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 (Recast)

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(Recast)

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 Articles 170 and 192 in conjunction with Article 4,

Whereas:

(1) Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products[(2)] has been substantially amended several times[(3)]. Since further amendments are to be made, it should be recast in the interests of clarity.

(2) The general rules laid down by the Council provide for the refund to be paid upon proof being furnished that the products have been exported from the Community. Entitlement to the refund is acquired as soon as the products have left the Community market, when a single refund rate applies for all third countries. Where the rate of refund is differentiated according to the destination of the products, entitlement to the refund is conditional on importation into a third country.

(3) The implementation of the Uruguay Round Agreement on Agriculture[(4)] makes the grant of a refund subject, as a general rule, to the requirement of an export licence comprising the advance fixing of the refund. However, deliveries in the Community for international organisations and for the armed forces, deliveries for victualling and exports of small quantities are special cases and of minor economic importance. For those reasons, provision has been made for a special system without an export licence, in the interests of simplifying such export operations and avoiding an excessive administrative burden on economic operators and the competent authorities.

(4) Within the meaning of this Regulation, the day of export is that during which the customs authorities accept the act by which the declarant shows his willingness to carry out the export of the products for which he seeks the benefit of an export refund. Such act is intended to draw the attention, and in particular the attention of the customs

authorities, to the fact that the operation under consideration is being carried out with the aid of Community funds, in order that those customs authorities shall carry out suitable checks. At the time of acceptance, products are placed under customs supervision until their actual export. The date serves as a reference for establishing the quantity, nature and characteristics of the product exported.

(5) In the case of consignments in bulk or in non-standard units, it is recognised that the exact net mass of the products can be known only after loading onto the means of transport. In order to deal with that situation, provision should be made for stating a provisional mass on the export declaration.

(6) As regards the concept of the 'place of loading', a great many administrative and commercial circumstances affect the trade in agricultural exports; it is therefore hard to lay down a single rule and the Member States should accordingly be allowed to decide on the most appropriate place for conducting the physical checks of exported agricultural products qualifying for an export refund. To this end, there are particularly good grounds for defining the place of loading differently, depending on whether the goods are loaded in containers or, conversely, in bulk, sacks or cartons, and not subsequently loaded into containers. In duly justified cases, the customs authorities should also be permitted to accept the lodging of an export declaration for agricultural products qualifying for a refund at a customs office other than the office responsible for the place where the products are loaded.

(7) For the sake of the proper application of Commission Regulation (EC) No 1276/2008 of 17 December 2008 on the monitoring by physical checks of exports of agricultural products receiving refunds or other amounts[(5)], provision should be made so that verification of whether the export declaration matches the agricultural products is carried out at the time of loading of the container, lorry, vessel or other similar container.

(8) Where exports involve frequent consignments of small quantities, provision should be made for a simplified procedure as regards the relevant day to be used for the determination of the rate of refunds.

(9) The operative event, as defined by Commission Regulation (EC) No 1913/2006 of 20 December 2006 laying down detailed rules for the application of the agrimonetary system for the euro in agriculture and amending certain regulations[(6)], should be adopted.

(10) In order that the concept of 'exportation from the Community' may be interpreted consistently, it should be specified that a product is to be regarded as having been exported when it leaves the customs territory of the Community.

(11) It may be necessary for the exporter or transporter to take steps in order to prevent deterioration in the products intended for export during the 60-day period following acceptance of the export declaration and before departure from the customs territory of the Community or before arrival at destination. Freezing is such a step, making it possible to leave the products intact. In order to comply with this requirement, it should be permissible for freezing to be carried out during the said period.

(12) The competent authorities should ensure that products leaving the Community or in transit to a particular destination are in fact those which have undergone the customs export formalities. To this end, when a product crosses the territory of other Member States before leaving the customs territory of the Community or reaching a particular destination, use should be made of the T5 control copy referred to in Annex 63 to 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 Community Customs Code[7]. However, it seems desirable, in order to simplify administrative procedure, to provide more flexible arrangements than the use of the T5 control copy, in the case of transactions under the simplified Community transit procedures for carriage by rail or large containers under Articles 412 to 442a of Regulation (EEC) No 2454/93, which provides that when a transport operation begins within the Community and is to end outside it, no formalities need to be carried out at the customs office of the frontier station.

(13) In some instance a refund may be claimed in respect of products which have been exported and which have left the customs territory of the Community, but which are returned for the purposes of transhipment or a transit operation before reaching a final destination outside that territory. Such returns may conceivably also occur for reasons other than transport requirements, and more particularly for the purpose of speculation. In such cases compliance with the 60-day time limit for leaving the customs territory of the Community is undermined. In order to avoid such situations, there is a need to define clearly the conditions under which such returns may take place.

(14) The arrangements provided for in this Regulation may be accorded only to products which are in free circulation and which are, if appropriate, of Community origin. In the case of certain compound products the refund is fixed not on the basis of the product itself but by reference to the basic products of which they are composed. In cases where the refund is thus fixed on the basis of one or more components, it is sufficient for the grant of the refund or the relevant part thereof that the component or components in question themselves should meet the requirements, or no longer do so solely because they have been incorporated in other products. In order to take into account the particular status of certain components, a list should be drawn up of products for which the refunds are fixed on the basis of one component.

(15) Articles 23 to 26 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code[8], define the non-preferential origin of goods. For the grant of export refunds; only products wholly obtained or substantially processed in the Community are deemed to be of Community origin. It is appropriate to clarify, in order to reach uniform application throughout the Member States, that certain mixtures of products do not qualify for refund.

(16) The rate of refund is determined by the tariff classification of a product. The classification may, for certain mixtures, goods put up in sets and composite goods, result in the grant of a higher refund than is economically justified. It is therefore necessary to adopt special provisions for determining the refund applicable to mixtures, goods put up in sets and composite goods.

(17) Where the rate of the refund varies according to the destination of the product, provision should be made for verification that the product has been imported into the third country or countries for which the refund was fixed. Such a measure can be relaxed without difficulty in respect of exports where the refund involved is small and the transaction is such as to offer adequate assurances that the products concerned arrive at their destination. The purpose of the provision is to simplify the administrative work involved in the submission of evidence.

(18) Provision should also be made for products under the returned-goods system to be reintroduced either via the Member State in which the products originated or via the Member State of first export.

(19) Where a single rate of refund applies to all destinations on the day on which the refund is fixed in advance, there is in certain cases a compulsory destination clause. This situation should be treated as a variation of the refund where the rate of the refund applicable on the day on which export takes place is lower than the rate, of the refund applicable on the day of advance fixing, adjusted where appropriate to the day on which export takes place.

(20) Where the rate of refund is differentiated according to the destination of the exported products, proof should be furnished that the product concerned has been imported into a third country. Completion of customs import formalities consists notably in the payment of import duties applicable in order that the product may be marketed in the third country concerned. Considering the diversity of situations prevailing in the importing third countries, it is advisable to accept the production of customs import documents which give assurances that the products exported have arrived at their destination, whilst hindering trade as little as possible.

(21) In order to assist the Community exporters in obtaining proof of arrival at destination, it should be provided that international control and supervisory agencies approved by Member States are to deliver arrival certificates for exported agricultural products of the Community benefiting from a differentiated refund. The approval of these agencies is the responsibility of the Member States which give their approval on a case-by-case basis, in accordance with certain guidelines. It is appropriate to integrate the principal guidelines in this Regulation.

(22) In order to put exports of products enjoying a variable refund, according to destination, on an equal footing with other exports, provision should be made for part of the refund, calculated on the basis of the lowest rate of refund applicable on the day on which export takes place, to be paid as soon as the exporter has furnished proof that the product has left the customs territory of the Community.

(23) In the case of differentiated refunds, if there has been a change of destination, the refund applicable to the actual destination is payable, subject to a ceiling of the level of the amount applicable to the destination fixed in advance. To prevent abuse whereby destinations with the highest rates of refund are selected systematically, a system of penalties should be introduced for changing the destination where the actual rate of refund is less than the rate for the destination fixed in advance. This new provision has

consequences for the calculation of the part of the refund payable once the exporter furnishes proof that the product has left the customs territory of the Community.

(24) Articles 23 to 26 of Regulation (EEC) No 2913/92 define the non-preferential origin of goods. It is appropriate in certain cases to apply the criterion covering substantial processing or working laid down in Article 24 to assess whether products have actually reached their destination.

(25) Certain export transactions can lead to deflection of trade. In order to prevent such deflections, payment of the refund should be subject to the condition that the product has not only left the customs territory of the Community but has also been imported into a third country or has undergone substantial processing or working. Moreover, payment of the refund may, in some cases, be subject to the product's having actually been placed on the market in the importing third country or to its having undergone substantial processing or working.

(26) If a product has been destroyed or damaged before being placed on the market in a third country or undergoing substantial processing the refund is considered not to be due. In such cases the exporter should have the opportunity of submitting evidence showing that the export operation was carried out in such economic conditions as would have allowed the transaction to be carried out in the normal course of events.

(27) Community financing of export operations is unjustified where the operation is not a normal commercial transaction, since it has no real economic purpose and is effected solely to obtain a payment from the Community.

(28) Steps should be taken to prevent Community funds from being allocated for transactions which do not correspond to any objective of the system of export refunds. This risk exists for products attracting export refunds which are subsequently reimported into the Community without having undergone substantial processing or working in a third country and on which reduced or zero duty is paid on reimport rather than the normal rate, pursuant to a preferential agreement or a Council decision. It is appropriate, in order to limit constraints on exporters, to apply such measures to the most sensitive products.

(29) It is appropriate, in order to limit the exporters' uncertainty, to remove the requirement as to repayment of refunds, whenever the product is reimported into the Community more than two years after exportation.

(30) On the one hand, the Member States should be permitted to refuse to grant refunds, or should be able to recover them; in flagrant cases where they note that the transaction is not in line with the aim of the system of export refunds and, on the other hand, no excessive burden should be placed on the national authorities through an obligation to verify systematically all imports.

(31) Products should be of a quality such that they can be marketed on normal terms in the Community. It is appropriate, however, to take account of the specific obligations arising from the standards in force in the third countries of destination.