COMMISSION REGULATION (EC) No 1563/2001

of 31 July 2001

amending Regulation (EC) No 1520/2000 laying down common detailed rules for the application of 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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3448/93 of 6 December 1993 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products [1], as last amended by Regulation (EC) No 2580/2000 [2], and in particular the first subparagraph of Article 8(3) thereof,

Whereas:

(1) It is necessary to clarify and fine-tune certain provisions regarding refund certificates and certain provisions regarding the use of Annex D as provided for in Commission Regulation (EC) No 1520/2000 [3], as amended by Regulation (EC) No 2390/2000 [4].

(2) In order to make the use of refund certificates more efficient, they must be made transferable without, however, promoting an increase in the number of applications for purposes of speculation. The transferee should be designated before a certificate is applied for.

(3) Operators retain their refund right if they have complied with the applicable rules and have not made a specific refund application within three months of the date on which the customs authority accepted the export declaration. In such cases, the guarantee or part thereof corresponding to the refund certificate is retained.

(4) There must be specific provisions covering refund certificates in the case of an open invitation to tender in a non-member country in order to enable European operators to submit a bid on competitive terms. However, for the sake of simplification, the procedure must be based largely on what is already provided for in Article 49 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 [5], as last amended by Regulation (EC) No 1095/2001 [6].

(5) For reasons of administrative simplification, special procedures should be laid down for the release of the guarantee, including in particular the conditions for partial release and a threshold below which a guarantee that should have been retained may be released.

(6) In order to make full use of the scope for exporting agricultural products that benefit from refunds, there must be provisions similar to those set out in Article 35 of Regulation (EC) No 1291/2000 and operators must be encouraged to swiftly return certificates that have not been fully used throughout the budget period.

(7) Because of the amendments under this Regulation, the references to the Articles of Regulation (EC) No 1291/2000 will need to be adapted.

(8) With a view to more efficient use of the funds available, particularly in view of the need for the Community to meet its international commitments, there must be procedures for adapting the threshold above which the exemption from presenting certificates for certain exporters no longer applies. It is also necessary to make special arrangements to enable operators that no longer wish to take advantage of the exemption from presenting certificates when a budgetary period is changed to make efficient use of the threshold provided for in Article 14(2) of Regulation (EC) No 1520/2000. Furthermore, in order to ensure that the Community's international commitments have been met by the end of a budget year, there must be procedures for suspending payments in connection with refund certificates issued during the corresponding budget period.

(9) Given the experience acquired since the introduction of refund certificates, the procedures provided for in Annex F to Regulation (EC) No 1520/2000 need to be adapted.

(10) It has to be possible to apply some of the provisions of this Regulation as from 9 July. The date of entry into force therefore has to be as soon as possible after the date of publication.

(11) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee on Horizontal Questions Concerning Trade in Processed Agricultural Products Not Listed in Annex I,

[1] OJ L 318, 20.12.1993, p. 18.
[2] OJ L 298, 25.11.2000, p. 5.
[3] OJ L 177, 15.7.2000, p. 1.
[4] OJ L 276, 28.10.2000, p. 3.
[5] OJ L 152, 24.6.2000, p. 1.
[6] OJ L 150, 6.6.2001, p. 25.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1520/2000 is amended as follows:

1. Article 6(3) is replaced by the following:

'3. Without prejudice to the provisions set out in Article 6a, the refund certificate shall not be transferable. It shall be used by the holder.'

2. The following Article 6a is inserted:

'*Article 6a*

1. Obligations deriving from licences or certificates shall not be transferable. Rights deriving from licences or certificates may be transferred by their titular holder during the period of their validity, provided that such transfer is made in favour of a single transferee only for each certificate or extract therefrom and the name and address of the transferee who accepts it are entered in box 20 of the application form for a refund certificate no later than at the time of lodging the application. Such transfer shall relate to the amounts not yet attributed to the certificate or to all the extracts therefrom.

Before the certificate is issued, the following shall be entered in box 22 and completed in accordance with the details of the application: "The rights may possibly be transferred to... (name and address of the transferee)"

If no name and address of a possible transferee were specified in the application for the certificate, box 6 shall be deleted.

2. Transferees may not further transfer their rights but may transfer them back to the titular holder.

In such cases, one of the following entries shall be made by the issuing body in section 6 of the certificate:

— retrocesión al titular, el …

— tilbageføring til indehaveren den …

— Rückübertragung auf den Bescheinigungsinhaber am …

— εκ νέου παραχώρηση στο δικαιούχο στις …

— rights transferred back to the titular holder on [date]

— rétrocession au titulaire le …

— retrocessione al titolaire in data …

— aan de titularis geretrocedeerd op …

— retrocessão ao titular em …

— palautus todistuksenhaltijalle …

— återbördad till licensinnehavaren den …

3. In the event of a request for transfer by the titular holder or transfer back to the titular holder by the transferee, the issuing body or the agency or agencies designated by each Member State shall enter the following on the certificate or, where appropriate, the extract therefrom:

(a) the name and address of the transferee as indicated in accordance with paragraph 1 or the entry referred to in paragraph 2;

(b) the date of such entry certified by the stamp of the body or agency.

4. The transfer or transfer back to the titular holder shall take effect from the date of the entry.'

3. In Article 7, the following paragraph 5 is added:

'5. A refund requested on the basis of a specific application which is not the export declaration shall be granted on the applicable terms, particularly those set out in Article 6.

Without prejudice to the previous subparagraph, if the time limit of three months specified in paragraph 4 is not complied with, the obligation referred to in paragraph 3 cannot be deemed to have been met and consequently, the security provided for in Article 11 shall be retained in respect of the amount in question.'

4. The following Article 10a is inserted:

'*Article 10a*

1. This Article shall apply to refund certificates applied for fixing the refund in advance, on the day the application is lodged, in connection with an invitation to tender issued in an importing non-member country.

The expression "invitation to tender" shall be understood to mean open invitations issued by public agencies in third countries, or by international bodies governed by public law, to submit by a given date tenders on which a decision will be taken by those agencies or bodies.

For the purposes of this Article, the armed forces referred to in Article 36(1)(c) of Regulation (EC) No 800/1999 shall be regarded as an importing country.

2. Exporters who have submitted or wish to submit a tender in response to an invitation to tender as referred to in paragraph 1 may, by way of derogation from Article 8(5), (6) and (9), subject to the conditions set out in paragraph 10, and provided the conditions specified in paragraph 3 are fulfilled, apply for one or more certificates, which will be issued subject to the exporter being awarded a contract.

3. This Article shall apply only if the following particulars at least are specified in the invitation to tender:

— the importing country and the agency issuing the invitation to tender,

— the closing date for the submission of tenders,

— the specific quantity of products covered by the invitation to tender.

The party concerned shall communicate these particulars to the issuing agency when applying for the certificate.

An application or applications for a certificate may not be lodged more than 15 days before the closing date for the submission of tenders but must be lodged at the latest by 1 p.m. on that closing date.

The amount in respect of which the certificate or certificates are applied for may not exceed the corresponding quantity applying the rate fixed in advance in accordance with the first subparagraph of paragraph 1, specified in the invitation to tender. No account shall be taken of tolerances or options provided for in the invitation to tender.

4. Notwithstanding Article 15(2) of Regulation (EC) 1291/2000, the security need not be lodged when the certificate is applied for.

5. Within 44 days of the closing date for submitting tenders, except in case of *force majeure*, the applicant shall inform the issuing body by letter or by written telecommunication, to reach the issuing body no later than the date of expiry of the 44-day time limit:

(a) either that he has himself been awarded a contract;

(b) or that he has not been awarded a contract;

(c) or that he has not submitted a tender;

(d) or that he is not in a position to know the outcome of the invitation to tender within the time limit specified for reasons which may not be ascribed to him.

6. Applications for certificates shall not be accepted where, during the period of issue to which applications for refund certificates are subject, the issue of a certificate has been suspended in accordance with the second subparagraph of Article 8(8).

No special measure taken subsequent to the expiry of the said period may prevent the issue of one or more certificates in respect of the invitation to tender in question where the applicant has fulfilled the following conditions:

(a) the information referred to in the first subparagraph of paragraph 3 is evidenced by the appropriate documents;

(b) proof is furnished of the applicant's having been awarded a contract;

(c) the contract is presented; or

(d) where absence of the contract is justified, documentation is submitted attesting the obligations entered into with the other contracting party or parties, including confirmation from his or their bank of the opening of an irrevocable documentary letter of credit by the purchaser's financial institution relating to the agreed delivery;

(e) the security required for the issue of the certificate is lodged.

The certificate or certificates shall be issued only for the country referred to in the first indent of the first subparagraph of paragraph 3. The invitation to tender shall be mentioned thereon.

The total amount for which the certificate or certificates are issued shall be the corresponding total quantity applying the rate fixed in advance in accordance with the first subparagraph of paragraph 1, for which the applicant was awarded the contract and has presented the contract or documentation referred to in point (d); such amount may not exceed the amount applied for.

By way of exemption from Article 9(1) and the first and second subparagraphs of Article 9(2), refund certificates issued in accordance with this article shall be valid with effect from the day on which they are issued within the meaning of Article 23(2) of Regulation (EC) No 1291/2000. Refund certificates shall be valid for no longer than the end of the eighth month following the month of issue or until 30 September of each year, which ever is the sooner. Rates fixed in advance are therefore valid until the last day of the certificate's validity.

No certificate may be issued for the amount corresponding to the quantity for which the applicant has not been awarded a contract or has failed to comply with any of the conditions specified in point (a), (b), (c) and (e) of the second subparagraph or, as the case may be, point (a), (b), (d) and (e) of the second subparagraph.

The holder of the certificate or certificates shall be held primarily liable for the repayment of any refund incorrectly paid where it is established that the certificate or certificates was or were issued on the basis of a contract or obligation, specified in point (d), not corresponding to the invitation to tender opened by the non-member country.

7. In the cases referred to in paragraph 5(b), (c) and (d), no certificate shall be issued in connection with the application referred to in paragraph 3.

8. Where the applicant for a certificate fails to comply with paragraph 5, no certificate shall be issued.

However, where the applicant furnishes proof to the issuing body that the closing date for the submission of tenders has been deferred:

— by no more than 10 days, the application shall remain valid and the period of 44 days for notifying the particulars specified in paragraph 5 shall run with effect from the new closing date for the submission of tenders,

— by more than 10 days, the application shall no longer be valid.

9. (a) If the successful tenderer demonstrates to the satisfaction of the competent authority that the agency that issued the invitation to tender has cancelled the contract for reasons which are not attributable to the tenderer and are not considered to constitute *force majeure*, the competent authority shall release the security in cases where the rate of the refund fixed in advance in respect of the basic product corresponding to the largest refund compared with the other basic products used is higher than or equal to the rate of the refund valid on the last day of the certificate's validity.

(b) If the successful tenderer demonstrates to the satisfaction of the competent authority that the agency that issued the invitation to tender has obliged him to accept changes to the contract for reasons that are not attributable to him and are not considered to constitute *force majeure*, the competent authority may extend the validity of the certificate and the duration of advance fixing up to 30 September.

(c) If the successful tenderer furnishes proof that the invitation to tender or the contract concluded following the award provided for a downward tolerance or option of more than 5 % and that the agency that issued the invitation to tender is invoking the relevant clause, the obligation to export shall be deemed to have been fulfilled where the quantity exported is not more than 10 % less than the quantity corresponding to the amount for which the certificate was issued, on condition that the rate of the refund fixed in advance in respect of the basic product corresponding to the largest refund compared with the other basic products used is higher than or equal to the rate of the refund valid on the last day of validity of the certificate. In such cases the rate of 95 % referred to in Article 12(4) shall be replaced by 90 %.

(d) In comparing the rate of the refund fixed in advance with that of the refund valid on the last day of validity of the certificate, account shall be taken, where applicable, of other amounts provided for under Community rules.

10. By way of exemption from Article 8, applications for refund certificates may be submitted in accordance with this article from 1 October of each budget period. Member States shall immediately inform the Commission of the particulars referred to in the first subparagraph of paragraph 3, and of the amounts and date and time of submission of each certificate applied for. The Commission shall inform the Member State within two working days of such notification whether the third subparagraph of paragraph 12 is applicable.

11. In the case of applications which have not yet been submitted, the Commission may suspend application of paragraph 2 under the conditions set out in the second and third subparagraphs of Article 8(8).

12. For the purposes of applying the first subparagraph of paragraph 6, the Commission may consider that there is no danger of international commitments not being met if the sum of the amounts corresponding to a single invitation to tender for which one or more applications for certificates have been made by one or more operators and for which no certificate has yet been issued does not exceed EUR 2 million.

However, this limit may be increased to EUR 4 million if none of the reduction coefficients published since the beginning of the budgetary period and referred to in Article 8(5) exceeds 50 %.

Refund certificates shall not be issued to operators if the amount concerned, added to the amounts for which certificates have been applied for as part of the same invitation to tender, exceed the applicable limit.'

5. Article 12 is replaced by the following:

'Article 12

1. If a reduction coefficient is applied pursuant to Article 8(5) and (8), part of the security equal to the amount lodged multiplied by the reduction coefficient shall be released immediately.

2. Should the applicant withdraw his application for a certificate, as provided for in Article 8(6), 94 % of the security shall be released.

3. The security shall be released in full once the holder of the certificate has applied for refunds totalling 95 % of the amount for which the certificate was issued. On application by the titular holder, Member States may release the security by instalments in proportion to the quantities of products for which proof as referred to in Article 7(4) has been produced, provided that proof has been produced that an amount equal to at least 5 % of that indicated on the certificate has been applied for.

4. Where the refund certificate has been used for less than 95 % of the amount for which it was issued, part of the security equal to 25 % of the difference between 95 % of the amount for which the certificate was issued and the amount of refunds actually used shall be forfeited.

Furthermore, if the total amount of the security which would be forfeited comes to EUR 60 or less for a given certificate, the Member State concerned shall release the whole of the security.

5. However,

— where the certificate or an extract from the certificate is returned to the issuing body within a period corresponding to the initial two thirds of its term of validity, the corresponding amount of security to be forfeited shall be reduced by 40 %; for this purpose, any part of a day counts as a whole day;

— where the certificate or extract from the certificate is returned to the issuing body within a period corresponding to the last third of its term of validity or during the month following the expiry date, the corresponding amount of security to be forfeited shall be reduced by 25 %.

The above paragraph shall apply only to certificates and extracts from certificates returned to the issuing body during the budgetary period in respect of which the certificates have been issued, provided that they are returned more than 30 days before the end of that period.'

6. In Article 14, paragraphs 2 and 3 are replaced by the following:

'2. The provisions of this Article are applicable to exports by operators that have not held a refund certificate since the beginning of the budgetary period in question and do not hold such a certificate on the date of export. The applications submitted by the operator on the terms set out in Annex F-VI, paragraph 2, during the budget year and before the submission of the application for the export in question must total less than EUR 50 000.

For the application of the previous subparagraph, if the specific application is regarded by the competent authority as being the customs declaration within the meaning of Article 5(1) of Regulation (EC) No 800/1999, the date of the application may, if the competent authority agrees, be the date on which the customs authority accepted the export declaration in question.

This Article is applicable only in the Member State in which the goods are manufactured or assembled.

3. Member States shall notify the Commission no later than the fifth day of each month of the amounts of the refunds granted pursuant to this Article from the sixteenth day to the end of the previous month, and no later than the twentieth day of each month of the amounts of the refunds granted pursuant to this Article from the first to the fifteenth day of the current month.

If the sum of the amounts notified by the Member States reaches 20 million euro, the Commission can suspend the application of paragraphs 1 and 2 of this Article to exports not covered by a refund certificate.

Taking into account both the amounts notified by Member States in application of the first subparagraph and the European Community's meeting of international commitments, the Commission may adjust the amount provided for in the second subparagraph in respect of a budgetary period, in which case it shall publish the new amount in the *Official Journal of the European Communities*.'

7. Article 15(2) is replaced by the following:

'2. By way of derogation from paragraph 1, the following provisions of Regulation (EEC) No 1291/2000 shall not apply to the refund certificates referred to in this Regulation:

— Articles 9, 12, 14, 21, 24, 32, 33, 35, 42, 46, 47, 49 and 50,

— Article 8(2),

— Article 8(4),

— Article 18(1),

— Article 36(5).'

8. Article 16 is amended as follows:

(a) In paragraph 3, the second subparagraph is replaced by the following:

'However, if the goods concerned are listed in columns 1 and 2 of Annex D, the party concerned may, at his express request, be granted a refund, the nature and quantity of the basic products taken into consideration for the calculation of such refund being determined from an analysis of the goods to be exported and in accordance with the conversion table in Annex D. The competent authority shall decide on the conditions under which the analysis is to be carried out.'

(b) Paragraph 8 is replaced by the following:

'8. As regards exports effected between 1 October and 15 October of each year, refunds may not be paid before 16 October.

As regards exports effected with presentation of a refund certificate issued in respect of a budgetary period, and where the Commission considers that there is a danger that the Community may not meet its international commitments, refund payments scheduled after the end of that period may not be made before 16 October, in which case the time limit referred to in the first subparagraph of Article 49(8) of Regulation (EC) No 800/1999 may be temporarily extended to three months and 15 days.

If the previous subparagraph is applied, the Commission shall publish this provision before 20 September in the *Official Journal of the European Communities*.'

9. Annex F is amended as follows:

(a) in section I, paragraph 2 is replaced by the following:

'2. The "Export licence or advance fixing certificate" shall be stamped "Refund certificate non-Annex I". This information may be computerised.

Applicants must complete boxes 4, 8, 17 and 18 and, where appropriate, 7. In boxes 17 and 18, the amount shall be entered in euro;

Boxes 13 to 16 shall not be completed.

In box 20, applicants must state whether they plan to use the refund certificate only in the Member State which issued it or whether they require a refund certificate which is valid throughout the Community.

Applicants must enter in box 20 the words "Article 8-1", or other words to the satisfaction of the competent authority, if the application refers to a certificate provided for under Article 8(1) or the words "Article 8-8", or other words to the satisfaction of the competent authority, if it refers to a certificate provided for under Article 8(8) to (10).

Applicants must enter the place and date of application and sign the application.

If the application concerns food aid, they must also enter in box 20 one of the indications mentioned in Article 10 of this Regulation or in Article 3 of Commission Regulation (EC) No 259/98 (*).

(*) OJ L 25, 31.1.1998, p. 39.'

(b) In section II, paragraph 3 is replaced by the following:

'3. Application for an extract from a refund certificate

Any holder of a refund certificate may request an extract from the certificate for an amount not exceeding the amount not yet recorded on the original certificate on the date on which the extract is issued, particularly if the refund applications for the planned exports will not be submitted in the Member State which issued the refund certificate. In this case, the amount for which an extract is requested shall be recorded on the original certificate and an extract shall be issued, based on an application drawn up on the form set out in Annex I to Regulation (EC) No 1291/2000 and containing the following information:

— in boxes 1 and 2, the name of the agency which issued the refund certificate from which an extract is requested and the number of the original certificate,

— in box 4, the name of the holder of the refund certificate,

— in boxes 17 and 18, the amount of the extract requested in euro.'

(c) Section IV is replaced by the following:

'IV. **Issue of refund certificates without advance fixing for use throughout the Community**

These refund certificates shall be completed in the same way as the certificates referred to in Section III.

Box 21 shall be deleted.

Should the holder of such a refund certificate subsequently request advance fixing of the refund rates, he must return the original certificate and any extracts already issued. "Refund valid on [date], fixed in advance on [date]" shall be entered and completed in box 22 of the certificate.'

Article 2

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

Article 1(2) and (5) shall apply to certificates applied for as from 9 July 2001 and corresponding to exports effected as from 1 October 2001.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 31 July 2001.

For the Commission

Frederik BOLKESTEIN

Member of the Commission