Commission Regulation (EU) No 578/2010 of 29 June 2010 on the implementation of Council Regulation (EC) No 1216/2009 as regards the system of granting export refunds for certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and the criteria for fixing the amount of such refunds

COMMISSION REGULATION (EU) No 578/2010

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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 1216/2009 of 30 November 2009 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products[(1)], and in particular the first subparagraph of Article 8(3) thereof,

Whereas:

(1) Commission Regulation (EC) No 1043/2005 of 30 June 2005 implementing Council Regulation (EC) No 3448/93 as regards the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and the criteria for fixing the amount of such refunds[(2)] has been substantially amended several times. Since further amendments are necessary, it should be replaced.

(2) 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)[(3)] provides that, to the extent required to allow certain agricultural products to be exported in the form of certain processed goods not listed in Annex I to the Treaty on the basis of world market quotations or prices for such products, the difference between such quotations or prices and prices in the Union may be covered by an export refund. The granting of refunds for all those agricultural products exported in the form of goods not covered by Annex I to the Treaty should therefore be subject to common rules.

(3) In order to ensure uniform application of Regulation (EC) No 1234/2007 relating to the granting of export refunds, such refunds should not be granted for goods from third countries used in the manufacture of goods which are exported after having been in free circulation in the Union.

(4) Export refunds should be paid for goods which are obtained directly from basic products, from products obtained from the processing of basic products and from products assimilated to either of these categories. The method for determining the amount of the export refund in each of those cases should be established.

(5) Commission Regulation (EC) No 612/2009 of 7 July 2009 on laying down common detailed rules for the application of the system of export refunds on agricultural products[4] and Commission Regulation (EEC) No 2220/85 of 22 July 1985 laying down common detailed rules for the application of the system of securities for agricultural products[5] apply in general to goods not covered by Annex I to the Treaty. It is therefore necessary to specify the manner in which certain provisions of those Regulations apply.

(6) In accordance with Commission Regulation (EC) No 1670/2006 of 10 November 2006 laying down certain detailed rules for the application of Council Regulation (EC) No 1784/2003 as regards the fixing and granting of adjusted refunds in respect of cereals exported in the form of certain spirit drinks[6], the rate of the export refund is to be that applicable on the day on which the cereals are placed under customs control for the manufacture of spirit drinks. The placing of cereals under customs control for the production of the spirit drinks referred to in Article 2 of Regulation (EC) No 1670/2006 should therefore be deemed to be equivalent to export for the purpose of granting export refunds.

(7) Spirit drinks are considered less sensitive to the price of the agricultural products used in their manufacture than other goods. However, Protocol 19 of the Act of Accession of the United Kingdom, Ireland and Denmark provides that the necessary measures must be decided to facilitate the use of Union cereals in the manufacture of spirit drinks obtained from cereals.

(8) Many goods manufactured by an undertaking under clearly defined technical conditions and having constant characteristics and quality follow a regular export pattern. To ease export formalities, a simplified procedure should be adopted for such goods whereby the manufacturer communicates to the competent authorities such information as the latter consider necessary concerning the conditions of manufacture of the goods. Where the quantities of agricultural products actually used in the manufacture of the exported goods are registered with the competent authorities, provision should be included for annual confirmation of such registration in order to reduce the risks associated with failure to communicate changes in those quantities.

(9) Many agricultural products are subject to natural and seasonal variability. The agricultural product content of exported goods may consequently vary. The amount of the refund should therefore be determined on the basis of the quantities of agricultural products actually used in the manufacture of the exported goods. However, for certain goods of a simple and relatively constant composition, the amount of the refund should, for ease of administration, be determined on the basis of fixed quantities of agricultural products.

(10) In order to qualify for a refund, the agricultural products used and in particular the goods manufactured from such products must be exported. Any exception to that rule should be interpreted restrictively. However, during the process of manufacturing the goods, producers may incur losses of raw materials for which Union prices have nevertheless been paid while the losses incurred by producers established outside the Union are limited to world market prices. In addition, in the process of manufacturing, certain by-products are obtained which differ markedly in value from the principal products.

In some instances, these by-products can be used only as animal feed. Therefore, it is necessary to lay down common rules for determining the concept of the quantity of products actually used in the process of manufacturing the exported goods.

(11) For the purposes of the second subparagraph of Article 8(3) of Regulation (EC) No 1216/2009, it is necessary to provide that the refunds for basic products exported in the form of goods not covered by Annex I be fixed for the same period as that for refunds for agricultural products exported in the unprocessed state. However, it is also necessary to provide for a possibility to derogate from that rule in circumstances of market disturbance to be determined in accordance with the procedure referred to in Article 16(2) of Regulation (EC) No 1216/2009.

(12) When fixing the rate of refund for basic products or assimilated products, account should be taken of aids or other measures having similar effect which are applicable in accordance with Regulation (EC) No 1234/2007.

(13) Potato starch should be assimilated to maize starch for the purposes of determining export refunds. However, it should be possible to fix a specific refund rate for potato starch in market situations where its price is significantly lower than that of maize starch.

(14) In accordance with Article 162(2) of Regulation (EC) No 1234/2007, refunds granted for exports of agricultural products incorporated in goods not covered by Annex I to the Treaty may not exceed the refunds that would be payable on those products when exported in the unprocessed state. That should be taken into account when rates of refund are fixed and assimilation rules are established.

(15) Certain goods having similar characteristics may have been obtained by various techniques from different base materials. Exporters should be required to identify the nature of the base materials and to make certain declarations in respect of the manufacturing process where such information is necessary to determine entitlement to a refund or the appropriate refund rate to apply.

(16) It is appropriate when calculating the quantities of agricultural products actually used to have regard to the dry matter content in the case of starches and certain glucose and maltodextrin syrups.

(17) Where the world trade situation, the specific requirements of certain markets or international trade agreements so require, it should be possible to differentiate the refund for certain agricultural products exported in the form of goods not covered by Annex I to the Treaty according to destination.

(18) In view of the management of the amounts of refunds which may be granted during a budget year on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, different rates for exports should be permitted to be fixed with or without advance fixing of the rate of refund on the basis of developments in Union and world markets.

(19) The amount of refunds that may be granted in any budget year is limited in accordance with the international commitments entered into by the Union. It should be made

possible to export goods not covered by Annex I to the Treaty under conditions which are known in advance. In particular, it should be possible that operators have an assurance that such exports are eligible for a refund compatible with the commitments of the Union. Where such an assurance can no longer be given, exporters should be informed sufficiently in advance. The issue of refund certificates makes it possible to follow up on refund applications and guarantee to their holders that they will be able to benefit from a refund up to the amount for which the certificate is issued, provided that they comply with the other conditions for refund laid down by Union rules.

(20) Management measures should be laid down for the system of refund certificates. In particular, provision should be made for a reduction coefficient to be applied where applications for refund certificates exceed the available amounts. In certain circumstances, provision should be made for the issue of refund certificates to be suspended.

(21) Refund certificates serve to ensure compliance with the international commitments entered into by the Union. They also make it possible to determine in advance the refund which can be granted for agricultural products used in the manufacture of goods exported to third countries. This purpose differs, in some respects, from the objectives of export licences issued for basic products exported in the unprocessed state which are subject to international commitments involving quantitative restrictions. It is therefore necessary to specify which general provisions applicable to agricultural licences and certificates, currently laid down by Commission Regulation (EC) No 376/2008 of 23 April 2008 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products[7] should not apply to refund certificates.

(22) For the most part, refund rates are fixed or modified on Thursdays. It is necessary to reduce the risk of applications for advance fixing for products submitted for speculative reasons. Accordingly, where an application for advance fixing is submitted on a Thursday, the application should be deemed to have been submitted on the following working day.

(23) In order to facilitate the operation of the system of export refunds by Member States, refund rates for the different basic products incorporated in goods not covered by Annex I should be simultaneously fixed in advance.

(24) Applications received for certificates may be for amounts greater than can be granted. The budget year should therefore be divided into periods so that certificates can be made available both to operators who export at the end of the budget year and to those who export at the beginning of the budget year. Where appropriate, a reduction coefficient should be applied to all amounts requested during a particular period.

(25) In cases where the total amount of refunds applied for in respect of a particular tranche is less than the amount available for that tranche, operators should be permitted to submit applications for refund certificates on a weekly basis in respect of any remaining amount available for that tranche.

(26) It is necessary to specify how certain provisions of Regulation (EC) No 376/2008 relating to certificates, fixing the export refund in advance, applied for in connection with an invitation to tender issued in an importing third country, should apply to refund certificates.

(27) Conditions should be laid down for the release of the security which is lodged in respect of refund certificates. Those conditions should include the obligations which are considered primary requirements, against which security is lodged, and the evidence which needs to be produced to demonstrate compliance with those obligations.

(28) Most exporters receive less than EUR 100 000 a year in refunds. Taken together, those exports are of minor economic importance and account for only a small part of the total amount of refunds granted for agricultural products exported in the form of goods not covered by Annex I to the Treaty. In those cases, it should therefore be possible to exempt small exporters from the requirement to present a certificate. In the interest of simplification, they should, in certain circumstances, be entitled to use refund certificates without losing the status of small exporter. However, in order to prevent misuse, it is necessary to limit application of that exemption to the Member State in which the small exporter is established.

(29) Monitoring arrangements should be established, based on the principle that the exporter should declare the quantities of products used to manufacture the exported goods to the competent authorities each time goods are exported. The competent authorities should take any measure they consider necessary to verify the accuracy of such declarations.

(30) The authorities responsible for checking the exporter's declaration may not possess sufficient evidence to enable them to accept the declaration of the quantities used, even if it is based on a chemical analysis. Such situations are particularly likely to arise when the goods to be exported have been manufactured in a Member State other than the exporting Member State. Therefore, the competent authorities of the exporting Member State should be able, if necessary, to obtain directly from the competent authorities of the other Member States all the information which the latter authorities are able to obtain concerning the conditions of manufacture of the goods.

(31) In consultation with the competent authorities of the Member State in which the goods are manufactured, operators should be permitted to make a simplified declaration of the products used, in the form of aggregated quantities of those products, provided they keep a detailed record of the products used and make it available to those authorities.

(32) It is not always possible for the exporter to know the precise quantities of agricultural products used in respect of which he can claim a refund, particularly if he is not the manufacturer. Therefore, the exporter is not always able to declare such quantities. It is therefore necessary to provide an alternative method for calculating the refund which the person concerned may ask to be applied, restricted to certain goods, based on the chemical analysis of those goods, and using a table created for that purpose.

(33) In accordance with Article 28 of Regulation (EC) No 612/2009 no refund is to be granted on products that are not of sound and fair marketable quality on the day of acceptance of the export declaration. In order to ensure that this rule is uniformly