were issued during the quota year in which the sale or conveyance occurred. Further, for the purposes of § 6.23 (b) and (c), the entries made under such licenses by the original licensee during the year in which the sale of conveyance is made, shall be considered as having been made by the person to whom the business was sold or conveyed.

[61 FR 53007, Oct. 9, 1996, as amended at 69 FR 59764, Oct. 6, 2004]

§ 6.29 Use of licenses.

(a) An article entered under a license shall be an article produced in the country specified on the license.

(b) An article entered or withdrawn from warehouse for consumption under a license must be entered in the name of the licensee as the importer of record by the licensee or its agent, and must be owned by the licensee at the time of such entry.

(c) If the article entered or withdrawn from warehouse for consumption was purchased by the licensee through a direct sale from a foreign supplier, the licensee shall present, at the time of entry:

(1) A true and correct copy of a through bill of lading from the country; and

(2) A commercial invoice or bill of sale from the seller, showing the quantity and value of the product, the date of purchase and the country; or

(3) Where the article was entered into warehouse by the foreign supplier, Customs Form 7501 endorsed by the foreign supplier and the commercial invoice.

(d) If the article entered was purchased by the licensee via sale-in-transit, the licensee shall present, at the time of entry:

(1) A true and correct copy of a through bill of lading endorsed by the original consignee of the goods;

(2) A certified copy of the commercial invoice or bill of sale from the foreign supplier to the original consignee of the goods; and

(3) A commercial invoice or bill of sale from the original consignee to the licensee.

(e) If the article entered was purchased by the licensee in warehouse, the licensee shall present, at the time of entry:

(1) Customs Form 7501 endorsed by the original consignee of the goods;

(2) A certified copy of the commercial invoice or bill of sale from the foreign supplier to the original consignee of the goods; and

(3) A commercial invoice or bill of sale from the original consignee to the licensee.

(f) The Licensing Authority may waive the requirements of paragraphs (c), (d) or (e), if it determines that because of strikes, lockouts or other unusual circumstances, compliance with those requirements would unduly interfere with the entry of such articles.

(g) Nothing in this subpart shall prevent the use of immediate delivery in accordance with the provisions of Customs regulations relating to tariff-rate quotas.

§6.30 Record maintenance and inspection.

A licensee shall retain all records relating to its purchases, sales and transactions governed by this subpart, including all records necessary to establish the licensee's eligibility, for five years subsequent to the end of the quota year in which such purchases, sales or transactions occurred. During that period, the licensee shall, upon reasonable notice and during ordinary hours of business, grant officials of the U.S. Department of Agriculture full and complete access to the licensee's premises to inspect, audit or copy such records.

§6.31 Debarment and suspension.

7 CFR part 3017—Governmentwide Debarment and Suspension (Nonprocurement) and Government Requirements for Drug-Free Workplace (Grants), Subparts A through E, applies to this subpart.

§6.32 Globalization of licenses.

If the Licensing Authority determines that entries of an article from a country are likely to fall short of that country's allocated amount as indicated in Appendices 1, 2, and 3, the Licensing Authority may permit, with the approval of the Office of the United States Trade Representative, the applicable licensees to enter the remaining balance or a portion thereof from any country during that quota year. Requests for consideration of such adjustments must be submitted to the Licensing Authority no later than September 1. The Licensing Authority will obtain prior consent for such an adjustment of licenses from the government of the exporting country for quantities in accordance with the Uruguay Round commitment of the United States.

§6.33 License fee.

(a) A fee will be assessed each quota year for each license to defray the Department's costs of administering the licensing system. To the extent practicable, the fee will be announced by the Licensing Authority in a notice published in the FEDERAL REGISTER no later than August 31 of the year preceding the quota year for which the fee is assessed.

(b) The license fee for each license issued is due and payable in full by mail or electronic submission, postmarked or electronically submitted in accordance with §6.36(b), no later than May 1 of the year for which the license is issued. The fee for any license issued after May 1 of any quota year is due and payable in full by mail or electronic submission, postmarked or electronically submitted in accordance with §6.36(b), no later than 30 days from the date of issuance of the license. Fee payments, if made by mail, shall be made by certified check or money order payable to the Treasurer of the United States. Fee payments, if made electronically, shall be made utilizing the electronic software designated for the purpose by the Licensing Authority.

(c) If the license fee is not paid by the final payment date, a hold will be placed on the use of the license and no articles will be permitted entry under that license. The Licensing Authority shall send a warning letter by certified mail, return receipt requested, advising the licensee that if payment is not mailed in accordance with §6.36(b) or received within 21 days from the date of the letter, that the license will be revoked. Where the license at issue is a historical license, this will result, pursuant to §6.23(b), in the person's loss of historical eligibility for such license.

(d) Licensees may elect not to accept certain licenses issued to them; however, the Licensing Authority must be so notified by mail or electronic e-mail, postmarked or electronically submitted in accordance with §6.36(b) no later than May 1 of the year for which the license is issued.

[61 FR 53007, Oct. 9, 1996, as amended at 69 FR 59764, Oct. 6, 2004]

§ 6.34 Adjustment of Appendices.

(a) Whenever a historical license (Appendix 1) is not issued to an applicant pursuant to the provisions of §6.23, is permanently surrendered or is revoked by the Licensing Authority, the amount of such license will be transferred to Appendix 2.

(b) The cumulative annual transfers to Appendix 2 made in accordance with paragraph (a) will be published in the FEDERAL REGISTER. If a transfer results in the addition of a new article, or an article from a country not previously listed in Appendix 2, the Licensing Authority shall afford all eligible applicants for that quota year the opportunity to apply for a license for such article.

§ 6.35 Correction of errors.

(a) If a person demonstrates, to the satisfaction of the Licensing Authority, that errors were made by officers or employees of the United States Government, the Licensing Authority will review and rectify the errors to the extent permitted under this subpart.

(b) To be considered, a person must provide sufficient documentation regarding the error to the Licensing Authority by letter, postmarked not later than August 31 of the calendar year following the calendar year in which the error was alleged to have been committed.

(c) If the error resulted in the loss of a historical license by a license holder, the Licensing Authority will transfer the amount of such license from Appendix 2 to Appendix 1 in order to provide for the issuance of such license in the calendar year following the calendar year for which the license was revoked. The cumulative annual transfers to Appendix 1 in accordance with this paragraph will be published in the FEDERAL REGISTER.

[65 FR 1298, Jan. 10, 2000]

§ 6.36 Miscellaneous.

(a) If any deadline date in this subpart falls on a Saturday, Sunday or a Federal holiday, then the deadline shall be the next business day.

(b) All submissions required under this subpart shall be made either by registered or certified mail, return receipt requested, with a postmarked receipt, with proper postage affixed and properly addressed to the Dairy Import Licensing Group, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington DC 20250–1021, or by electronic submission utilizing the electronic software designated for this purpose by the Licensing Authority.

[61 FR 53007, Oct. 9, 1996. Redesignated at 65 FR 1298, Jan. 10, 2000; 69 FR 59764, Oct. 6, 2004]

§ 6.37 Supersedure of Import Regulation 1, Revision 7.

This subpart will supersede the provisions of Import Regulation 1, Revision 7 heretofore in effect (§§6.20 through 6.33 and appendices 1 through 3 as contained in 7 CFR subtitle A revised as of January 1, 1996). With respect to any violation of the provisions of that regulation by a licensee prior to the effective date hereof, the provisions of that regulation will be deemed to continue in full force; however, the debarment and suspension of §6.31 of this subpart shall apply with respect to any violation of that regulation.

[61 FR 53007, Oct. 9, 1996. Redesignated at 65 FR 1298, Jan. 10, 2000]

APPENDIXES 1–3 TO SUBPART—DAIRY TARIFF-RATE IMPORT QUOTA LICENSING

APPENDICES 1, 2 AND 3 TO SUBPART—DAIRY TARIFF-RATE IMPORT QUOTA LICENSING

[Articles Subject to: Appendix 1, Historical Licenses; Appendix 2, Nonhistorical Licenses; and Appendix 3, Designated Importer Licenses for Quota Year 2004 (quantities in kilograms)]

Article by Additional U.S. Note Number and Country of Origin NON-CHEESE ARTICLES	Appendix 1	Appendix 2	Appendix 3	
			Tokyo Round	Uruguay Round
BUTTER (NOTE 6)	5,421,214	1,555,786		
EU–15	75,918	20,243		
New Zealand	118,082	32,511		
Other Countries	55,902	18,033		
Any Country	5,171,312	1,484,999		
DRIED SKIM MILK (NOTE 7)	600,076	4,660,924		
Australia	600,076			
Canada		219,565		
Any Country		4,441,359		
DRIED WHOLE MILK (NOTE 8)	3,175	3,318,125		
New Zealand	3,175			
Any Country		3,318,125		
DRIED BUTTERMILK/WHEY (NOTE 12)	63,820	161,161		
Canada		161,161		
New Zealand	63,820			
BUTTER SUBSTITUTES CONTAINING OVER 45 PERCENT OF BUTTERFAT AND/OR BUTTER OIL (NOTE 14)		6,080,500		
Any Country		6,080,500		
TOTAL: NON-CHEESE ARTICLES	6,088,285	15,776,496		

Article by Additional U.S. Note Number and Country of Origin CHEESE ARTICLES	Appendix 1	Appendix 2	Appendix 3	
			Tokyo Round	Uruguay Round
CHEESE AND SUBSTITUTES FOR CHEESE (EXCEPT: SOFT RIPENED COW'S MILK CHEESE; CHEESE NOT CONTAINING COW'S MILK; CHEESE (EXCEPT COTTAGE CHEESE) CONTAINING 0.5 PERCENT OR LESS BY WEIGHT OF BUTTERFAT; AND, ARTICLES WITHIN THE SCOPE OF OTHER IMPORT QUOTAS PROVIDED FOR IN THIS SUBCHAPTER) (NOTE 16)	23,527,549	7,942,182	9,661,128	7,496,000
Argentina	7,690		92,310	
Australia	535,628	5,542	758,830	1,750,000
Canada	1,031,946	109,054		
Costa Rica				1,550,000
Czech Republic				200,000
EU–15	15,365,028	6,966,404	1,132,568	2,346,000
Of which Portugal is:	127,536	1,773	223,691	
Israel	79,696		593,304	
Iceland	294,000		29,000	
New Zealand	4,461,713	353,759	6,506,528	
Norway	124,982	25,018		
Poland	917,497	18,727		300,000
Slovak Republic				600,000
Switzerland	597,513	73,899	548,588	500,000
Uruguay				250,000
Other Countries	111,856	89,779		
Any Country		300,000		
BLUE-MOLD CHEESE (EXCEPT STILTON PRODUCED IN THE UNITED KINGDOM) AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, BLUE-MOLD CHEESE (NOTE 17)	2,290,547	190,454		430,000
Argentina	2,000			
EU–15	2,288,546	190,454		300,000
Chile				80,000
Czech Republic				50,000
Other Countries	1			
CHEDDAR CHEESE, AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, CHEDDAR CHEESE (NOTE 18)	3,655,039	628,817	519,033	7,620,000
Australia	937,721	46,778	215,501	1,250,000
Chile				220,000
Czech Republic				50,000

Article by Additional U.S. Note Number and Country of Origin CHEESE ARTICLES	Appendix 1	Appendix 2	Appendix 3	
			Tokyo Round	Uruguay Round
EU–15	52,404	210,596	.....	1,000,000
New Zealand	2,539,040	257,428	303,532	5,100,000
Other Countries	125,874	14,015	.....	.....
Any Country	.....	100,000	.....	.....
AMERICAN-TYPE CHEESE, INCLUDING COLBY, WASHED CURD AND GRANULAR CHEESE (BUT NOT INCLUDING CHEDDAR) AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING OR PROCESSED FROM SUCH AMERICAN-TYPE CHEESE (NOTE 19)	2,842,435	323,118	357,003	.....
Australia	830,124	50,874	119,002	.....
EU–15	186,222	167,778	.....	.....
New Zealand	1,662,224	99,775	238,001	.....
Other Countries	163,865	4,691	.....	.....
EDAM AND GOUDA CHEESE, AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, EDAM AND GOUDA CHEESE (NOTE 20)	5,252,765	353,637	.....	1,210,000
Argentina	119,003	5,997	.....	110,000
Czech Republic	.....	.....	.....	100,000
EU–15	5,009,619	279,381	.....	1,000,000
Norway	114,318	52,682	.....	.....
Other Countries	9,825	15,577	.....	.....
ITALIAN-TYPE CHEESES, MADE FROM COW'S MILK, (ROMANO MADE FROM COW'S MILK, REGGIANO, PARMESAN, PROVOLONE, PROVOLETTI, SBRINZ, AND GOYA-NOT IN ORIGINAL LOAVES) AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, SUCH ITALIAN-TYPE CHEESES, WHETHER OR NOT IN ORIGINAL LOAVES (NOTE 21)	6,491,099	1,029,448	795,517	5,165,000
Argentina	3,944,769	180,714	367,517	1,890,000
EU–15	2,535,930	846,070	.....	700,000
Poland	.....	.....	.....	1,325,000
Romania	.....	.....	.....	500,000
Uruguay	.....	.....	428,000	750,000
Other Countries	10,400	2,664	.....	.....
SWISS OR EMMENTHALER CHEESE OTHER THAN WITH EYE FORMATION, GRUYERE-PROCESS CHEESE AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, SUCH CHEESES (NOTE 22)	5,676,043	975,271	823,519	380,000
EU–15	4,330,758	821,236	393,006	380,000
Switzerland	1,270,525	148,962	430,513	.....
Other Countries	74,760	5,073	.....	.....
CHEESE AND SUBSTITUTES FOR CHEESE, CONTAINING 0.5 PERCENT OR LESS BYWEIGHT OF BUTTERFAT (EXCEPT ARTICLES WITHIN THE SCOPE OF OTHER TARIFF-RATE QUOTAS PROVIDED FOR IN THIS SUBCHAPTER), AND MARGARINE CHEESE (NOTE 23)	3,037,225	1,387,683	1,050,000	.....
EU–15	3,037,224	1,212,776	.....	.....
Israel	.....	.....	50,000	.....
New Zealand	.....	.....	1,000,000	.....
Poland	.....	174,907	.....	.....
Other Countries	1	.....	.....	.....
SWISS OR EMMENTHALER CHEESE WITH EYE FORMATION (NOTE 25)	18,149,617	4,147,714	9,557,945	2,620,000
Argentina	.....	9,115	70,885	.....
Australia	209,698	.....	290,302	.....
Canada	.....	.....	70,000	.....
Czech Republic	.....	.....	.....	400,000
Hungary	.....	.....	.....	800,000
EU–15	13,190,754	3,286,074	4,003,172	1,220,000
Iceland	149,999	.....	150,001	.....
Israel	27,000	.....	.....	.....
Norway	3,192,843	462,467	3,227,690	.....
Switzerland	1,294,048	390,057	1,745,895	200,000
Other Countries	85,275	1	.....	.....
TOTAL: CHEESE ARTICLES	70,922,319	16,978,324	22,764,145	24,921,000

[69 FR 27819, May 17, 2004]

Subpart—Price-Undercutting of Domestic Cheese by Quota Cheeses

AUTHORITY: Sec. 702, Pub. L. 96–39, 93 Stat. 144, 19 U.S.C. 1202 note.

SOURCE: 45 FR 9883, Feb. 13, 1980, unless otherwise noted.

§6.40 General.

This subpart sets forth the procedures applicable to the determination by the Secretary of Agriculture as to whether the price at which any article of quota cheese is being offered for sale in the United States on a duty-paid wholesale basis is less than the domestic wholesale market price of similar articles produced in the United States (i.e., price-undercutting) in accordance with section 702 of the Trade Agreements Act of 1979 (Pub. L. 96–39, 93 Stat. 144, 19 U.S.C. 1202 note) (hereinafter referred to as the Act).

§6.41 Definitions.

(a) *Complainant* means the person who has filed with the Investigating Authority, in accordance with the procedures set forth in this subpart, a written complaint alleging that price-undercutting is occurring.

(b) *Country of origin* means the country, as defined in 19 CFR 134.1(b), in which the quota article subject to this regulation was produced or manufactured.

(c) *Foreign government* means the government of the country of origin or, for purposes of determining whether a subsidy has been provided for the member states of the European Economic Community, the subsidy granting bodies of the European Economic Community.

(d) *Investigating Authority* means the Director, Dairy, Livestock and Poultry Division, Commodity Programs, Foreign Agricultural Service.

(e) *Quota cheese* means the articles provided for in the following items of the Tariff Schedules of the United States:

117.00 (except Stilton produced in the United Kingdom);
117.05 (except Stilton produced in the United Kingdom);
117.15;
117.20;
117.25;
117.42;
117.44;
117.55;
117.60 (except Gammelost and Nokkelost);
117.75 (except goat's milk cheeses and soft-ripened cow's milk cheeses);
117.81;
117.86;
117.88 (except goat's milk cheeses and soft-ripened cow's milk cheeses);

(f) *Secretary* means the Secretary of Agriculture.

(g) *Subsidy* has the same meaning as such term has in section 771(5) of the Tariff Act of 1930 as added by section 101 of the Trade Agreements Act of 1979 (19 USC 1677(5)).

(h) The *United States* means the Customs Territory of the United States, which is limited to the United States, District of Columbia and Puerto Rico.

§6.42 Complaints of price-undercutting.

(a) *Submission of complaint.* Any person who has reason to believe that the price at which any article of quota cheese is offered for sale or sold in the United States on a duty-paid wholesale price basis is less than the domestic wholesale market price of similar articles produced in the United States and that a foreign government is providing a subsidy with respect to such article of quota cheese may file with the Investigating Authority a written complaint making such allegation.

(b) *Contents of complaint.* Such complaint shall contain, or be accompanied by, information to substantiate complainant's allegations, in substantially the following form:

(1) The name and address of the complainant.

(2) The location of the domestic wholesale market in which price-undercutting is alleged to be occurring.

(3) The article of quota cheese involved in the alleged price-undercutting.

(4) The country of origin of such article of quota cheese.

(5) The similar domestic article, the price of which the complainant believes is being undercut.

(6) The month and year that the complainant first concluded that the price-undercutting was taking place.

(7) To extent known to the complainant, all pertinent facts with regard to

the alleged subsidy, and, if known, the statutory or other authority under which it is paid, the manner in which it is paid, and the value of such subsidy when received and used by producers or sellers of such quota cheese.

(8) All other information which the complainant believes substantiates the allegation of price-undercutting, including the complainant's estimate of the domestic wholesale market price of the similar article produced in the United States and the duty-paid wholesale price of the quota cheese involved. If available, samples of the domestic and imported cheese products should be submitted.

§ 6.43 Determinations.

(a) *Making determinations.* Not later than 30 days after receiving an acceptable complaint, as described in § 6.42(b), alleging price-undercutting, the Secretary shall make a determination as to the validity of the allegation. In making such determination, the following shall apply:

(1) The ''domestic wholesale market'' shall be one or more of the three major U.S. market areas, viz., New York City, Chicago, and San Francisco, and/or any other market area within the Customs Territory of the United States, which the Investigating Authority determines most representative of the area specified by the complainant as the one in which price-undercutting is alleged to be occurring (hereinafter referred to as ''designated area'').

(2) The ''duty-paid wholesale price'' determined by the Investigating Authority shall be the average of prices at which wholesalers have sold or offered for sale in the designated area the article of quota cheese alleged to be involved in price-undercutting, as obtained in a survey directed by the Investigating Authority during the investigation: *Provided,* That whenever the designated area is not or does not include one of the major market areas specified in paragraph (a)(1) of this section, the Investigating Authority may adjust the average of prices determined for such designated area on the basis of the average of prices determined for the major market area which is determined to be the most representative of the designated area, taking into consideration any special factors which may be affecting prices in the designated area.

(3) The ''domestic wholesale market price'' determined by the Investigating Authority for a similar article produced in the United States to that article of quota cheese which is alleged to be involved in price-undercutting shall be the average of prices at which wholesalers have sold the similar article produced in the United States in the designated area, as obtained in a survey directed by the Investigating Authority during the investigation: *Provided,* That whenever the designated area is not or does not include one of the major market areas specified in paragraph (a)(1) of this section, the Investigating Authority may adjust the average of prices determined for such designated area on the basis of the average of prices determined for the major market area which is determined to be the most representative of the designated area, taking into consideration any special factors which may be affecting prices in the designated area.

(4) ''Similar article produced in the United States'' shall be an article of cheese, cheese product, or imitation cheese produced in the United States and marketed in the domestic wholesale market, which is determined by the Investigating Authority, based upon available information to be most like the imported article of quota cheese alleged to be involved in price-undercutting, in terms of its physical properties and end use. In making this determination, first consideration shall be given to the normal end uses of the article produced in the United States in comparison with the end use of the article of quota cheese alleged to be involved in price-undercutting. If the end use of both articles is determined to be the same (e.g., processing or retail sale), the physical characteristics of the two articles shall be considered.

If the common end use of the two articles is processing, the representative samples of the two articles shall be examined in terms of processing quality, taking special note of processing yields. If the common end use of the

two articles is retail sale, representative samples of the two articles shall be examined in terms of similarities of taste, texture, general appearance, quality, age, and packaging. Imported imitation quota cheese shall only be compared with imitation domestic cheese. If it is determined that the domestic cheese the price of which is claimed to be undercut is not similar to the quota cheese allegedly undercutting it, there shall be no finding of price-undercutting.

(b) *Reporting determinations.* Determinations by the Secretary as to the validity of allegations of price-undercutting made under this subpart shall be published in the FEDERAL REGISTER not later than 5 days after the date the determination is made.

§6.44 Delegation of authority.

The powers vested in the Administrator, FAS, insofar as such powers relate to the functions of the Investigating Authority by this regulation are hereby delegated to the Investigating Authority. This final rule has been reviewed under the USDA criteria established to implement Executive Order 12044, ''Improving Government Regulations.'' a determination has been made that this action should not be classified ''significant'' under those criteria. A Final Impact Statement has been prepared and is available from Carol M. Harvey in room 6622, South Agriculture Building, 14th and Independence Ave., SW., Washington, DC 20250.

PART 7—SELECTION AND FUNCTIONS OF AGRICULTURAL STABILIZATION AND CONSERVATION STATE, COUNTY AND COMMUNITY COMMITTEES

Sec.

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7.17 Dual office.
7.18 Terms of office of county and community members.
7.19 Terms of office of delegates to the conventions.
7.20 State committee duties.
7.21 County committee duties.
7.22 Community committee duties.
7.23 Chairperson of the county committee duties.
7.24 Chairperson of the community committee duties.
7.25 County executive director duties.
7.26 Private business activity and conflicts of interest.
7.27 Political activity.
7.28 Removal from office or employment for cause.
7.29 Delegation of authority to Deputy Administrator.
7.30 Right of review.
7.31 Hearing in connection with appeals and requests for reconsideration to Deputy Administrator.
7.32 Findings, analysis, and recommendations of hearing officer.
7.33 Determination of the Deputy Administrator.
7.34 Custody and use of books, records, and documents.
7.35 Administrative operations.
7.36 Implementation.
7.37 Applicability.
7.38 Retention of authority.

AUTHORITY: Secs. 4 and 8 of the Soil Conservation and Domestic Allotment Act, as amended; 49 Stat. 164 and 1149, as amended (16 U.S.C. 590d and 590h).

SOURCE: 52 FR 48512, Dec. 23, 1987, unless otherwise noted.

§7.1 Administration.

(a) The regulations of this part are applicable to the election and functions of community and county Agricultural Stabilization and Conservation (''ASC'') committee and the functions of State ASC committees (''community'', ''county'', and ''State committees'', respectively). State, county, and community committees shall be under the general supervision of the