Commission Regulation (EU) No 1084/2010 of 25 November 2010 amending Regulation (EC) No 612/2009 on laying down common detailed rules for the application of the system of export refunds on agricultural products, as regards equivalence under Inward Processing

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THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)[(1)], and in particular Articles 167 and 170, in conjunction with Article 4 thereof,

Whereas:

(1) According to the second subparagraph of Article 12(4) of Commission Regulation (EC) No 612/2009[(2)], export refunds are to be granted where the ingredient, or ingredients, in respect of which the refund is claimed, were originally of Community (currently Union) origin and/or in free circulation as provided for in paragraph 1 thereof and are no longer in free circulation on account solely of their incorporation in other products. That provision applies when products of Community origin and/or in free circulation are processed under Inward Processing as set out in Articles 114 to 129 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code[(3)].

(2) According to Article 84(1)(b) and Article 89 of Regulation (EEC) No 2913/92, Inward Processing is a customs procedure with economic impact and a suspensive procedure which shall be discharged when a new customs-approved treatment or use is assigned to the goods placed under that arrangement or to compensating products placed under it.

(3) Article 115(1) of Regulation (EEC) No 2913/92 provides that the customs authorities have to allow compensating products to be obtained from equivalent goods and compensating products obtained from equivalent goods to be exported from the Community before importation of the import goods. Article 114(2)(e) of that Regulation defines equivalent goods as Community goods which are used instead of the import goods for the manufacture of compensating products. According to Article 545(2) and (3) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Customs Code[(4)], equivalent goods and compensating products made therefrom become non-Community goods and the import goods Community goods at

the time of acceptance of the declaration discharging the arrangements, or where import goods are put on the market before the arrangements are discharged, they change their status at the time they are put on the market. In case of prior exportation, compensating products become non-Community goods on acceptance of the export declaration on condition that the goods to be imported are entered for the arrangements; import goods become Community goods at the time of their entry for the arrangements.

(4) As under the rules on the use of equivalent goods the customs status of import goods changes into Community status, and the Inward Processing arrangement is or will be discharged by that, the import goods are not subject to import duties. Consequently, the price level in the Union of the equivalent exported goods of Community origin is in that situation compensated by the world market price level of the import goods, and therefore there is no justification for the equivalent exported goods to be covered for the difference between the world market price and the price in the Union by an export refund as set out in Article 162 of Regulation (EC) No 1234/2007.

(5) For the sake of clarity and legal certainty it is appropriate to exclude the granting of export refunds explicitly in Regulation (EC) No 612/2009 when products are exported under rules on the use of equivalent goods.

(6) Regulation (EC) No 612/2009 should therefore be amended accordingly.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 12(1) of Regulation (EC) No 612/2009, the following subparagraph is added:

Refunds shall not be granted for products which are used as equivalent goods within the meaning of Article 114(2)(e) of Regulation (EEC) No 2913/92.

Article 2

This Regulation shall enter into force on the seventh day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 25 November 2010.

For the Commission

The President

José Manuel BARROSO