Commission Delegated Regulation (EU) 2016/1237 of 18 May 2016 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the rules for applying the system of import and export licences and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the rules on the release and forfeit of securities lodged for such licences, amending Commission Regulations (EC) No 2535/2001, (EC) No 1342/2003, (EC) No 2336/2003, (EC) No 951/2006, (EC) No 341/2007 and (EC) No 382/2008 and repealing Commission Regulations (EC) No 2390/98, (EC) No 1345/2005, (EC) No 376/2008 and (EC) No 507/2008 (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2016/1237

of 18 May 2016

supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the rules for applying the system of import and export licences and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the rules on the release and forfeit of securities lodged for such licences, amending Commission Regulations (EC) No 2535/2001, (EC) No 1342/2003, (EC) No 2336/2003, (EC) No 951/2006, (EC) No 341/2007 and (EC) No 382/2008 and repealing Commission Regulations (EC) No 2390/98, (EC) No 1345/2005, (EC) No 376/2008 and (EC) No 507/2008

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007[(1)], and in particular Article 177 thereof,

Having regard to Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008[(2)], and in particular Article 66(3) (c) and (e) thereof,

Whereas:

(1) Regulation (EU) No 1308/2013 repealed and replaced Council Regulation (EC) No 1234/2007[(3)] and lays down rules regarding import and export licences for agricultural products. It also empowers the Commission to adopt delegated and implementing acts in that respect. In order to ensure the smooth functioning of the system of import and export licences in the new legal framework, certain rules have to be adopted by means of such acts.

Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2016/1237. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(2) Article 176 of Regulation (EU) No 1308/2013 provides that the import for release for free circulation or the export of one or more products of the sectors laid down in that Article may be made subject to the presentation of a licence. The list of the products of those sectors subject to the presentation of an import or export licence should be laid down.

(3) Monitoring trade flows by means of licences should be addressed in a flexible way. When defining the cases where a licence is required, account should be taken of other possible sources of information, such as the customs surveillance system, and the need for licences or the time needed to gather information by means of licences. The specific cases where a licence is not required should be defined.

(4) It is necessary to provide that the licences are to be issued subject to the lodging of a security, so as to guarantee that the products will be imported or exported during the period of validity of the licence. It is also necessary to lay down when the obligation to import or export is fulfilled.

(5) An import or export licence confers the right to import or export and, therefore, in order to make this right effective a licence should be presented at the time when the import or export declaration is submitted.

(6) Since the person using a licence may not be the titular holder or transferee, it should be specified, in the interests of legal certainty and administrative efficiency, which persons are authorised to use the licence, including a customs representative acting on behalf of the titular holder or transferee.

(7) In view of international trade practice in respect of the agricultural products concerned, certain tolerances should be allowed with regard to the quantity of products imported or exported as compared with the quantity indicated on the licence.

(8) Where an import licence is also used to administer a tariff quota to which preferential arrangements apply, such preferential arrangements are to apply to importers by virtue of the licence which must, in some cases, be accompanied by a document from a third country. To avoid any overrun in the quota, the preferential arrangement is to apply up to the quantity for which the licence was issued. In such cases a tolerance should be permitted, provided that the part of the quantity exceeding the quantity shown on the licence but within the tolerance does not benefit from the preferential arrangement and the conventional customs duty is payable.

(9) It is appropriate to lay down specific rules as regards the transferability of a licence.

(10) Provisions should be laid down on the release and forfeiture of the security lodged for import and export licences.

(11) Due to the specificity of the sector, it is necessary to lay down some additional conditions for import licences for hemp and for garlic.

(12) For the sake of clarity it is appropriate to lay down the rules concerning the import and export licences issued for products for which the import or export licence obligation

***Changes to legislation:** There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2016/1237. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

is abolished or affected by this Regulation and which are still valid on the date of application of this Regulation.

(13) As the aim of this Regulation and Commission Implementing Regulation (EU) 2016/1239[(4)] is to simplify and adapt the provisions applicable to the system of import and export licences to the new legal framework established by Regulation (EU) No 1308/2013, the currently applicable provisions should be replaced. For the sake of clarity, certain provisions of Commission Regulations (EC) No 2535/2001[(5)], (EC) No 1342/2003[(6)], (EC) No 2336/2003[(7)], (EC) No 951/2006[(8)], (EC) No 341/2007[(9)] and (EC) No 382/2008[(10)] should be deleted and Commission Regulations (EC) No 2390/98[(11)], (EC) No 1345/2005[(12)], (EC) No 376/2008[(13)] and (EC) No 507/2008[(14)] should be repealed.

(14) The transition from the arrangements provided for in the deleted provisions and repealed Regulations to those provided for in this Regulation might have some practical consequences. Therefore, it is appropriate to defer the application of this Regulation,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(a) ‘licence’ means an electronic or paper document with a specific period of validity, expressing the right and obligation to import or export products;

(b) ‘notice on import and export licences for agricultural products’ means the detailed provisions for the import licence or export licence and set of information to be mentioned in a licence application and in a licence as published in the *Official Journal of the European Union*, C-series.[(15)]

Article 2

Cases where a licence is required

1 An import licence shall be presented for the following products:

a products listed in Part I of the Annex, when they are declared for release for free circulation under all conditions, other than tariff rate quotas, save as otherwise provided in that Part I;

b products declared for release for free circulation under tariff rate quotas administered by the simultaneous examination method or the traditional/newcomer method as referred to in Article 184(2)(b) and (c) of Regulation (EU) No 1308/2013 respectively, or a combination thereof or by another appropriate method;

Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2016/1237. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

c products for which Part I of the Annex refers to this provision when declared for release for free circulation under tariff rate quotas administered by the method of the 'first come, first served' principle referred to in Article 184(2)(a) of Regulation (EU) No 1308/2013;

d products referred to in Part I of the Annex when declared for release for free circulation under a preferential arrangement to be administered by licences;

e products that are covered by an outward processing procedure using an export licence and that return into release for free circulation as a product listed in Section A or B of Part I of the Annex;

f products declared for release for free circulation under Article 185 of Regulation (EU) No 1308/2013 in case an import duty reduction applies.

2 An export licence shall be presented for the following products:

a products listed in Part II of the Annex;

b Union products for which an export licence needs to be presented for admission under a quota that is administered by the Union or by a third country and has been opened in that country for those products;

c the following Union products referred to in Part II of the Annex to be exported:

(i) products that are under the customs procedure of inward processing;

(ii) products that are basic products as listed in Annex III to Regulation (EU) No 510/2014 of the European Parliament and of the Council[16] and that are under the customs procedure of outward processing;

(iii) **[**[F1]products that are subject to the repayment or remission of the amount of import or export duty as set out in Section 3 of Chapter 3 of Title III of Regulation (EU) No 952/2013 of the European Parliament and of the Council[17] in respect of which a final decision has not yet been taken.**]**

Textual Amendments

F1 Substituted by Commission Delegated Regulation (EU) 2017/1965 of 17 August 2017 amending Delegated Regulation (EU) 2016/1237 as regards the nature and type of information to be notified for licences in the rice sector (Text with EEA relevance).

Article 3

Cases where a licence is not required

1 A licence shall not be required and shall not be issued or presented for the purposes of:

a release for free circulation or export of products of a non-commercial nature as set out in Section II(D)(2) of Part One of Annex I to Council Regulation (EEC) No 2658/87[18];

b cases in which relief from import duties, export duties and measures adopted on the basis of Article 207 of the Treaty is to be granted under Council Regulation (EC) No 1186/2009[19];

c quantities of products to be released for free circulation or export not exceeding those set out in the Annex;

d products to be released for free circulation as returned goods in accordance with Section 1 of Chapter 2 of Title VI of Regulation (EU) No 952/2013;

e products for which at the time of acceptance of the re-export declaration the declarant provides proof that a favourable decision for repayment or remission of import duties

***Changes to legislation:** There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2016/1237. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

has been given in respect of such products under Section 3 of Chapter 3 of Title III of Regulation (EU) No 952/2013.

By way of derogation from points (b) and (c) of the first subparagraph, a licence shall be required where the release for free circulation or export is being made under preferential arrangements which are granted by means of the licence.

For the purposes of point (c) of the first subparagraph, the quantity to be covered by one licence shall be calculated as comprising all the quantities to be released for free circulation or to be exported that are covered by the same logistic operation.

2 An export licence shall not be required and shall not be issued or presented in respect of products consigned by private individuals or groups of private individuals with a view to their free distribution for humanitarian aid purposes in third countries where such consignments are occasional in nature, comprise varied products and do not exceed a total of 30 000 kg per means of transport. Food aid operations not meeting these conditions are subject to a licence in accordance with this Regulation and the Implementing Regulation (EU) 2016/1239.

Article 4

Security

1 Licences are subject to a security, except in the cases provided for in the Annex.

2 When submitting an application for a licence, the applicant shall lodge a security, which shall be available at the licence issuing authority not later than 13.00 hours Brussels time on the day the application is submitted.

3 No security shall be required where the security comes to a threshold of EUR 100 or less.

For that purpose, the amount of the security shall be calculated as comprising all the quantities resulting from obligations covered by the same logistic operation.

4 No security shall be required where the applicant is either:

a a public body responsible for executing the duties of a public authority; or

b a private body executing duties referred to in point (a) under a Member State's supervision.

5 The security lodged in respect of a quantity for which a licence has not been issued shall be released forthwith.

Article 5

Rights and obligations, tolerance

1 The import or export licence shall constitute a right and give rise to an obligation to release for free circulation or to export, respectively, the quantity of products covered by the licence during its period of validity in accordance with Article 7(1) of Implementing Regulation (EU) 2016/1239.

2 The customs declaration for release for free circulation or for export shall be lodged by: