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Part VII

Department of Agriculture

Office of the Secretary

Section 22 Import Quotas; Certain Dairy
Products

DEPARTMENT OF AGRICULTURE**Office of the Secretary****7 CFR Part 6****Section 22 Import Quotas; Certain Dairy Products**

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises Import Regulation 1 governing the administration of the import licensing system for certain dairy products subject to quotas proclaimed under the authority of Section 22 of the Agricultural Adjustment Act of 1933, as amended. The provisions of this final rule reflect changes made in quotas for certain dairy products by Presidential Proclamation effective December 13, 1979, issued in accordance with the provisions of the Trade Agreements Act of 1979 (Pub. L. 96-39) (the Act) and bilateral agreements approved by the Act. The revision is needed in order to assure fair and equitable allocation and use of licenses for the importation of articles subject to such quotas.

EFFECTIVE DATE: December 21, 1979.

FOR FURTHER INFORMATION CONTACT: Carol M. Harvey, Head, Dairy and Import Group, Dairy, Livestock and Poultry Division, CP, Room 6616, South Building, Department of Agriculture, Washington, D.C. 20250. (202) 447-5270.

SUPPLEMENTARY INFORMATION: The proposed revision of Import Regulation 1, was published in the *Federal Register* on October 3, 1979. A 30-day public comment period ended on November 2, 1979. Written comments were received from 29 different entities. Those meritorious comments deemed both administratively possible to implement and not in conflict with the objective of fair and equitable allocation among the various interested parties have been incorporated into this final rule, Import Regulation I, Revision 7. Other comments were not included in this final rule because their inclusion would have resulted in a significant enough change in the proposed rule to require another comment period. In view of the need to implement the program governed by this rule for the 1980 quota year, such was not considered possible. However, the Licensing Authority will keep the operation of this revision under review and propose amendments as necessary.

Since it will be necessary to have a preparation period, in addition to an application period, in order to give applicants throughout the country

adequate time to study the regulation and apply for 1980 Appendix 2 licenses, final issuance of Appendix 2 licenses cannot occur by the beginning of the quota year, January 1, 1980.

Consequently, the Licensing Authority has determined that in certain cases it will be necessary to issue partial interim licenses based on the documents already submitted pursuant to the notice in the *Federal Register* of August 16, 1979, (44 FR 47969). This does not exempt applicants from submitting their documents as required in § 6.25(a) of this rule.

**Discussion of Major Comments—
Definition of Affiliate**

One entity commented that the rules of attribution under which affiliation may be found should not be limited to stock ownership but should extend to any form of ownership in an entity holding license to import cheese. The rules of attribution in § 6.25(b)(3) are accordingly revised.

It should be noted that the definition of affiliate in the proposed regulation was stated only in terms of attribution of ownership. This has been changed to a more general definition which is in turn expanded by the rules of attribution to be found in § 6.25(b)(3).

These rules of attribution have been slightly modified from the draft to permit family members who can clearly show the Licensing Authority that they are not affiliates to be considered as separate persons for the purpose of this regulation.

Definition of Cheese

It was pointed out by two entities that a definition of cheese or cheese product would clarify many passages, especially the passages dealing with eligibility. A definition has thus been inserted. It includes all those products defined as cheese or cheese products for which standards of identity have to date been promulgated by the Food and Drug Administration and/or found in Part 133 of Title 21 of the CFR.

**Definition of Entire Dairy Products
Business**

One entity commented that a definition of "entire dairy products business" in terms of total assets was unfair to small businesses that would like to acquire the good will, trade connections, and licenses for an entire product line of all cheese from a particular country, but have no way of acquiring the requisite assets of a large corporation with a large business dependent on licenses. While this may be true, it is felt that altering the definition to permit the transfer of

license eligibility for an entire product line, rather than the entire dairy products business, would tend to be an undesirable step toward the legalization of the actual buying and selling of selected licenses. This has always been considered inequitable in light of the historical basis upon which most license allocations have been made. In addition, it is felt that such a change could lead to the gradual acquisition of the import rights for a certain country's quotas by one firm.

EC-Wide Quotas

Three entities were either opposed to the EC-wide quota or desired gradual implementation of it. The reasons advanced by these commentators ranged from the greater difficulty of license adjustment, which could result from the larger source of product, to the possibility that competition among EC member states will be so intense that chaotic market conditions will develop in the United States. The regulation governing price-undercutting (published as a proposed rule in the *Federal Register* on October 30, 1979, 44 FR 62292) should serve to prevent such market chaos.

Postmark

One entity objected entirely to the idea of using the postmark date as a criterion for license allocation, indicating that ways can be found to get around the stricter definition of "postmark" and suggesting that a random selection method be used. The Licensing Authority has been authorized in this final rule to use some other fair and equitable procedure in cases where the postmark dates on applications are all the same.

The Application Period for 1980 Licenses

In view of the number of changes brought about by this regulation, the number of importers which may become involved for the first time with licensing procedures, and the need for time to receive and study the substantive provisions contained in this revision, it has been determined that a 21-day application preparation period for 1980 licenses is warranted beginning December 21, 1979. This will be followed by a 21-day official application period during which all license applications for Appendix 2 licenses and government endorsements for the 1980 quota year must be submitted. Therefore, all applications and endorsements for 1980 Appendix 2 licenses must be postmarked no later than January 31, 1980.

Provisions for Historical License Eligibility

Three entities stated that they would like to see the increases in the quotas negotiated during the Tokyo Round of the Multilateral Trade Negotiations left open, i.e., not allocated on a historical basis. They felt that historical licenses have prevented and would continue to prevent full utilization of the quotas. Two of the entities preferred a first-come, first-served system, and the third a gradual phase-out of historical licenses for some other form of licensed imports. While this regulation does not eliminate historical licenses, it has, since Revision 6 (effective November 22, 1978), envisioned the eventual diminution of the proportion of each quota allocated as historical licenses through the conversion to nonhistorical or supplementary status of those historical licenses lost by licensees due to nonuse or violation of the regulation.

Three entities commented on the base period used for determining eligibility for Appendix 2 historical licenses. Each suggested that the chosen period was not representative. The Licensing Authority, however, feels that the base period chosen, July 1, 1978–June 30, 1979, is representative, and the fact that so few of the over 400 firms involved in importing cheese have expressed dissatisfaction with it tends to substantiate the fact that this period is generally accepted as representative.

Methods for the Allocation of License

Two entities commented on the fact that no more than 50 percent of the quota in Appendix 2 will be made available for historical licenses. One commentator felt that an eligible importer should receive 100 percent of what he or she imported during the base period. The other felt that at least 50 percent of Appendix 2 should, in all instances, be reserved for importers active during the base period. The provision of the regulation is intended to accommodate all legitimate interests in the cheese importing business, including firms who, after January 1, 1980, will be totally new to the importing business. The allocation procedures established will, generally speaking, give such newcomers the opportunity to compete through the application process for up to 25 percent of the overall quota.

It should be noted that a change in § 6.26(a)(4) has been made in response to comments. The provision was generalized in the interest of fairness.

Size and Number of Supplementary Licenses

Two entities commented on the size of the supplementary licenses. One commentator indicated that the minimum quantity should be graduated according to the amount of quota available for supplementary allocation for a particular cheese from a particular country. This suggestion was approved in modified form and incorporated in the final rule as a means of giving more importers a chance to obtain licenses.

The second commentator dealt with the limitation on supplementary licenses obtained by Appendix 2 historical licensees. This limitation provides that such historical licensees receive supplementary allocations the sizes of which are not more than their historical shares under Appendix 2. Under certain circumstances, this could result in the historical licensee receiving less than the newcomer. A revision has thus been made permitting the Licensing Authority to allocate to an Appendix 2 historical licensee a supplementary quota share large enough in size to bring his or her combined historical and supplementary quota share up to at least the size of the supplementary shares given to newcomers.

It should be noted that Appendix 2 historical licensees will be limited to the supplementary shares to which they are entitled by virtue of their historical license and one other supplementary share of a particular cheese article. This is intended to increase the amount available for allocation to newcomers.

Less Than 85 Percent Use of Licenses

Eight entities offered comments on various provisions of the regulation which deal with less than 85 percent use of a license—some finding the penalties too harsh, others not harsh enough.

Five of the comments submitted focused specifically on the proposed August 1 surrender date for portions of quota shares which will not be used during the remainder of the quota year. All five felt August 1 was too early to make a decision on license use for the remainder of the year. To resolve the problem the October 1 date contained in Revision 6 is being retained, but a September 1–15 application period for extra license is being introduced to permit the Licensing Authority to make immediate reallocation upon receipt of the surrendered licenses. This should give importers receiving reallocated portions adequate time to use such portions before the quota year ends.

Another change from the proposed rule made in the interest of equity is the application of the penalty for less than

85 percent use of supplementary licenses to importers endorsed by foreign governments, as well as non-endorsed importers. This change was adopted in response to comments submitted to this effect.

The penalty for less than 85 percent use of a historical license has been modified in response to public comment.

Rather than automatically reducing the license to one half of its normal amount, it will be reduced to the amount imported during the previous quota year. This will prevent undue hardship on those firms which miss the 85 percent use rate by only a few percentage points while reducing to less than 50 percent those licenses which were used at less than the 50 percent rate.

Annual Licenses

One entity disagreed with the reasons favoring annual licenses stated in the supplementary information section of the proposed rule. The Licensing Authority feels that the combination of regulations implementing the price-undercutting provisions of section 702 of the Trade Agreements Act of 1979 (Pub. L. 96-39), the usual price disincentive to import during the flush period, and past experience indicating that the heaviest business takes place during the holiday season all serve to eliminate the need for utilizing a semi-annual licensing system. The resulting reduction in administrative burden will be substantial both for the importers and the Licensing Authority.

Endorsement of Preferred Importers by Exporting Countries

Sixteen entities submitted comments on the provision for endorsement of preferred importers by the governments of exporting countries. Comments on the matter were about equally divided. The Licensing Authority has examined the quantities available for such endorsement and is convinced that the endorsement provision will not distort competition but, on the contrary, in some cases, will tend to enhance competition. Periodic examination of the effects of the system over time will be conducted by the Department of Agriculture. Should revision of the regulation become necessary in order to improve this or any other provision, the Licensing Authority will, as it has in the past, propose such necessary revisions, allowing time for public comment. This final rule has been revised to ensure that endorsed importers comply with the provisions of the regulation, and effective with the 1981 quota year, that they meet the eligibility requirements of § 6.25(c).

Permitting the exporting country to designate importers for a certain proportion of the quota only allows it to maintain some of the prerogative it has enjoyed in the absence of quotas, i.e., to choose the business partner(s) in the United States with whom it would like to deal.

Authority to Adjust Licenses

Three entities commented on the authority found in § 6.30 to adjust the country of origin on licenses. The suggestion was made that if it can be satisfactorily shown to the Licensing Authority that an exporting country has been or is discriminating against a licensee with respect to price or availability, then the Licensing Authority should adjust the country of origin of the license or waive the penalty for less than 85 percent utilization. This has been incorporated into § 6.30, especially to eliminate a possible avenue for a supplying country to indirectly cause selected historical licensees to lose their eligibility.

In view of the fact that the provisions contained herein will affect the administration of the import licensing system for certain dairy products subject to quota imposed by Presidential Proclamation issued under the authority of Section 22 of the Agricultural Adjustment Act of 1933, as amended, effective January 1, 1980, and since prompt implementation of the provisions is essential in order to carryout the terms of such Proclamation and issue licenses as near to January 1, 1980, as possible, it is found that good cause exists for not postponing the effective date of this final rule until 30 days after publication in the *Federal Register* (5 U.S.C. 552).

Accordingly, 7 CFR, Part 6, Subpart—Section 22 Import Quotas, § 6.20–6.32, Appendix 1 and Appendix 2 are amended as follows:

Subpart—Section 22 Import Quotas

- Sec.
- 6.20 Determination.
- 6.21 Definitions.
- 6.22 Prohibitions and restrictions on imports.
- 6.23 Exceptions.
- 6.24 Application for license.
- 6.25 Eligibility.
- 6.26 Allocation of annual quota and issuance of licenses.
- 6.27 Use of licenses.
- 6.28 Records and inspection.
- 6.29 Suspension or revocation of eligibility.
- 6.30 Adjustment of countries of origin.
- 6.31 Delegation of authority.
- 6.32 Superseding of Import Regulation 1, Revision 6.

Appendix 1—Articles subject to the historical and nonhistorical licensing provisions of Import Regulation 1, Revision 7,

and respective annual import quotas for each quota year.

Appendix 2—Articles subject to the historical and supplementary licensing provisions of Import Regulation 1, Revision 7, and respective annual import quotas for each quota year.

Authority: Sec. 3, Pub. L. 897, 80th Cong., 2nd Sess., 62 Stat. 1248, as amended (7 U.S.C. 624); secs 701, 703, Pub. L. 96–39, 93 Stat. 268, 272 (19 U.S.C. 1202 note); Part 3 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202).

Subpart—Section 22 Import Quotas

§ 6.20 Determination.

Part 3 of the Appendix to the Tariff Schedules of the United States, which contains the quantitative limitations on certain articles imported into the United States proclaimed by the President pursuant to Section 22 of the Agricultural Adjustment Act, as amended (7 U.S.C. 624), provides that certain articles may be entered only by or for the account of a person or firm to which a license has been issued by or under the authority of the Secretary of Agriculture and only in accordance with the terms of such license as set forth in this regulation. Licenses are to be issued under regulations of the Secretary of Agriculture which he determines will, to the fullest extent practicable, result in the fair and equitable allocation among importers or users of the right to import articles subject to such quotas and facilitate the maximum utilization of the respective quotas for such articles, taking due account of any special factors which may have affected or may be affecting the trade in the articles concerned. It is hereby determined that the regulation will, to the fullest extent practicable, accomplish this result.

§ 6.21 Definitions.

Except where the context otherwise requires, the following terms have the meanings set forth in this section:

(a) "Affiliate" means any person or legal entity which owns or is owned by, in total or in part, directly or indirectly, or controls or is controlled by another person, persons or legal entity. For a corporation, ownership interest will be the controlling criterion. If 5 percent or more equity interest in the aggregate is owned or controlled in a corporation, partnership, estate, or trust by or for a person, a corporation, a partnership, or a beneficiary of an estate or a trust, the interest will be considered as owned or controlled by the person, partnership, corporation, estate or trust. Ownership interest in any person or legal entity may be attributed to another person or entity in accordance with § 6.25(b)(3), thereby causing the person or entity to whom the ownership interest has been

attributed to be defined as an "affiliate" even though such persons or legal entities have no direct relation with each other.

(b) "Annual Quota" means the quantity of an article which may be entered in a quota year as provided in Appendix 1 or Appendix 2.

(c) "Appendix 1" means Appendix 1 to this regulation. Definitions of articles in this appendix are the same as those provided in the Tariff Schedules of the United States.

(d) "Appendix 2" means Appendix 2 to this regulation. Definitions of articles in this appendix are the same as those provided in the Tariff Schedules of the United States.

(e) "Article" means any TSUS item referred to in Appendix 1 or Appendix 2.

(f) "Associate" means a party connected with one or more parties, formally or informally, directly or indirectly, with the common purpose of obtaining eligibility for additional licenses, one party intending to use, (and benefit economically from such use) directly or indirectly the licenses that the other may acquire. Two or more associates of a third party shall not be deemed to be associates of one another due to such third-party association only.

(g) "Authorized agent" means an agent as used in 19 CFR 141.31(a) for whom the licensee has filed with the District Director of Customs a limited power of attorney using Customs Form 5291 authorizing such agent to act for, but only in, the licensee's name.

(h) "Basic annual allocation" refers to historical quota shares only and means the quota share of a licensee for an article before any reduction as authorized under § 6.26(d) has been effected. It will be calculated on the basis of the annual average amount entered by a licensee during a predetermined representative base period.

(i) "Cheese or cheese products" means those cheeses and cheese products for which standards of identity have been promulgated by the Food and Drug Administration and/or which are encompassed within Part 133 of Title 21 (Food and Drugs) of the Code of Federal Regulation as of December 20, 1979.

(j) "Country of origin" and/or "Supplying country" mean the country in which the article subject to the regulation was produced or manufactured as defined under 19 CFR 134.1(b).

(k) "Date of entry" is the date when the specified Customs entry form is properly executed and deposited, together with estimated duties and any related documents required by law or regulation to be filed with such form at

the time of entry, with the appropriate Customs Officer.

(l) "Department" means the United States Department of Agriculture.

(m) "EC" means the nine European Community countries, viz., Belgium, Denmark, the Federal Republic of Germany, France, Ireland, Italy, Luxembourg, the Netherlands, and the United Kingdom, which for the purposes of this regulation shall be deemed as one country of origin.

(n) "Eligible applicant" means a person applying for a license to enter an article who has established, to the satisfaction of the Licensing Authority, eligibility to enter such article, in accordance with § 6.25.

(o) "Enter" means to make entry, or withdrawal from warehouse, for consumption by deposit with, and acceptance by, the appropriate Customs officer of the properly executed entry documents, including invoices, bills of lading and payment of estimated duties.

(p) "Entire dairy products business" means the total assets and operations of the foreign and domestic aspects of a business pertaining to articles subject to the provisions of this regulation.

(q) "Entrepreneurial use" means the processing or sale of the article entered pursuant to the license as a part of the ordinary conduct of business by a licensee who is managing and assuming the risk of such business. Such term does not include one who is functioning as a mere supplier of license.

(r) "Licensee" means any person to whom a license has been issued under the regulation.

(s) "Licensing Authority" means the Director, Dairy, Livestock and Poultry Division, Foreign Agricultural Service, U.S. Department of Agriculture or any other officer or employee of the Department designated in writing as Acting Director in the absence of the Director.

(t) "Other countries" refers to countries sharing a common quota which are not listed as having separate quotas in Appendix 1 or Appendix 2, and for the purposes of the regulation are deemed as one country of origin.

(u) "Person" includes any individual, firm, corporation, partnership, association, or other legal entity. It also includes any national government (other than the Government of the United States and any agency thereof).

(v) "Postmark" means the postage cancellation mark applied by the U.S. Post Office showing the post office and date of mailing. This *does not* include metered postage affixed by the applicant or any other private entity.

(w) "Quota share" means that part of the annual quota of an article listed in

Appendix 1 or Appendix 2 for which a person is eligible.

(x) "Quota year" means the 12-month period beginning on January 1 of any given year.

(y) "Regulation" means the provisions contained in the Licensing Regulation of this subpart.

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

§ 6.22 Prohibitions and restrictions on importers.

(a) No person may enter or cause to be entered any article listed in Appendix 1 or Appendix 2, except as provided in § 6.23 or as authorized by a license issued pursuant to this regulation.

(b) A person to whom a license has been issued hereunder is not relieved from compliance with any requirement of this regulation or any other applicable laws and regulations.

§ 6.23 Exceptions.

Licenses are not required for the entry of:

(a) Articles imported by or for the account of any agency of the U.S. Government.

(b) Articles with an aggregate value of not over \$25 in any shipment, if imported as samples for taking orders, for the personal use of the importer, or for research.

(c) Articles imported for exhibition, display or sampling at a trade fair, or for research, if written approval of the Licensing Authority is obtained.

§ 6.24 Application for license.

Applications to the Licensing Authority for the issuance of licenses to enter articles must be made in writing, addressed to the Head, Dairy and Import Group, Dairy, Livestock and Poultry Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, D.C. 20250. Each letter of application must state the article (including the Part 3 TSUS Appendix classification number), the country of origin of the article, and, in the case of supplementary and nonhistorical licenses or licenses for portions allocated under paragraph (e) of § 6.26, the size of each quota share desired. Unpostmarked applications will not be approved by the Licensing Authority.

§ 6.25 Eligibility.

(a) *Historical Eligibility.* (1) Historical eligibility for licenses to enter quota shares of articles subject to quotas in effect as of November 22, 1978, the adjusted quantities of which are shown

in Appendix 1, has already been determined.

(2) Historical eligibility for licenses to enter quota shares of articles under Group V of Appendix 2, which prior to January 1, 1980 were not subject to quota, will be established upon submission by the importer of copies of broker's copies of official consumption entry or warehouse withdrawal for consumption records, Customs forms 7501 and 7505, showing the applicant as the importer of record or importer of account for entries made during the period July 1, 1978 through June 30, 1979 of cheese, cheese product or substitutes for cheese falling under TSUS Nos. 117.6035 (Swiss or Emmenthaler), 117.6055, 117.7550, 117.8550 (Gruyere-Process), 117.7560, 117.8560 except soft-ripened cheese (Other cheese, NSPF, except soft-ripened cheese), and 117.7570 and 117.8570 (Other cheese, Lowfat). In order to assure consideration for 1980 licenses, such consumption entry or warehouse withdrawal documents should be mailed to the Licensing Authority no later than January 31, 1980. Copies of other than the broker's copy will only be accepted if it is established that, for reasons satisfactory to the Licensing Authority, the broker's copy is not available. The Licensing Authority may also require a copy of the invoice or other documentation showing that the importer was the owner of the article at the time entry was made and substantiating the type or variety of cheese entered. Such invoices should accompany an application for Appendix 2 historical licenses for TSUS items 117.7560 and 117.8560.

(3) Historical eligibility for license to enter a quota share of an article under Group II, III, or IV of Appendix 2 from a particular country of origin may be acquired only by persons eligible for a historical license to enter such article from such country of origin under Appendix 1.

(b) *Nonhistorical eligibility.* (1) Any person, who is not eligible under paragraph (a) of this section to receive a historical license to enter a particular article in Appendix 1 or Appendix 2, or has voluntarily surrendered such eligibility, who meets the requirements of this paragraph, will be eligible to obtain a nonhistorical license to enter a quota share of such article in Appendix 1.

(2) Nonhistorical eligibility for specific articles listed in Appendix 1 will be established upon submission of:

(i) A notarized certification sworn to by the applicant under penalty of perjury stating that: (A) Such person intends to be regularly engaged, during

the period covered by the license(s) for which application is made, in the business of manufacturing within the United States or entering such articles for his or her own entrepreneurial use and for this purpose will maintain a bonafide business office within the United States and have a person, principal or resident agent upon whom service of judicial process may be made; (B) such person intends to use any article entered pursuant to a license obtained hereunder in actual commerce and, when required will submit proof demonstrating the use to which licenses and the articles entered pursuant thereto have been made; (C) such person is not a part of or an affiliate of the business of any other person eligible for a license for the article(s) for which application for license is made, and is not an officer, member, partner, associate, or employee of the business of such other person;

(ii) A list of the person(s) holding an ownership interest of 5 percent or more in the applying firm (if other than an individual) showing the percent of ownership held by each such person, and;

(iii) In addition, in the case of application for license(s) to enter any article(s) under Groups II through V (cheese), documentary evidence that such person has made at least two commercial entries of cheese or cheese products together totaling at least 10,000 pounds, as owner of the product and importer of record, or is listed in the most current issue of "Dairy Plants Surveyed and Approved for USDA Grading Service" and has manufactured in his or her own plant 100,000 pounds or more of cheese or cheese product within the United States, during the 12 month period ending August 1 of the year preceding that for which application for license is being made, including, when required, proof of payment in said person's own name for the said entered cheese or cheese products and corresponding duties.

(3) In determining whether persons or legal entities having no direct relation are, for purposes of this regulation, affiliated, the following rules of attribution apply:

(i) Members of a family: Unless established otherwise to the satisfaction of the Licensing Authority, an individual shall be considered as owning the stock or other ownership interest owned, directly or indirectly, by or for (A) a spouse (other than a spouse legally separated from the individual under a decree of divorce or separate maintenance), and (B) children, grandchildren, parents, brothers and sisters.

(ii) Attribution from partnerships and estates: Stock or other ownership interest owned, directly or indirectly, by or for a partnership or estate shall be considered as owned proportionately by its partners or beneficiaries.

(iii) Attribution from trusts: (A) Stock or other ownership interest owned, directly or indirectly, by or for a trust (other than an employees' trust) shall be considered as owned by its beneficiaries in such trust. (B) Stock or other ownership interest owned, directly or indirectly, by or for any portion of a trust of which a person is considered the owner under subpart E of part I of subchapter J of the Internal Revenue Code (relating to grantors and others treated as substantial owners) shall be considered as being owned by such person.

(iv) Attribution from corporations: If five percent or more in value of the stock or other ownership interest in a corporation is owned, directly or indirectly, by or for any person, such person shall be considered as owning the stock or other interest owned, directly or indirectly, by or for such person.

(v) Attribution to partnerships and estates: Stock or other ownership interest owned, directly or indirectly, by or for a beneficiary of a trust (other than an employees' trust) shall be considered as owned by the trust, unless such beneficiary's interest in the trust is a remote contingent interest. For purposes of this clause, a contingent interest of a beneficiary in a trust shall be considered remote if, under the maximum exercise of discretion by the trustee in favor of such beneficiary, the value of such interest, computed actuarially, is five percent or less of the value of the trust property. Stock or other ownership interest owned, directly or indirectly, by or for a person who is considered the owner of any portion of a trust under subpart E of part I of subchapter J of the Internal Revenue Code (relating to grantors and others treated as substantial owners) shall be considered as owned by a trust.

(vi) Attribution to corporations: If five percent or more in value of the stock or other ownership interest of a corporation is owned, directly or indirectly, by or for any person, such corporation shall be considered as owning the stock or other ownership interest owned, directly or indirectly, by or for such person.

(vii) Options: If any person has an option to acquire stock or other ownership interest, such stock or other ownership shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an

option, and each one of a series of such options, shall be considered as an option to acquire such stock or ownership interest.

(viii) Operating Rules: (A) In general: Except as provided in paragraph (b)(3)(viii)(B) and (C) of this section, stock or other ownership interest constructively owned by a person by reason of the application of paragraph (b)(3) (i), (v), (vi), or (vii), shall for purposes of applying paragraph (b)(3) (i), (v), (vi), and (vii) be considered as actually owned by such person.

(B) Members of a family: Stock or other ownership interest constructively owned by an individual by reason of the application of paragraph (b)(3)(i) of this section shall not be considered as owned by him or her for purposes of again applying paragraph (b)(3)(i) of this section in order to make another the constructive owner of such stock or ownership interest.

(C) Partnerships, estates, trusts, and corporations: Stock or ownership interest constructively owned by a partnership, estate, trust or corporation by reason of the application of paragraph (b)(3) (v) and (vi) of this section shall not be considered as owned by it for purposes of again applying paragraph (b)(3) (ii), (iii) and (iv) of this section in order to make another the constructive owner of such stock or ownership of interest.

(D) Option rule in lieu of family rule: For purposes of this paragraph, if stock or other ownership interest may be considered as held by an individual under paragraph (b)(3) (i) or (vii) of this section, it shall be considered as held by him under paragraph (b)(3)(viii) of this section.

(4) Evidence and certification required to establish the nonhistorical eligibility of a person making application to receive a quota share for a given quota year shall not be approved by the Licensing Authority if postmarked before August 1 or later than November 1 of the year preceding the quota year for which the license to import is requested, except as may otherwise be provided by notice published in the Federal Register.

(c) *Supplementary licenses.* (1) Supplementary license eligibility for specific articles listed in Appendix 2 will be established (i) by submission of documentary evidence acceptable to the Licensing Authority as required under paragraph (b) (2) and (4) of this section or; (ii) by application by a person having historical eligibility under paragraph (a) (2) and (3) of this section for the article from the country of origin for which such person is seeking supplementary license or (iii) by being endorsed in writing by

the government of the supplying country as a preferred importer, with such endorsement being sent directly from the government of the supplying country through appropriate channels to the Licensing Authority and, beginning with the 1981 quota year, by meeting one or both of qualifications (c)(1) (i) and (ii) of this section. Endorsement by the government of a supplying country of a person who is known by the Licensing Authority to have at any time violated any provision of this or any other regulation or law of the United States applicable to international commerce will not be recognized by the Licensing Authority.

(2) Notwithstanding paragraph (b)(4) of this section, certification required to establish supplementary license eligibility for 1980 licenses must be submitted to the Licensing Authority during the 21-day period ending January 31, 1980.

(d) *Continuation of eligibility.* (1) The historical eligibility of a person to receive a license for a quota share established under paragraph (a) of this section will be continued for subsequent quota years unless surrendered in accordance with paragraph (d)(4) of this section or suspended or revoked pursuant to § 6.29: *Provided*, That, no such licenses shall be issued to any licensee unless such licensee, no later than 60 days prior to the beginning of each subsequent quota year submits to the Licensing Authority a notarized certification sworn to by the licensee under the penalty of perjury stating that such licensee maintains a bonafide business office within the United States and has a person, principal or resident agent upon whom service of judicial process may be made; that such licensee has been the sole user of his or her license(s); that such licensee has not permitted his or her license(s) to be used by or for any other person; that such licensee has not entered any article(s) under license(s) issued to any other person(s); and, that such licensee will enter only for his or her own entrepreneurial use the articles for which he or she will be issued license(s) during the next quota year.

(2) The nonhistorical or supplementary eligibility of a person established under paragraph (b) or (c) of this section to enter a quota share of an article for a particular quota year will expire at the end of such quota year. Eligibility for each ensuing year, if desired, must be established by following the procedures set forth in paragraph (b) or (c) of this section.

(3) Any licensee who fails to enter at least 85 percent of a particular nonhistorical or supplementary quota

share for any article for a given year will be ineligible to have such nonhistorical or supplementary quota share renewed for the next quota year, unless such licensee notifies the Licensing Authority in a letter postmarked no later than October 1 of the quota year for which his license is valid, of his intentions to enter less than 85 percent of his quota share and surrenders to the Licensing Authority that portion of the quota share which he or she does not intend to use. If, after surrendering a portion of a non-historical or supplementary quota share of an article, a licensee fails to import 85 percent or more of the unsurrendered portion of the quota share, such licensee will be ineligible to receive a license to import a quota share of such article in the next quota year, unless the licensee establishes that he or she was unable to enter such article due to reasons acceptable to the Licensing Authority.

(4) A historical licensee may elect to permanently surrender his or her historical eligibility for an article in Appendix 1 and receive a nonhistorical quota share for the same article from the same country of origin in the next quota year. If done, said licensee's nonhistorical eligibility will be deemed to have been in effect in the year preceding the year for which nonhistorical application is made giving said licensee the priority accorded under § 6.26(b)(2) (ii) and (iv) below.

(e) *Transfer of eligibility.* (1) Upon receipt of documentary evidence acceptable to the Licensing Authority that the entire dairy products business covered by this regulation of a person who has established historical eligibility for a quota share has been sold or otherwise transferred (a complete transfer of total assets, binding on all parties-in-interest) to a person who is assuming the operation of the entire business involving dairy products covered by this regulation, the Licensing Authority will recognize the successor-in-interest as having eligibility for such quota share: *Provided*, That, in the event of the merger of the businesses of two or more persons, the successor-in-interest, with the persons or firms for which said person is successor-in-interest and said person's affiliates and associates, will be considered only as one person for the purpose of determining nonhistorical or supplementary license eligibility for quota shares. Eligibility for nonhistorical or supplementary quota shares may not be transferred.

(f) The Licensing Authority may, on an annual basis, require submission of signatures of the person(s) authorized to sign for a licensee.

§ 6.26 Allocation of annual quota and issuance of licenses.

(a) *Historical licenses.* (1) Subject to paragraph (d) of this section (concerning temporary reduction of historical quota share), and paragraph (d)(1) of § 6.25 (concerning continuation of eligibility), a person, or his or her successor-in-interest, eligible to receive a historical quota share for an article in Appendix 1 will receive his or her basic annual allocation plus a prorated share of the portion derived from temporary reductions of historical quota shares (done under paragraph (d) of this section) of other historical licensees for the same article in Appendix 1.

(2) Subject to paragraph (d) of this section and paragraph (d)(1) of § 6.25, a person, or his or her successor-in-interest, eligible to receive a historical quota share for an article in Appendix 2 will receive his or her basic annual allocation, but portions of quota shares of articles in Appendix 2 derived from temporary reductions of historical quota shares (done under paragraph (d) of this section) will, to the extent practicable, be allocated as supplementary quota shares in accordance with the provisions of paragraph (c) of this section.

(3) Subject to paragraph (d) of this section and paragraph (d)(1) of § 6.25, a person, or his or her successor-in-interest, who is eligible to receive a historical quota share for an article in Group II, III, or IV of Appendix 1 from a particular country of origin will receive a prorated historical quota share for such article from such country of origin in Appendix 2. A person who has established historical eligibility in accordance with the requirements of § 6.25(a)(2) for an article from a particular country in Group V of Appendix 2 will receive a prorated historical quota share for such article from such country. *Provided*, That, in no case shall more than 50 percent of any quota for any particular country in Appendix 2 be allocated on a historical basis; and no licensee may receive a historical quota share for an article in Group V of Appendix 2 from a particular country of origin which exceeds in size the quantity of such article entered free of quota from such country of origin by such licensee during the period July 1, 1978 through June 30, 1979.

(4) Subject to paragraph (d) of this section and paragraph (d)(1) of § 6.25, a person, or his or her successor-in-interest, who is eligible to receive a historical quota share for an article in Group V of Appendix 1 from a particular country of origin for which entries during the base period were equal to or less than 2 percent of the quota amount

in Appendix 2 for such article from such countries of origin, will receive a historical quota share in Appendix 2 for such article from such country, but in no case shall such person receive a historical quota share for such article from such country in Appendix 2 which is greater in size than 50 percent of his or her basic annual allocation for such article from such country in Appendix 1.

(5) Historical licensees for articles classified under item 950.10D from "Other Countries" in Appendix 1 who can show proof satisfactory to the Licensing Authority that their quota shares for this quota were based on entries of an article for which Australia was the supplying country, may, upon written request, have the country of origin for such quota share(s) permanently changed from "Other Countries" to "Australia."

(6) Where loss of historical licenses has occurred as a result of elimination of a particular quota from a particular country of origin, during the Tokyo Round of Multilateral Trade Negotiations, the Licensing Authority may, to the extent practicable, compensate the affected licensees with equal but not larger historical shares from other quota from the same or another country. Shifts in historical licenses granted for this reason shall be done with the intent of avoiding any adverse impact on eligibility for or the sizes of other historical or non-historical licenses granted to such licensees.

(b) *Nonhistorical licenses (pertaining only to articles in Appendix 1).* (1) The annual quotas in Appendix 1, less the quantities allocated to historical licensees, will, to the extent practicable, be allocated among eligible nonhistorical applicants. Subject to paragraph (b)(3)(ii) of this section, the minimum annual nonhistorical quota share for each article will be as follows:

Article	TSUS Item No.	Minimum quantity (pounds)
Dried buttermilk and whey	950.01	2,500
Dried skimmed milk	950.02	5,000
Dried whole milk	950.03	1,000
Dried cream	950.04	250
Butter	950.05	1,000
Blue-mold cheese	950.07	5,000
Cheddar cheese	950.08A	10,000
American-type cheese	950.08B	10,000
Natural Edam and Gouda cheese	950.09A	7,000
Processed Edam and Gouda cheese	950.09B	5,000
Italian-type cow's milk cheese in original loaves	950.10	5,000
Italian-type cow's milk cheese in other than original loaves	950.10A	5,000
Swiss or Emmenthaler cheese with eye formation	950.10B	10,000
Swiss or Emmenthaler cheese other than eye formation, "Gruyere-Process"	950.10C	10,000
"Other" cheese, NSPF	950.10D	40,000
"Other" cheese, "low fat"	950.10E	10,000
Malted milk	950.11	25C

(2) A person with his or her affiliate(s) and associate(s) will be considered only as one person for the purpose of allocation of nonhistorical quota shares. A person with historical eligibility for an article in Appendix 1 or Appendix 2 may not qualify for a nonhistorical quota share for the same article in Appendix 1, except where nonhistorical eligibility for a particular article was established and maintained prior to the awarding of Appendix 2 historical eligibility.

(3) A nonhistorical quota share (referring only to articles in Appendix 1) will be determined on the following basis:

(i) If, after applications for nonhistorical eligibility for a quota year have been evaluated, the Licensing Authority determines that the number of eligible applicants who held a nonhistorical license for an article in Appendix 1 from a particular country of origin during the previous quota year *exceeds* the number which could be issued a quota share at the minimum quantity set forth above, the Licensing Authority will determine the quota shares by dividing the amount available by the number of such eligible applicants.

(ii) If the Licensing Authority determines that the number of eligible applicants for a quota year who held a nonhistorical license for an article from a particular country of origin during the previous year plus the number of eligible applicants who did not hold a nonhistorical license for such article from such country of origin during such year is *less* than the number which could be issued a quota share at the minimum quantity, the Licensing Authority will determine the quota shares by dividing the amount available by the number of such eligible applicants, subject to provisions in § 6.26 (b)(4).

(iii) If the number of eligible applicants for a quota year who held a nonhistorical license for an article from a particular country of origin during the previous year plus the number of eligible applicants who either did not hold a nonhistorical license for such article from such country of origin during such year or did not hold any nonhistorical license for such article *exceeds* the number which could be issued a quota share at the minimum quantity, the Licensing Authority will first issue quota shares at the minimum quantity to each of the eligible applicants who held a nonhistorical license for such article from that particular country of origin during the previous year, secondly, issue quota shares at the minimum quantity to

eligible applicants who held a nonhistorical license for such article from a different country of origin during the previous year, and thirdly, issue quota shares at the minimum quantity to eligible applicants who did not hold a nonhistorical license for such article during the previous year, until all available quota shares are issued. Selection of eligible applicants in the latter two groups shall be made on the basis of the date of postmark of the application received pursuant to § 6.24 of the regulation.

(4) Subject to paragraph (b)(3)(i) of this section, quota shares for an article may not be smaller than the applicable minimum quantity set forth above unless requested in writing by the applicant, but in no case shall the quota share be greater than the quantity requested by the applicant.

(c) *Supplementary Licenses* (pertaining only to articles in Appendix 2):

(1) A person with his or her affiliate(s) and associate(s) will be considered only as one person for the purpose of allocation of supplementary quota shares. No more than one supplementary quota share of an article from each specific country of origin listed for such article in Appendix 2 will be issued to any such person. No licensee with a historical license for a particular article in Appendix 2 from a particular country of origin, however, may receive more than one supplementary share in addition to the matching supplementary share(s) for such article for which such person is eligible under paragraph (c)(2)(i) of this section. However, in cases where the Licensing Authority deems it necessary to make additional allocations in order to fully allocate a quota, such additional allocations may only be made after all eligible persons have been notified and given an opportunity to apply. Such notification will not be necessary for the reallocation of surrendered licenses covered by paragraph (e)(3) of this section.

(2) A supplementary quota share for an article in Appendix 2 from the EC will be determined on the following basis:

(i) Subject to paragraph (c)(1) of this section, the size of supplementary quota share issued to an eligible applicant for a specific article in Appendix 2 shall not exceed (A), for applicants who have historical quota shares in Appendix 2 from the EC for such article: An amount equal to the amount of the applicant's Appendix 2 historical quota share, or, to the extent practicable, the difference between the applicant's Appendix 2 historical quota share for such article and the amount of each supplementary

quota share for such article allocated to applicants who have no Appendix 2 historical quota share for such article, whichever is larger; (B), for applicants who have no such historical quota shares: 110,000 pounds.

(ii) If, after applications for supplementary licenses have been evaluated and tabulated, the Licensing Authority determines that eligible applicants for shares of a particular quota for an article in Appendix 2 from the EC have appropriately requested amounts which together exceed the amount available for allocation, the Licensing Authority shall first assign quota shares of not less than the minimum share as indicated below to each applicant and then pro-rate the remaining portion of that available for allocation among them, based on each applicant's basic annual allocation for such quota in Appendix 2 from the EC, or on the minimum share assigned, whichever is greater. The minimum share shall be as follows:

(A) 5,000 pounds where the total poundage available for supplementary licenses is less than 500,000 pounds;

(B) 20,000 pounds where the total poundage available for supplementary licenses is over 500,000 pounds but less than 1,000,000 pounds;

(C) 36,000 pounds where the total poundage available for supplementary licenses is over 1,000,000 pounds.

(iii) If, after applications for supplementary licenses have been evaluated and tabulated, the Licensing Authority determines that the number of eligible applicants for a share of a quota for a particular article in Appendix 2 from the EC exceeds the number which could be assigned the minimum share each, the Licensing Authority may eliminate individual applications based on date of postmark and then, where necessary, other fair and equitable criteria. A single quota share for a particular article of less than the minimum may be issued, if appropriate, to facilitate full allocation of a particular quota.

(3) A supplementary quota share for an article in Appendix 2 from a particular country of origin other than the EC will be determined on the following basis:

(i) Eligible applicants whose applications have been endorsed in writing by an appropriate official of the government of the supplying country, which written endorsement is submitted directly from such government through appropriate channels to the Licensing Authority, shall receive first priority in allocation. Written endorsements shall also include the names and addresses of applicants endorsed and the quota

article(s), including the amount(s), endorsed for each such applicant.

(ii) To the extent practicable, an eligible applicant whose application has been endorsed by the government of the supplying country as set forth in paragraph (c)(3)(i) of this section shall be awarded the full amount for which he or she has been endorsed. If eligible applicants whose applications have been endorsed by the government of the supplying country as set forth in paragraph (c)(3)(i) of this section request an aggregate amount of a specific quota from a specific country (not the EC) smaller than is available for allocation, or if no endorsement is made, the Licensing Authority shall allocate remaining portions among applicants who have not been endorsed, following a procedure identical to that set forth in paragraph (c)(2) of this section for the EC, replacing, for this purpose, the words "the EC" wherever they appear with "a particular non-EC country."

(iii) If an endorsed licensee surrenders his or her endorsed quota share, or a portion thereof, under the provisions of paragraph (d)(2) of this section, the endorsing country may, by a new written endorsement, designate another importer for such portion or share.

(d) *Temporary reduction of historical quota share.* (1) Subject to provisions of paragraph (e) of this section, the historical quota share for any article in Appendix 1 or Appendix 2, which is not entered by its holder at the rate of 85 percent or more during a calendar year will be reduced in the following quota year, unless such licensee establishes that he or she was unable to enter such article due to reasons acceptable to the Licensing Authority. Such reduced historical quota share will be equal to the amount imported during the preceding quota year. *Provided*, That, once such reduced quota share has been established, the quota share of the licensee in the following quota year will be restored to its full basic annual allocation if the licensee enters 85 percent or more of the reduced quota share during the quota year when it was established.

(2) Notwithstanding the above, a licensee may, in a letter postmarked no later than October 1 of a quota year, voluntarily surrender without penalty that portion of a historical quota share for any article in Appendix 1 or Appendix 2 which he or she does not intend to use. Any temporary reduction of a historical quota share will be based on the percentage used of that portion of such quota share which was not surrendered before October 1 of the preceding quota year.

(e) *Temporary reallocation of quota shares.* (1) Notwithstanding any other provisions of this regulation, to the extent that, between June 1 and October 1, it appears from information submitted to the Licensing Authority or otherwise, that all or part of a quota share of a particular licensee for an article from a particular country of origin will not be entered during that quota year, the Licensing Authority may require such licensee to submit in writing within a specified 21 day period a statement as to the amount of the unused portion of such quota share which will be used during the remainder of such quota year. In addition, such licensee may be required to submit copies of contracts, purchase orders or any other documentary evidence of intent to import against the unused portion of such quota share. If the licensee fails to submit such statement (including documentary evidence, if requested) within the specified period, the Licensing Authority may conclude that the unused portion of the quota share in question will not be used during the remainder of said quota year. On the basis of said statement, or if no statement is submitted, the Licensing Authority may reallocate all or part of the unused portion of such quota share.

(2) To the extent that the quota shares or portions thereof are surrendered under § 6.25(d)(3) (pertaining to nonhistorical and supplementary quota shares), § 6.26(d)(2), (pertaining to historical quota shares), or paragraph (e)(1) of this section by licensees for articles during a quota year, the quota shares for other licensees will be increased for such year as follows:

(i) Reallocation will be made among applying licensees from such article from such country of origin on the basis of the amounts requested by the applicants, unless the aggregate of the amounts requested exceeds the portion of the quota available for reallocation, in which case each applicant will be granted an appropriate minimum amount and any excess will then be allocated on the basis of the respective amounts of such articles entered by such licensees from such country of origin during the previous two quota years. However, no applicant may receive more than the amount he or she requests.

(ii) If, after a surrendered quota share is reallocated among licensees who hold a nonreduced license for such quota and apply for a portion of the reallocation, unallocated quantities of the quota still remain, such quantities may be allocated to other non-affiliated and non-associated applicants who have

historical or nonhistorical eligibility for any quota under the regulation for the remainder of the quota year in question. Quota shares allocated to such other applicants under this provision will be made in equal amounts of not less than 2,500 pounds each; except in the case of quota items the quota amounts for which are less than 10,000 pounds, which quota items will be allocated in equal shares of not less than 250 pounds each; except that no applicant will receive more than the amount requested in his or her application.

(3) Application for a reallocated portion will not be valid unless made in accordance with § 6.24 and postmarked during the period September 1–15 of the quota year in which reallocation is being considered.

(4) Any temporary reduction in a historical quota share (in accordance with paragraph (d) of this section) will be based on the percentage used of the portion of such quota share which was not surrendered for reallocation during the preceding quota year.

(f) *Interim Appendix 2, 1980 Historical Licenses.* The Licensing Authority may, where deemed necessary by the Licensing Authority issue partial interim 1980 licenses for an article from a particular country in Appendix 2, particularly to persons who have no Appendix 1 license for such article from such country. *Provided,* That such licenses are issued on the basis of documents submitted pursuant to notice in the *Federal Register* of August 16, 1979 (44 FR 47969), and the amounts issued are deducted from the final 1980 Appendix 2 licenses for such article from such countries.

§ 6.27 Use of licenses.

(a) The article entered must be a product of the country of origin specified in the license under which it is entered.

(b) Subject to § 6.30, a quota share may be imported from only one country of origin.

(c) Notwithstanding any other rules, regulations, or procedures for the importation of goods, the article entered under license may be entered or withdrawn from warehouse only in the name of the licensee either by the licensee or by the licensee's agent acting in the licensee's name under the power of attorney, and the quantity so entered must, on the date of entry, be owned by the licensee and must be charged against the license in effect. The article entered under license must be accompanied by:

(1) an invoice from a seller in the country of origin to a purchaser in the United States and a through bill of

lading from the country of origin to the United States, or,

(2) if the seller is not located in the country of origin, a through bill of lading from the country of origin to the United States and a certificate of origin issued in the country of origin which shall indicate the United States as the destination of the merchandise and state the quantity and description of the merchandise in the shipment. *Provided,* That, these requirements as well as those in paragraph (c)(1) of this section may be temporarily waived by the Licensing Authority upon his or her determination that compliance therewith, during periods of strikes, lockouts, or other such emergencies, affecting the importation of articles would interfere with the entry of such articles.

(d) In the event of a sale in transit, an article may be entered for consumption under a license issued to an authorized person to whom the sale has been made against a properly endorsed through bill of lading and a certified copy of the bill of sale from the original consignee showing the amount paid, the date of purchase, and the licensee as the owner of the article at such time.

(e) In the event of the loss of the original through bill of lading, a carrier's certificate showing the licensee as consignee and certifying that the shipment is a through shipment may be substituted therefor.

(f) An article may be entered from bonded warehouse only in the manner prescribed above for consumption entries. In the event of sale while in bonded warehouse, entry may be made under license issued to an authorized person or firm to whom the sale has been made and only upon the presentation of a properly endorsed Customs Form 7505 and a certified copy of the bill of sale, showing the amount, date of sale, and that the licensee is the owner of the article at such time.

(g) Consolidated entries or withdrawals from warehouse for consumption may not be made except with the written approval of the Licensing Authority.

(h) Each entry or withdrawal from warehouse for consumption must be accompanied by a copy of Customs entry Form 7501 or Customs warehouse withdrawal Form 7505 (with the appropriate license number noted on it), required through bill of lading and required invoice. The Customs Service will stamp the copy of the completed form 7501 or 7505 with the date of entry and the Customs entry or withdrawal number and submit it to the Licensing Authority as soon as practicable.

§ 6.28 Records and inspection.

Any person making an entry, except as provided in § 6.23, of an article listed in either Appendix 1 or Appendix 2 is required to retain all records, including invoices of all purchases, entries, withdrawals, sales and deliveries of such articles for a period of not less than 2 years subsequent to the end of the quota year during which entry was made. The Licensing Authority or his or her designee is entitled to make such audit and inspection of such records, to inspect the premises and stocks of articles of such person, and to make such other investigations as may be necessary or appropriate in the enforcement or administration of the regulation.

§ 6.29 Suspension or revocation of eligibility.

(a) *Failure to import quota share*—(1) If the Licensing Authority has reason to believe that a person with a historical quota share for any article has failed to enter any of such article for two consecutive quota years, or three nonconsecutive quota years within a five year period, the eligibility of such person for a historical license to enter such article will be suspended for the following quota year pending receipt by the Licensing Authority of documentary evidence of entry against such quota share during one or more of said years, unless the reason for failure to enter is acceptable to the Licensing Authority and an application to receive a license to import such article is received and approved by the Licensing Authority no later than 3 months after the beginning of such following quota year.

(2) If the Licensing Authority determines that a person with a historical quota share for any article has failed to import any of such article during two consecutive years, or three non-consecutive years within a five year period, the eligibility of such person will be revoked unless the licensee establishes that he or she was unable to import such article due to extraordinary circumstances acceptable to the Licensing Authority.

(b) *Violations of the regulation*—(1) *Charge against licenses.* Any quantity of an article entered by any person contrary to this regulation may be charged against any unused import license held by, or to be issued to, such person.

(2) *Civil and criminal liability.* Any person who violates any provision of the regulation may be prosecuted under any and all applicable laws. Civil action may also be instituted to enforce any liability or duty created by, or enjoin any violation of any provision of, the

regulation or requirement pursuant hereto.

(3) *Revocation of license eligibility.* The Licensing Authority, upon reasonable cause to believe—after records are reviewed and a preliminary investigation is made by the Department—that a licensee has violated the provisions of the regulation or has furnished false or incomplete information in connection with the application for or use of licenses issued hereunder, may, after notice to the licensee, revoke said licensee's eligibility (a permanent revocation of historical eligibility) and may bar such person from receiving any supplementary or nonhistorical licenses for a period of not more than three years. Any person whose eligibility has been revoked pursuant to provisions of this section will have the opportunity to appeal the determination to the Administrator, Foreign Agricultural Service (FAS), or his designee within 30 days from the date of notification. The request for reconsideration will be presented in writing separately stating any reason as to why such determination should not stand. The Administrator, FAS will provide such person with an opportunity for a hearing on such matter.

§ 6.30 Adjustment of countries of origin.

(a) Upon submission by a licensee of proof satisfactory to the Licensing Authority that said licensee will be unable to enter during a quota year his or her quota share of an article from the country of origin specified in his or her license, the Licensing Authority or his or her designee may authorize the licensee and other licensees similarly situated after taking due account of any special factors which may have affected or may be affecting the trade in the article concerned, to obtain the unfilled portion of their quota shares of such article from:

(1) Other countries specified in Part 3 of the Appendix to the Tariff Schedules of the United States as countries of origin for such article;

(2) Any country of origin (global) whenever countries of origin for such article are not specified.

(b) In the event that it is shown to the satisfaction of the Licensing Authority that the country of origin discriminates against a licensee as to either price or availability of an article, the Licensing Authority shall not impose any penalties with respect to failure to use 85% or more of his or her quota share during such quota year and/or the Licensing Authority may adjust the country of origin.

§ 6.31 Delegation of Authority.

The powers vested in the Administrator, FAS, insofar as such powers relate to the functions vested in the Licensing Authority by this regulation are hereby delegated to the Licensing Authority.

§ 6.32 Supersedure of Import Regulation 1, Revision 6.

This regulation will supersede the provisions of Import Regulation 1, Revision 6, as amended, heretofore in effect. With respect to violations, rights accrued, liabilities incurred, or appeals taken concerning Import Regulation 1, as amended and revised, prior to the effective date hereof, all provisions of said Import Regulation 1, as amended and revised, in effect at the time when such violations occurred, rights accrued, liabilities incurred, or appeals taken will be deemed to continue in full force and effect for the purpose of sustaining any proper suit, action, or other proceeding with respect to any such violation, right, liability, or appeal.

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Subtitle A--Office of the Secretary of Agriculture

Appendix 1-Articles¹ subject to the historical and nonhistorical licensing provisions of Import Regulation 1, Revision 7, and respective annual Import Quotas for each Quota year

Article ¹ by TSUS item number	Annual historical/ nonhistorical quota (kilograms)	Equivalent Whole Pounds
Group I:		
(a) Butter (Item 950.05).....	320,693	707,000
EC.....	96,162	212,000
New Zealand.....	150,594	332,000
Other countries.....	73,936	163,000
(b) Dried cream (Item 950.04).....	226	500
(c) Malted milk (Item 950.11).....	2,721	6,000
(d) Dried whole milk (Item 950.03).....	3,175	7,000
(e) Dried skimmed milk (Item 950.02).....	819,649	1,807,000
(f) Dried buttermilk and whey (Item 950.01)..	224,984	496,000
Group II:		
(a) Edam and Gouda cheese (Item 950.09A).....	4,177,001	9,208,615
EC.....	4,011,000	8,842,650
Argentina.....	125,000	275,575
Sweden.....	41,000	90,388
Other countries.....	1	2
(b) Cheese and substitutes for cheese containing, or processed from Edam and Gouda cheese (Item 950.09B).....	1,429,000	3,150,373
EC.....	1,237,000	2,727,090
Norway.....	167,000	368,168
Other Countries.....	25,000	55,115
(c) Blue-mold cheese (except Stilton made in England), and cheese and substitutes for cheese containing or processed from Blue-mold cheese (Item 950.07).....	2,257,001	4,975,784
EC.....	2,255,000	4,971,373
Argentina.....	2,000	4,409
Other countries.....	1	2

See footnotes at the end of table.

Subtitle A--Office of the Secretary of Agriculture
Appendix 1-Import Regulation 1, Revision 7

Group III:

(a) Cheddar cheese, and cheese and substitutes for cheese containing or processed from		
Cheddar cheese (Item 950.08A).....	3,667,889	8,086,226
EC.....	263,000	579,809
Australia.....	769,000	1,695,337
New Zealand.....	2,496,000	5,502,681
Other Countries.....	139,889	308,399
(b) 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 (Item 950.08B).....	2,708,556	5,971,281
EC.....	254,000	559,968
Australia.....	762,000	1,679,905
New Zealand.....	1,524,000	3,359,810
Other Countries.....	168,556	371,598

Group IV:

(a) Italian-type cheeses made from cow's milk, in original loaves. (Romano made from cow's milk, Reggiano, Parmesano, Provoloni, Provolette, Sbrinz) (Item 950.10).....		
	4,863,001	10,720,968
EC.....	1,763,000	3,886,709
Argentina.....	3,100,000	6,834,260
Other Countries.....	1	2
(b) Italian-type cheeses made from cow's milk, not in original loaves (Romano made from cow's milk, Reggiano, Parmesano, Provoloni, Provolette, Sbrinz, and Goya) and cheese and substitutes for cheese containing, or processed from, such Italian-type cheeses, whether or not in original loaves (Item 950.10A).....		
	671,000	1,479,285
EC.....	47,000	103,616
Argentina.....	611,000	1,347,010
Other Countries.....	13,000	28,659

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Appendix 1-Import Regulation 1, Revision 7

Group V

(a)	Swiss or Emmenthaler cheese with eye formation (Item 950.10B).....	9,260,276	20,415,204
	EC.....	1,767,000	3,895,528
	Austria.....	3,729,000	8,220,953
	Finland.....	2,772,000	6,111,151
	Israel.....	27,000	59,524
	Norway.....	758,000	1,671,086
	Switzerland.....	122,000	268,961
	Other Countries.....	85,276	187,999
(b)	Swiss or Emmenthaler cheese other than with eye formation. Gruyere-process cheese; and cheese and substitutes for cheese containing, or processed from such cheese (Item 950.10C).....	5,061,833	11,159,314
	EC.....	2,478,000	5,462,998
	Austria.....	638,000	1,406,534
	Finland.....	728,000	1,604,948
	Portugal.....	125,000	275,575
	Switzerland.....	1,013,000	2,233,259
	Other Countries.....	79,833	176,000
(c)	Cheese and substitutes for cheese provided for in Items 117.75 and 117.85, part 4C, schedule 1 (except 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 Part 3 of the Appendix to the Tariff Schedules of the United States (Item 950.10D).....	18,392,859	40,548,891
	EC.....	10,621,000	23,415,056
	Austria.....	90,000	198,414
	Canada.....	1,141,000	2,515,448
	Finland.....	562,000	1,238,985
	Iceland.....	294,000	648,152
	Israel.....	66,000	145,503
	New Zealand.....	3,427,000	7,555,164
	Norway.....	150,000	330,690
	Poland.....	936,224	2,063,999
	Portugal.....	103,000	227,073
	Sweden.....	774,000	1,706,360
	Switzerland.....	98,000	216,050
	Other Countries.....	130,635	287,997

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(d) Cheese and substitutes for cheese,
containing 0.5 percent or less by weight
of butterfat, as provided for in items
117.75 and 117.85 of subpart C, Part 4,
schedule 1, except articles within the
scope of other import quotas provided for
in Part 3 of the Appendix to the Tariff
Schedules of the United States

(Item 950.10E).....	4,008,001	8,836,038
EC.....	3,777,000	8,326,774
Australia.....	56,000	123,457
Poland.....	175,000	385,805
Other Countries.....	1	2

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Appendix 2--Articles¹ subject to the historical and nonhistorical licensing provisions of Import Regulation 1, Revision 7, and respective annual Import Quotas for each Quota year

Article ¹ by TSUS item number	Annual historical/ nonhistorical quota (kilograms)	Equivalent Whole Pounds
Group II:		
(c) Blue-mold cheese (except stilton made in England), and cheese and substitutes for cheese containing, or processed from Blue-mold cheese (Item 950.07)		
EC.....	224,000	493,830
Group III:		
(a) Cheddar cheese, and cheese and substitutes for cheese containing, or processed from Cheddar cheese (Item 950.08A).....	1,035,000	2,281,760
New Zealand.....	604,000	1,331,578
Australia.....	431,000	950,182
(b) American-type cheese, including Colby, washed curd, and granular cheese (but no including Cheddar) and cheese and substitutes for cheese containing, or processed from such American-type cheese (Item 950.08B)....	714,000	1,574,083
New Zealand.....	476,000	1,049,389
Australia.....	238,000	524,694
Group IV:		
(a) Italian-type cheese made from cow's milk, in original loaves. (Romano made from cow's milk, Reggiano, Parmesano, Provoloni, Provolette, Sbrinz) (Item 950.10)		
Argentina.....	750,000	1,653,450

See footnotes at the end of table.

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(b) Italian-type cheeses made from cow's milk, not in original loaves (Romano made from cow's milk, Reggiano, Parmesano, Provoloni, Provolette, Sbrinz, and Goya) and cheese and substitutes for cheese containing, or processed from, such Italian-type cheeses, whether or not in original loaves (Item 950.10A)
Argentina..... 32,000 70,547

Group V

(a) Swiss or Emmenthaler cheese with eye formation (Item 950.10B)..... 22,595,000 49,812,934
EC..... 4,233,000 9,332,071
Argentina..... 80,000 176,368
Austria..... 2,551,000 5,623,934
Australia..... 500,000 1,102,300
Canada..... 70,000 154,322
Finland..... 5,428,000 11,966,568
Iceland..... 300,000 661,380
Norway..... 6,125,000 13,503,175
Switzerland..... 3,308,000 7,292,816

(b) Swiss or Emmenthaler cheese other than with eye formation. Gruyere-process cheese; and cheese and substitutes for cheese containing, or processed from such cheese (Item 950.10C)..... 2,013,000 4,437,859
EC..... 1,022,000 2,253,101
Austria..... 282,000 621,697
Finland..... 272,000 599,651
Switzerland..... 437,000 963,410

(c) Cheese and substitutes for cheese provided for in Items 117.75 and 117.85, part 4C, schedule 1 (except 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 Part 3 of the Appendix to the Tariff Schedules of the United States (Item 950.10D)..... 22,518,000 49,643,180
EC..... 9,379,000 20,676,943
Argentina..... 100,000 220,460
Australia..... 1,050,000 2,314,830
Austria..... 560,000 1,234,576

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Finland.....	738,000	1,626,994
Iceland.....	29,000	63,933
Israel.....	607,000	1,338,192
New Zealand.....	7,895,000	17,405,317
Portugal.....	353,000	778,223
Sweden.....	285,000	628,311
Switzerland.....	1,522,000	3,355,401

- (d) Cheese and substitutes for cheese, containing 0.5 percent or less by weight of butterfat, as provided for in items 117.75 and 117.85 of subpart C, Part 4, schedule 1, except articles within the scope of other import quotas provided for in Part 3 of the Appendix to the Tariff Schedules of the United States

(Item 950.10E).....	1,717,000	3,785,298
EC.....	223,000	491,625
Australia.....	194,000	427,692
Israel.....	50,000	110,230
New Zealand.....	1,000,000	2,204,600
Sweden.....	250,000	551,150

1/ Each time a particular TSUS Item No. is referred to in this Appendix, it includes all the articles classified under that item number in Part 3 of the Appendix to the Tariff Schedules of the United States except where specifically otherwise provided in the article description.

(Sec. 3, 62 Stat. 1248, as amended (7 U.S.C. 624); part 3 of the Appendix to the Tariff Schedules of the United States (9 U.S.C. 1202)

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, Head Dairy and Import Group, CP, Room 6616, South Building, Department of Agriculture, Washington, D.C. 20250.

Signed the 18th day of December, 1979.
Thomas R. Hughes,
Administrator, Foreign Agricultural Service.
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