Commission Regulation (EC) No 1001/2007 of 29 August 2007 amending Regulations (EC) No 800/1999 and (EC) No 2090/2002 as regards controls in the framework of export refunds on agricultural products

COMMISSION REGULATION (EC) No 1001/2007

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amending Regulations (EC) No 800/1999 and (EC) No 2090/2002 as regards controls in the framework of export refunds on agricultural products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals[(1)], and in particular Article 18 thereof, and the corresponding provisions of the other regulations on the common organisation of the markets in agricultural products,

Having regard to Council Regulation (EEC) No 386/90 of 12 February 1990 on the monitoring carried out at the time of export of agricultural products receiving refunds or other amounts[(2)], and in particular Article 6 thereof,

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[(3)] requires in particular that certain documentary proof be presented to show that the products for which export refunds are claimed have in fact been imported in their unaltered state into a specific third country, when a differentiated refund applies for that third country. The procedures concerning such proof should be simplified whilst safeguarding the financial interests of the Community. The Commission and the Member States should monitor the use of simplified procedures and take appropriate action in the case of abuse.

(2) In practice, the third countries for which export refunds for a given product are differentiated to lower than average or zero values are generally situated close to the Community whilst refund levels tend to be set at a higher, identical level for countries which are more remote from the Community. In many cases, exporters have problems obtaining proof of importation into these more remote countries.

(3) The countries for which the higher, identical levels of refund have been set may be considered as a ‘remote refund zone’ for the product concerned. However, remote countries for which the differentiated part of the refund is lower than average or zero should be excluded from such zone. Also those countries in respect of which a real risk of trade deflection exists, or all countries for sectors in respect of which a real risk of trade deflection exists should be excluded from such zone.

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(4) Where an export declaration is made for a country in a remote refund zone and export is made by container sea transport, the combination of commercial container management, transport documentation and the relatively inflexible transport modality gives a reasonable level of assurance that the products have been imported into the specific third country. Under these circumstances, proof that the products have been transported to and unloaded in a country in the remote refund zone could be provided by the combination of a transport document to the port in the country of destination or the port serving the hinterland of destination, and a declaration of unloading.

(5) If a container carrier's commercial, computerised tracking and tracing system meets the operational security norms as set out in Annex I to Commission Regulation (EC) No 885/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the accreditation of paying agencies and other bodies and the clearance of the accounts of the EAGF and of the EAFRD[(4)], and provides information equivalent to that contained in transport documents, Member States may decide to use such information instead of the paper documents, as proof of transport to the country of destination.

(6) Article 17 of Regulation (EC) No 800/1999 provides for derogations limited to EUR 2 400 and 12 000 on differentiated parts of the refund for contiguous or remote destinations. It is considered useful to provide for a new derogation for containerised sea transport to remote refund zones by requiring the transport document and one of the declarations of unloading referred to in point (a), (b) or (c) of Article 16(2). Such derogation may be granted only if information is provided on the unloading in the port situated in the remote refund zone. In order to ensure the reliability of the proof generated under such derogations, they should be granted under revocable authorisations.

(7) In order to reduce the risk of substitution, all means of transport or packages should be sealed save in exceptional cases where the products may be identified by some other means in accordance with Article 340a and Article 357 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 Community Customs Code[(5)]. This requirement has been laid down in Article 7 of Commission Regulation (EC) No 2090/2002 of 26 November 2002 laying down detailed rules for applying Council Regulation (EEC) No 386/90 as regards physical checks carried out when agricultural products qualifying for refunds are exported[(6)]. As that requirement is part of the formalities concerning the export declaration and of general character, it should be deleted from Regulation (EC) No 2090/2002 and a similar provision should be included in Regulation (EC) No 800/1999.

(8) The customs office of exit needs information in the T5 control copy as to whether products presented to it qualify for a substitution check required in accordance with Article 10 of Regulation (EC) No 2090/2002. As T5 control copies may also be used for products not qualifying for substitution checks, box 107 of the T5 control copy should bear information in case products are exported with a right to refunds.

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(9) Regulations (EC) No 800/1999 and (EC) No 2090/2002 should therefore be amended accordingly.

(10) The provisions of this Regulation related to proof of arrival at destination should apply in respect of refund applications submitted from the date of entry into force of this Regulation. Since this Regulation is intended to simplify the administration of the scheme for operators and Member States alike, it should also be possible, at the request of the exporter, to apply it in respect of refund applications submitted before that date, provided that the time limit for submission of proof has not expired.

(11) The measures provided for in this Regulation are in accordance with the opinion of the relevant Management Committees,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 800/1999 is amended as follows:

1. in Article 2(1), the following point is added:

(p) "remote refund zone" means all destinations for which the same differentiated, non-zero part of the refund applies for a particular product except the excluded destinations for that product as set out in Annex XI;

(q) "hinterland country" means a third country without its own sea port which is served by the sea port of another third country.

2. in Article 5, the following paragraph is added:

8. Goods for which export refunds are claimed shall be sealed by, or under the control of, the customs office of export. Article 340a and paragraphs 2, 3 and 4 of Article 357 of Regulation (EEC) No 2454/93 shall apply *mutatis mutandis*.

3. in Article 8, the following paragraph is added:

In case refunds are applied for, box 107 shall show one of the entries listed in Annex XII.

4. in Article 15, paragraph 1 is replaced by the following:

1. Within 12 months of the date of acceptance of the export declaration, the products shall:

a be imported in their unaltered state into the third country or one of the third countries for which the refund applies, or

b be unloaded in their unaltered state in a remote refund zone for which the refund applies pursuant to the conditions set out in Article 17(1)(b) and (2).

However, an extension to the time limit may be granted in accordance with Article 49.

5. Article 16 is amended as follows:

(a) Paragraph 1 is replaced by the following:

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1. Proof that customs formalities for importation have been completed shall, as the exporter chooses, be furnished by one of the following documents:

a the customs document, a copy or photocopy thereof, or a printout of equivalent information recorded electronically by the competent customs authority; such copy, photocopy or printout shall be certified as being a true copy or printout by one of the following:

(i) the body which endorsed the original document or electronically recorded the equivalent information;

(ii) an official agency of the third country concerned;

(iii) an official agency of a Member State in the third country concerned;

(iv) an agency responsible for paying the refund;

b a certificate of unloading and importation drawn up by an approved international control and supervisory agency (hereinafter referred to as "SA") in accordance with the rules set out in Annex VI, Chapter III, using the model set out in Annex VII; the date and number of the customs document of import must appear on the certificate concerned.

At the request of the exporter, a paying agency may waive the certification requirement referred to in point (a) of the first subparagraph where it is able to verify that customs formalities for importation have been completed by accessing electronically recorded information held by or on behalf of the competent authorities of the third country.

(b) Paragraph 3 is replaced by the following:

3. Exporters shall in all cases produce a copy or photocopy of the transport documents, which shall relate to the transport of the products for which the export declaration was made.

At the exporter's request, in the case of container transport by sea, a Member State may accept information equivalent to that contained in transport documents if they are generated by an information system managed by a third party responsible for the transport of the containers to the place of destination provided that the third party specialises in such operations and the information system security is approved by the Member State as meeting the criteria laid down in the version applicable to the period concerned of one of the internationally accepted standards set out in point 3(B) of Annex I to Commission Regulation (EC) No 885/2006[7].

6. Article 17 is replaced by the following:

Article 17

1 Member States may exempt exporters from furnishing the proof required pursuant to Article 16 other than the transport document or its electronic equivalent as referred to in Article 16(3), in case of an export declaration giving entitlement to a refund where:

a the differentiated part of the refund is no more than:

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(i) EUR 2 400 where the third country or territory of destination is listed in Annex IV;

(ii) EUR 12 000 where the third country or territory of destination is not listed in Annex IV; or

b the port of destination is located in the remote refund zone for the product concerned.

2 The exemption referred to in paragraph 1(b) shall apply only where the following conditions are met:

a the products are transported in containers and transport of the containers to the port of unloading is done by sea;

b the transport document mentions as destination the country mentioned in the export declaration or a port normally used for unloading products destined for a hinterland country which is the country of destination mentioned in the export declaration;

c the proof of unloading is provided pursuant to point (a), (b) or (c) of Article 16(2).

At the request of the exporter, in the case of container transport by sea, a Member State may accept that the proof of unloading referred to in point (c) of the first subparagraph is provided instead by information equivalent to that of the unloading document if it is generated by an information system managed by a third party responsible for the transport of the containers to and unloading of the containers at the place of destination, provided that the third party specialises in such operations and the information system security is approved by the Member State as meeting the criteria laid down in the version applicable to the period concerned of one of the internationally accepted standards set out in point 3(B) of Annex I to Commission Regulation (EC) No 885/2006.

The proof of unloading may be provided pursuant to point (c) of the first subparagraph or pursuant to the second subparagraph without the exporter having to prove that he has taken the appropriate steps to obtain the document referred to in points (a) or (b) of Article 16(1).

3 Eligibility for the exemptions referred to in paragraph 1(a) shall be automatic except in case of application of paragraph 4.

Eligibility for the exemption referred to in paragraph 1(b) shall be granted for three years, by means of a written authorisation, in advance of export, upon application by the exporter. Exporters using these authorisations shall refer to the number of the authorisation in the payment application.

4 If the Member State considers that products for which the exporter claims an exemption under this Article have been exported to a country other than that mentioned in the export declaration or, as the case may be, to a country outside the relevant remote refund zone for which the refund is fixed, or the exporter has artificially divided an export operation with the aim of benefiting from an exemption, the Member State shall immediately withdraw eligibility for any exemption under this Article from the exporter concerned.

The exporter concerned shall not be eligible for any further exemption under this Article for two years from the date of withdrawal.