# Commission Regulation (EC) No 828/2009 of 10 September 2009 laying down detailed rules of application for the marketing years 2009/2010 to 2014/2015 for the import and refining of sugar products of tariff heading 1701 under preferential agreements

## COMMISSION REGULATION (EC) No 828/2009

## of 10 September 2009

## laying down detailed rules of application for the marketing years 2009/2010 to 2014/2015 for the import and refining of sugar products of tariff heading 1701 under preferential agreements

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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 Article 156 in conjunction with Article 4 thereof,

Having regard to Council Regulation (EC) No 1528/2007 of 20 December 2007 applying the arrangements for products originating in certain states which are part of the African, Caribbean and Pacific (ACP) Group of States provided for in agreements establishing, or leading to the establishment of, Economic Partnership Agreements[(2)], and in particular Article 9(5) thereof,

Having regard to Council Regulation (EC) No 732/2008 of 22 July 2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011 and amending Regulations (EC) No 552/97, (EC) No 1933/2006 and Commission Regulations (EC) No 1100/2006 and (EC) No 964/2007[(3)], and in particular Article 11(7) thereof,

Whereas:

(1) Article 7(1) of Regulation (EC) No 1528/2007 eliminates, as from 1 October 2009, the import duties of tariff heading 1701 for the regions and states listed in its Annex I to that Regulation. However, if imports reach the double threshold specified in Article 9 of Regulation (EC) No 1528/2007, this preference may be suspended for the regions or states listed in Annex I thereto and which are not least-developed countries listed in Annex I to Regulation (EC) No 732/2008. In accordance with Article 9(2), a regional safeguard threshold should be fixed.

(2) Article 11(3) of Regulation (EC) No 732/2008 suspends entirely, as from 1 October 2009, the Common Customs Tariff duties on the products under tariff heading 1701 for the countries which according to its Annex I to that Regulation benefits from the special arrangements for the least-developed countries.

(3) In accordance with Article 11(6) of Regulation (EC) No 732/2008, for the period from 1 October 2009 to 30 September 2015, imports of products under tariff heading 1701 require an import licence.

(4) To simplify the licensing procedure, each reference number should be linked to a country listed under Annex I of this Regulation. To avoid fraudulent applications, this list shall be limited to those countries identified as current or potential sugar exporters to the European Union. Any country not currently listed in Annex I to this Regulation but listed either in Annex I to Regulation (EC) No 1528/2007 or in Annex I to Regulation (EC) No 732/2008 is eligible to be included in Annex I of this Regulation. To this effect, such a country shall request the Commission to be listed in Annex I of this Regulation.

(5) 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[(4)] should apply to import licences issued under this Regulation, except as otherwise provided by this Regulation.

(6) To ensure uniform and equitable treatment for all operators, the period in which licence applications may be submitted and licences issued should be determined.

(7) In accordance with Article 5 of Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences[(5)], operators should submit, to the Member States in which they are registered for VAT purposes, proof that they have been trading sugar during a certain period. Nevertheless, operators approved in accordance with Article 7 of Commission Regulation (EC) No 952/2006 of 29 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 318/2006 as regards the management of the Community market in sugar and the quota system[(6)] should be able to participate in the trading of preferential sugar.

(8) Sugar imported for refining needs specific monitoring by the Member States. Therefore operators should specify as from the import licence application if the imported sugar is intended for refining or not.

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

(10) In accordance with Article 11(4) of Regulation (EC) No 732/2008 and Article 8 of Regulation (EC) No 1528/2007, the importer has to undertake to purchase the products of CN code 1701 at a price not lower than 90 % of the reference price (on a c.i.f. basis) set in Article 8 paragraph 1 point (c) of Regulation (EC) No 1234/2007.

(11) When the quantities resulting from import licence applications exceed the quantities specified in Article 9(1)(a) of Regulation (EC) No 1528/2007, the issuance of licenses by Member States should be subject to an allocation coefficient to be fixed by the Commission similarly to what provided by Regulation (EC) No 1301/2006. In

accordance with Article 9(2) of Regulation (EC) No 1528/2007, that coefficient should be calculated on a regional level.

(12) Article 9(2) of Regulation (EC) No 1528/2007 increases the possibility of exceeding the quantities specified in Article 9(1) of Regulation (EC) No 1528/2007. The Commission should therefore report on the application of the transitional safeguard mechanism for sugar and, if necessary, make appropriate proposals. This report should include an overview of the import flows during the first marketing years of application of this regulation, analyse future trade developments and evaluate any possible risk of an overshoot and the quantities involved.

(13) The thresholds for the management of the transitional safeguard mechanism for sugar are based on imports during a specific marketing year. Import licences should therefore be valid between 1 October and 30 September.

(14) Article 8 of Regulation (EC) No 1528/2007 restricts the benefit of the elimination of import duties to those importers who pay a price not lower than 90 % of the reference price on a c.i.f. basis. In international trade, such contracts imply that the importer bears full responsibility of the sugar as from the date of loading. For licences valid until 30 September for which the sugar was loaded at the latest by 15 September, small delays in the logistic chain other than *force majeure* could lead to physical imports after 30 September. To avoid the risk of paying the full import duty of EUR 419 per tonne and the forfeit of the security, importers should be given the possibility to import that sugar loaded at the latest by 15 September of a marketing year based on an import licence issued for that marketing year. Therefore Member States should extend the validity of the import licence if the importer submits proof that the sugar was loaded at the latest by 15 September.

(15) The distinction ‘sugar intended for refining’ and ‘sugar not intended for refining’ is not linked to the distinction between white and raw sugar as defined in points 1 and 2 of Part II of Annex III of Regulation (EC) No 1234/2007. Therefore the CN codes authorised for imports under each group of import licences should be identified.

(16) For the sake of sound management of the agreements, the Commission should receive the relevant information in good time.

(17) Article 153(3) of Regulation (EC) No 1234/2007 restricts, during the first three months of each marketing year and within the limit referred to in Article 153(1) of Regulation (EC) No 1234/2007, the issuing of import licences to full-time refiners. During that period, only full-time refiners should be able to apply for import licences for sugar for refining. Such licences shall be valid to the end of the marketing year for which they are issued.

(18) 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, a penalty should be paid.

(19) 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.

**Changes to legislation:** *There are currently no known outstanding effects for the Commission Regulation (EC) No 828/2009. (See end of Document for details)*

(20) 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:

## CHAPTER I

## GENERAL PROVISIONS

### *Article 1*

### Scope

1 This Regulation lays down for the marketing years 2009/2010 to 2014/2015 detailed rules applying on imports of products of tariff heading 1701 referred to in:

a Article 9(1) of Regulation (EC) No 1528/2007;

b Article 11(4) of Regulation (EC) No 732/2008.

2 Imports from third countries which are least-developed countries (LDC) listed in Annex I to Regulation (EC) No 732/2008, whether they belong to African, Caribbean and Pacific Group of States (ACP countries) or not (NON-ACP countries), shall be duty free and quota free and shall bear the reference numbers as shown in Part I of Annex I to this Regulation.

3 Imports from the ACP countries which are not least-developed countries (NON-LDC) listed in Annex I to Regulation (EC) No 732/2008 shall be duty free subject to the transitional safeguard mechanism for sugar in accordance with the provisions referred to in Article 9 of Regulation (EC) No 1528/2007 and shall bear the reference numbers as shown in Part II of Annex I to this Regulation.

In accordance with Article 9(2) of Regulation (EC) No 1528/2007, a regional safeguard threshold is set up in Part II of Annex I to this Regulation for each marketing year.

**[**[F1]4 A country listed in Annex I to Regulation (EC) No 1528/2007 or listed as least-developed country in Annex I to Regulation (EC) No 732/2008 shall be added on its own request to Annex I to this Regulation.**]**

**Textual Amendments**

**F1** Substituted by Commission Regulation (EU) No 703/2010 of 4 August 2010 amending Regulation (EC) No 828/2009 laying down detailed rules of application for the marketing years 2009/10 to 2014/15 for the import and refining of sugar products of tariff heading 1701 under preferential agreements.

### *Article 2*

### Definitions

For the purposes of this Regulation:

(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 Part II of Annex III to Regulation (EC) No 1234/2007, and any equivalent technical operation applied to bulk white sugar.

## CHAPTER II

## IMPORT LICENCES

*Article 3*

### Applicability of Regulation (EC) 376/2008

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

*Article 4*

### Import licence applications and import licences

1 Import licence applications shall be submitted each week, from Monday to Friday, starting on the second Monday of September prior to the marketing year for which they are applied.

No applications may be lodged from Friday 11 December 2009 1 p.m. (Brussels time) till Friday 1 January 2010 1 p.m. (Brussels time).

2 Article 5 of Regulation (EC) No 1301/2006 shall apply mutatis mutandis. However, the submission of proof provided for in that Article may not be required for operators approved in accordance with Article 7 of Regulation (EC) No 952/2006.

3 Import licence applications and import licences shall contain the following entries:

a in box 8: the country of origin (one of the countries listed in Annex I to this Regulation).

The word 'yes' being marked with a cross;

b in box 16, a single eight digit CN code;

c in boxes 17 and 18: the quantity of sugar in white sugar equivalent;

d in box 20:

(i) 'sugar intended for refining' or 'sugar not intended for refining';

(ii) at least one of the entries listed in part A of Annex V;

(iii) the marketing year to which they are related;

e in box 24: at least one of the entries listed in part B of Annex V.

4 Import licence applications shall be accompanied by:

a proof that the applicant has lodged a security of EUR 20 per tonne of the quantity of sugar indicated in box 17 of the licence;

b 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 III, for a quantity equal to that mentioned in the licence applications;