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 (Codified version)

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

(Codified version)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) 1784/2003 of 29 September 2003 on the common organisation of the market in cereals[(1)], and in particular Article 18 thereof,

Having regard to Council Regulation (EC) No 2799/98 of 15 December 1998 establishing agrimonetary arrangements for the euro[(2)], and in particular Article 3(2) thereof,

Whereas:

(1) Commission Regulation (EEC) No 2825/93 of 15 October 1993 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards the fixing and granting of adjusted refunds in respect of cereals exported in the form of certain spirit drinks[(3)] has been substantially amended several times[(4)]. In the interests of clarity and rationality the said Regulation should be codified.

(2) Article 16 of Regulation (EC) No 1784/2003 provides that, in so far as it is necessary to take account of the particular features of the production of certain spirituous beverages obtained from cereals, the criteria for granting export refunds may be adapted to this particular situation. It would appear necessary to provide for such adjustment for certain spirit drinks where, on the one hand, the price of cereals at the moment of export is not linked to the price of cereals at the moment of production and, on the other hand, the final product derives from a mixture of numerous products, so that it has become impossible to monitor the identity of the cereals incorporated in the final product for exportation, all the more so since those spirit drinks are also subject to compulsory ageing of at least three years.

(3) Difficulties of this nature have been encountered in particular in respect of Scotch whisky, Irish whiskey and Spanish whisky.

(4) The usual system of refunds should, as far as possible, be applied on a similar basis. A refund should therefore be paid for cereals meeting the conditions provided for in Article 23(2) of the Treaty used *pro rata* in terms of the quantities of spirit drinks

exported. To this end, the quantities of such distilled cereals should be multiplied by an overall, flat-rate coefficient calculated on the basis of national statistics supplied by the Member States concerned. Use of the ratio between the total quantities of spirit drinks concerned which have been exported and the total quantities which have been sold seems to afford a fair and simple basis. It is necessary to define what is meant by 'total quantities exported' and 'total quantities marketed'. For the purpose of determining the quantities of cereals distilled and the coefficient, the quantities subject to inward processing arrangements should be excluded.

(5) It is necessary to make provision for the coefficient to be adjusted in particular to guard against the possibility that payments of the refunds might serve to increase stocks abnormally.

(6) Article 13(3) of Regulation (EC) No 1784/2003 provides for the possibility of differentiating the refund according to destination. Therefore, objective criteria should be provided for which would lead to the abolition of the refund for certain destinations.

(7) The day determining the applicable refund rate should be fixed. That day should be linked in the first instance to the time at which the cereals are placed under control and, for the quantities distilled subsequently, to each fiscal distillation period. Before the refund is paid proof must be furnished in the form of a distillation declaration that the cereals have been distilled. Such a declaration must contain the information necessary for the calculation of the refunds. The first day of each fiscal distillation period may also be the operative event for the agricultural conversion rate pursuant to Article 3 of Regulation (EC) No 2799/98.

(8) It is necessary for the purposes of this Regulation to record that the products have left the Community and in certain cases to identify their destination as well. It is thus necessary to employ the definition of exportation set out in Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code[(5)] and to use the evidence provided for in 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[(6)].

(9) In order to establish the coefficient, it should be compulsory to provide proof that the quantities of spirit drinks have been exported. It is appropriate to provide that Article 43 of Commission Regulation (EC) No 1291/2000 of 9 June 2000 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 apply to goods returning to Community territory if the special conditions are met.

(10) The Member States should be required to pass on the necessary information to the Commission.

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

HAS ADOPTED THIS REGULATION:

Article 1

1 This Regulation lays down detailed rules for fixing and granting export refunds for cereals exported in the form of spirit drinks as referred to in Article 16 of Regulation (EC) No 1784/2003 and for which a compulsory ageing period of at least three years is part of the manufacturing process.

2 Commission Regulation (EC) No 1043/2005[8] shall not apply to the spirit drinks referred to in paragraph 1, save as otherwise provided in Article 6(1) of this Regulation.

Article 2

The refunds referred to in Article 1 may be granted for cereals meeting the conditions laid down in Article 23(2) of the Treaty and used in the production of the spirit drinks falling within CN codes 2208 30 32, 2208 30 38, 2208 30 52, 2208 30 58, 2208 30 72, 2208 30 78, 2208 30 82 and 2208 30 88 manufactured in accordance with Council Regulation (EEC) No 1576/89[9].

Article 3

For the purposes of this Regulation:

(a) 'given distillation period' means a period corresponding to a distillation period agreed between the beneficiary and the customs authorities or other competent authorities for the purposes of checks on excise duty (fiscal period);

(b) 'total quantities exported' means the quantities of spirit drinks fulfilling the terms of Article 23(2) of the Treaty and exported to a destination for which the refund applies;

(c) 'total quantities marketed' means the quantities of spirit drinks fulfilling the terms of Article 23(2) of the Treaty which have been finally dispatched from production or storage facilities with a view to their sale for human consumption;

(d) 'placed under control' means the placing under a customs control procedure, or under an administrative procedure offering equivalent assurances, of cereals intended for the manufacture of the spirit drinks referred to in Article 2.

Article 4

1 The quantities of cereals eligible for the refund shall be the quantities placed under control and distilled by those entitled to the refund during a given distillation period, weighted by a coefficient to be fixed annually for each Member State concerned and applicable to all eligible parties concerned. The coefficient shall express the average ratio between the total quantities exported and the total quantities marketed of the spirit drinks concerned, on the basis of the trend noted in those quantities during the number of years corresponding to the average ageing period of the spirit drink in question.

For the purpose of determining the quantities of cereals distilled and the coefficient, quantities which have been subject to inward processing arrangements shall be excluded.

When the coefficient is calculated, account shall also be taken of variations in the stocks of one of the spirit drinks in question.

The coefficient may differ according to the cereal used.

2 The competent bodies shall at regular intervals check on the volume actually exported and on the volume of stocks.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 1670/2006. (See end of Document for details)*

Article 5

The coefficient referred to in Article 4(1) shall be fixed before 1 July each year.

It shall apply from 1 October until 30 September of the following year.

The coefficient shall be fixed in accordance with information supplied by the Member States on the period 1 January to 31 December of the years preceding the year of fixing.

Article 6

1 The rate of the refund applicable shall be that fixed in accordance with the first paragraph of Article 14 of Regulation (EC) No 1043/2005.

[[F1]**[**[F2]2 The rate of the refund shall be that applicable on the day on which the cereals are placed under control. However, as regards the quantities distilled in each of the fiscal distillation periods following that in which the placing under control occurred, the rate shall be that applicable on the first day of each fiscal distillation period concerned.

The operative event for the exchange rate applicable to the refund shall be that referred to in Article 1(1) of Commission Regulation (EC) No 1913/2006[10].**]]**

Textual Amendments

F1 Substituted 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.

F2 Substituted by Commission Regulation (EC) No 873/2007 of 24 July 2007 amending and correcting Regulation (EC) No 1913/2006 laying down detailed rules for the application of the agrimonetary system for the euro in agriculture.

Article 7

1 Where the situation on the world market or the specific requirements of certain markets so dictate, the refund shall be abolished for certain destinations.

2 If the refund is abolished pursuant to paragraph 1, or if it is reintroduced, and if certain markets become ineligible for export refunds pursuant to an Act of Accession or agreements with third countries, the coefficient referred to in Article 4(1) shall be adjusted. That adjustment shall involve as appropriate, the exclusion or inclusion, in the total exported quantities used for calculating that coefficient, of the quantities exported to those markets for which the refund is abolished or reintroduced. The adjusted coefficient shall apply from the first day of the fiscal distillation period following the change in the eligibility of the markets concerned.

Article 8

For the purposes of this Regulation, cereals may be replaced by malt.

In that case the coefficient for calculating the barley equivalent of malt shall be 1,30.

However, where the malt that is placed under control is green malt with a moisture content of between 43 % and 47 %, the coefficient for calculating the equivalent weight of malt with a moisture content of 7 % shall be 0,57.

Article 9

1 Only distillers established in the Community shall be entitled to the refund.

2 The distiller shall communicate to the competent authorities prior to the commencement of each fiscal distillation period a declaration including all the particulars necessary for determining the refund, in particular:

a a description of the cereals or malt in accordance with the nomenclature of the common customs tariff, where necessary broken down by homogeneous lot;

b the net weight of the products and the moisture content, broken down for each lot referred to under (a);

c confirmation that the cereals fulfil the conditions laid down in Article 23(2) of the Treaty;

d the place of storage and distillation.

During the fiscal distillation period the declaration may be updated as the distillation process proceeds in order to take account of the larger or smaller quantities actually being distilled.

3 After each fiscal distillation period the distiller shall lodge with the competent authorities a declaration, hereinafter called a 'distillation declaration', in which he confirms that he has distilled, during the distillation period concerned, the cereals set out in the declaration referred to in paragraph 2, in order to produce one of the spirit drinks in question; he shall indicate the quantity of distilled products obtained. This declaration shall be certified by the authorities carrying out the placing under control.

4 The refund shall be paid once proof has been furnished that the cereals have been placed under control and distilled.

5 The weight of cereals to be taken into consideration for calculation of the payment shall be the net weight, if the moisture content is not more than 15 %. If the moisture content of the cereals used is more than 15 % but not more than 16 %, the weight to be taken into consideration shall be the net weight reduced by 1 %. If the moisture content of the cereals used is more than 16 % but not more than 17 %, the reduction shall be 2 %. If the moisture content of the cereals used is more than 17 % the reduction shall be two percentage points for each percentage point of moisture above 15 %.

The weight of malt other than green malt, as referred to in Article 8, which is to be taken into consideration for calculation of the payment shall be the net weight, if the moisture is not more than 7 %. If the moisture content of the malt used is more than 7 % but not more than 8 %, the weight to be taken into consideration shall be the net weight reduced by 1 %. If the moisture content of the malt used is more than 8 % the reduction shall be two percentage points for each percentage point of moisture above 7 %.

The Community reference method for determining the moisture content of cereals and malt intended for production of the spirit drinks referred to in this Regulation shall be that shown in Annex IV to Commission Regulation (EC) No 824/2000[(11)].

Article 10

Member States shall take the measures necessary to verify the accuracy of the declarations referred to in Article 9 and those relating to the physical control of the cereals, the distillation process and the use of the distilled product obtained.

Article 11

1 The by-products of processing shall be exempt from control if it has been established that they do not exceed the quantity of by-products normally obtained.