# Commission Delegated Regulation (EU) 2015/1538 of 23 June 2015 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to import licence applications, release for free circulation and proof of refining of sugar products of CN code 1701 under preferential agreements, for the marketing years 2015/16 and 2016/17 and amending Commission Regulations (EC) No 376/2008 and (EC) No 891/2009

## COMMISSION DELEGATED REGULATION (EU) 2015/1538

## of 23 June 2015

## supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to import licence applications, release for free circulation and proof of refining of sugar products of CN code 1701 under preferential agreements, for the marketing years 2015/16 and 2016/17 and amending Commission Regulations (EC) No 376/2008 and (EC) No 891/2009

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(1)(b), Article 177(2)(a), (b) and (e), and Article 192(4) thereof,

Whereas:

(1) Regulation (EU) No 1308/2013 has repealed and replaced Council Regulation (EC) No 1234/2007[(2)] and laid down specific rules for the import and refining of sugar products. Regulation (EU) No 1308/2013 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 refining of sugar products of CN code 1701 under preferential agreements in the new legal framework, certain rules have to be adopted by means of such acts. The new rules should replace the implementing rules laid down in Commission Regulation (EC) No 828/2009[(3)] that will expire on 30 September 2015.

(2) In order to ensure the proper functioning of the imports under preferential agreements, to avoid speculation and to allow the specific import regime for raw sugar for refining provided for in Article 192 of Regulation (EU) No 1308/2013, the requirements to be fulfilled when applying for import licences for imports under such preferential agreements should continue to apply.

(3) Commission Regulation (EC) No 376/2008[(4)] should apply to import licences issued under this Regulation, except as otherwise provided for in this Regulation.

(4) To avoid speculation or merchandising of import licences and to ensure that the applicant has commercial contacts with the exporting third country, import licence

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applications should be accompanied by an export document issued by a competent authority of the exporting third country for a quantity equal to the quantity of the import licence application.

(5) In order to ensure that sugar for refining imported in accordance with Article 192 of Regulation (EU) No 1308/2013 is actually refined, importers should commit to refine it within a certain period.

(6) The distinction between 'sugar intended for refining' and 'sugar not intended for refining' is not linked to the distinction between 'white sugars' and 'raw sugars' as defined in points 1 and 2 of Section A of Part II of Annex II to Regulation (EU) No 1308/2013. Therefore, the CN codes authorised for imports under each group of import licences should be identified.

(7) The obligation to refine sugar should be verified by the Member States. If the original holder of the import licence is not able to provide the proof of refining having taken place, a penalty should be paid. All imported sugar refined by an approved operator should be based on an import licence for sugar for refining. Quantities for which such proof cannot be given should be charged a penalty. Such penalty should allow for non-compliance of a minor nature and therefore a 5 % tolerance should be accepted. The same 5 % tolerance should be accepted for sugar for refining imported under a tariff quota in accordance with Commission Regulation (EC) No 891/2009[(5)].

(8) In accordance with point C of Part I of Annex II to Regulation (EC) No 376/2008, an import licence is to be presented for sugar with CN code 1701 imported under preferential conditions, other than tariff quotas.

(9) Article 3(1)(e) and (h) of Council Decision 2014/492/EU[(6)] allows for the provisional application of the concessions on sugar imports from the Republic of Moldova, agreed upon in the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part[(7)].

(10) Article 3(1)(d) and (i) of Council Decision 2014/494/EU[(8)] allows for the provisional application of the concessions on sugar imports from Georgia, agreed upon in the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part[(9)].

(11) Article 148 of the Association Agreement with the Republic of Moldova and Article 27 of the Association Agreement with Georgia introduce an anti-circumvention mechanism for imports of selected agricultural products and processed agricultural products originating respectively in the Republic of Moldova and in Georgia. Considering that imports of certain sugar products originating in the Republic of Moldova and in Georgia are subject to the anti-circumvention mechanism, which makes the use of import licences unnecessary and potentially confusing should the import licence requirement and the anti-circumvention mechanism be allowed to co-exist, it is opportune to provide that no import licence shall be required for preferential imports of those sugar products.

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(12) Regulations (EC) No 376/2008 and (EC) No 891/2009 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

*Article 1*

**Scope**

This Regulation lays down, for the marketing years 2015/16 and 2016/17, provisions on imports of products of CN code 1701 referred to in Council Regulation (EC) No 1528/2007[10] and Regulation (EU) No 978/2012 of the European Parliament and of the Council[11], supplementing certain non-essential elements of Regulation (EU) No 1308/2013 in relation to:

(a) documents and undertakings to be submitted in support of licence applications;

(b) release for free circulation;

(c) proof of refining and penalties.

*Article 2*

**Definitions**

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

(a) 'tel. quel weight' means the weight of the sugar in the natural state;

(b) 'refining' means the processing of raw sugars into white sugars as defined in points 1 and 2 of Section A of Part II of Annex II to Regulation (EU) No 1308/2013, and any equivalent technical operation applied to bulk white sugar.

*Article 3*

**Applicability of Regulation (EC) No 376/2008**

Regulation (EC) No 376/2008 shall apply save as otherwise provided for in this Regulation.

*Article 4*

**Requirements for import licence applications**

1 Import licence applications shall be accompanied by:

a the originals of the export licences issued by the competent authorities of the exporting third country in accordance with the model set out in Annex I, for a quantity equal to that mentioned in the licence applications. Those originals have to be presented by the applicant to the competent authorities of the Member States prior to customs clearance of the goods covered by the import licence. The export licences may be replaced by certified copies, issued by the competent authorities of the exporting third country, of the proof of origin provided for in Article 14 of Annex II to Regulation (EC) No 1528/2007

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for countries listed in Annex I to that Regulation or in Articles 67 to 97j of Commission Regulation (EEC) No 2454/93[12] for countries not listed in Annex I to Regulation (EC) No 1528/2007 but listed in Annex I to Regulation (EU) No 978/2012;

b electronic or facsimile copies of the export licences or of the certified copies of the proof of origin referred to in point (a) may be presented in place of the originals in support of import licence applications provided that the originals are presented by the applicant to the competent authorities of the Member States prior to customs clearance of the goods covered by the import licence issued on the strength of the electronic or facsimile copies;

c in the case of sugar refining, the undertaking by the applicant to refine the quantities of sugar in question before the end of the third month following that in which the import licence concerned expires.

2 The originals of the export licences or the certified copies of the proof of origin referred to in point (a) of paragraph 1 shall be kept by the competent authority of the Member State where the import licence was issued.

*Article 5*

**Release for free circulation**

Import licences containing in box 20 the entry ‘sugar intended for refining’ may be used for the import of CN codes 1701 13 10, 1701 14 10, 1701 91 00, 1701 99 10 or 1701 99 90.

Import licences containing in box 20 the entry ‘sugar not intended for refining’ may be used for the import of CN codes 1701 13 90, 1701 14 90, 1701 91 00, 1701 99 10 or 1701 99 90.

*Article 6*

**Proof of refining and penalties**

1 Each original holder of an import licence for sugar for refining shall, within six months following the expiry of the import licence concerned, provide the Member State which issued it with proof acceptable to it that refining has taken place within the period laid down in Article 4(1)(c).

Where proof is not provided that at least 95 % of the quantity stated on the import licence has been refined, the applicant shall pay, before 1 June following the marketing year concerned, an amount equal to EUR 500 per tonne for the difference between the actual quantity for which proof of refining has been submitted and 95 % of the quantity stated on the import licence, except for exceptional reasons of force majeure.

2 Sugar undertakings approved in accordance with Article 137 of Regulation (EU) No 1308/2013 shall declare to the competent authority of the Member State before 1 March following the marketing year concerned the quantities of sugar which they have refined in that marketing year, stating:

a the quantities of sugar corresponding to import licences for sugar for refining;

b the quantities of sugar produced in the Union, giving the references of the approved undertaking which produced that sugar;

c other quantities of sugar, stating their origin.