COMMISSION REGULATION (EC) No 1580/2006

of 20 October 2006

amending Regulation (EC) No 1043/2005 implementing Council Regulation (EC) No 3448/93 as regards 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], and in particular the first subparagraph of Article 8(3) thereof,

Whereas:

(1) In accordance with Article 4 of Commission Regulation (EC) No 1043/2005 [2], and in conjunction with the second subparagraph of Article 1(1) thereof, 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] applies to exports of products in the form of goods not covered by Annex I to the Treaty.

(2) In accordance with the second indent of Article 3 of Regulation (EC) No 800/1999, entitlement to the export refund is acquired on importation into a specific third country when a differentiated refund applies for that third country.

(3) Articles 14, 15 and 16 of Regulation (EC) No 800/1999 lays down the conditions for the payment of the differentiated refund, in particular the documents to be supplied as proof of the goods' arrival at destination.

(4) Article 17 of Regulation (EC) No 800/1999 provides that Member States may, in certain circumstances, exempt exporters from furnishing the proof, other than the transport document, required under Article 16 of that Regulation.

(5) The volume of specific applications in respect of which refunds are granted in accordance with Regulation (EC) No 1043/2005 is high. Most goods to which these applications relate are manufactured under clearly defined technical conditions, have constant characteristics and quality, follow regular export patterns and have manufacturing formulas which have been registered and confirmed by the competent authorities.

(6) In the light of these special circumstances and with a view to simplifying the administrative work involved in granting export refunds under Regulation (EC) No 1043/2005, it is appropriate to adopt special provisions giving Member States greater flexibility than those set out in Article 17 of Regulation (EC) No 800/1999 in so far as they relate to the maximums below which the Member States may exempt operators from furnishing the proof required under Article 16 of the latter Regulation.

(7) It is therefore appropriate, where goods are packaged for consumer retail sale or where goods follow well established regular export patterns involving exports by the same exporter of goods of the same CN code to the same consignee, to confer on Member States the flexibility, at their discretion, to exempt exporters from furnishing the proof required under Article 16 of Regulation (EC) No 800/1999, provided that they require exporters to submit such proof on a spot check basis.

(8) It is necessary to ensure that on the one hand Member States can establish that the foregoing exemptions are limited to the operations for which they are intended while on the other hand individual exporters know in advance of export the goods and operations for which a Member State is prepared to allow them to benefit from these more flexible arrangements. Therefore, it is appropriate to provide for administration by Member States of an authorisation procedure whereby they can control the goods and operations for which they are prepared to allow those more flexible arrangements.

[1] OJ L 318, 20.12.1993, p. 18. Regulation as last amended by Regulation (EC) No 2580/2000 (OJ L 298, 25.11.2000, p. 5).
[2] OJ L 172, 5.7.2005, p. 24. Regulation as last amended by Regulation (EC) No 544/2006 (OJ L 94, 1.4.2006, p. 24).
[3] OJ L 102, 17.4.1999, p. 11. Regulation as last amended by Regulation (EC) No 671/2004 (OJ L 105, 14.4.2004, p. 5).

(9) It is appropriate to provide that exemptions granted under such provisions be considered as risk factors to be taken into account for the purposes of Article 2(1) of Council Regulation (EEC) No 4045/89 [1], which relates to scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund. In addition, where Member States seek certain documentation on a risk factors basis, it is also appropriate that they apply the principles established in Commission Regulation (EC) No 3122/94 of 20 December 1994 laying down criteria for risk analysis as regards agricultural products receiving refunds [2].

(10) Notwithstanding the provisions for exemptions as provided in this Regulation, the proofs required under Article 16 of Regulation (EC) No 800/1999 should be obligatory in certain instances. Since subjecting the payment of refunds to these requirements entails a substantial change in the administrative procedures for both the national authorities and exporters, it has administrative implications and represents a significant financial burden. Obtaining the proof referred to in Article 16 of Regulation (EC) No 800/1999 can pose considerable administrative difficulties in some countries. To alleviate some of the administrative and financial constraints imposed on exporters, and in order to allow the authorities and exporters to set up the new arrangements for the goods concerned and introduce the procedures needed to ensure that all the formalities to be completed run smoothly, it is appropriate to provide for a transitional period during which the proof that customs formalities for importation have been completed is made easier.

(11) Regulation (EC) 1043/2005 should therefore be amended accordingly.

(12) 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,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 54 of Regulation (EC) No 1043/2005, the following paragraphs 3 to 6 are added:

'3. For the goods listed in Annex II to this Regulation and by way of derogation from Article 17 of Regulation (EC) No 800/1999, the amount set out in point (b) of the first paragraph of that Article shall apply regardless of the country or territory of destination to which the goods are exported:

(a) in the case of goods which are packaged for consumer retail sale in immediate packings of net content not exceeding 2,5 kg or in containers not holding more than 2 litres, with labelling within the meaning of Article 1(3)(a) of Directive 2000/13/EC of the European Parliament and of the Council (*) which mentions either the importer in the country of destination or whose text is in an official language of the country of destination or in a language easily understood in that country;

(b) in cases where a particular exporter, at least 12 times in the two years preceding the date of request for an authorisation as referred to in paragraph 4, exports goods containing not more than 90 % by weight of any single basic product on which refund is payable, which are of the same eight-digit CN code to the same consignee(s).

4. In the cases provided for in paragraph 3, Member States may, on request, grant formal authorisation exempting the exporter concerned from furnishing the documents required under Article 16 of Regulation (EC) No 800/1999, other than the transport document.

The authorisation referred to in the first subparagraph shall be valid, unless revoked, for a maximum period of two years and shall be renewable. Member States may revoke the authorisation at their sole discretion and in particular shall immediately withdraw it where they have reasonable grounds to suspect that the exporter did not follow the conditions of the specific authorisation.

Exemptions granted according to the first subparagraph shall be considered as risk factors to be taken into account for the purposes of Article 2(1) of Regulation (EEC) No 4045/89.

Exporters using the exemption shall mention the authorisation number on the single administrative document and on the specific application for payment as referred to in Article 32 of this Regulation.

[1] OJ L 388, 30.12.1989, p. 18. Regulation as last amended by Regulation (EC) No 2154/2002 (OJ L 328, 5.12.2002, p. 4).

[2] OJ L 330, 21.12.1994, p. 31. Regulation as amended by Regulation (EC) No 2655/1999 (OJ L 325, 17.12.1999, p. 12).

5. Notwithstanding paragraph 4, for the cases provided for in paragraph 3(b), Member States may exempt the exporter concerned from furnishing the transport documents for all exports covered by an authorisation, provided that the exporter concerned is required to furnish the transport documents in respect of a minimum of 10 % of such export declarations or one per annum, whichever is the greater, to be selected by Member States applying the criteria laid down in Regulation (EC) No 3122/94.

6. In the case of the goods listed in Annex II to this Regulation where the export declaration was accepted not later than 30 September 2007 and for which the exporter is unable to provide the proof referred to in Article 16(1) of Regulation (EC) No 800/1999, the goods shall be deemed to have been imported into a third country on presentation of a copy of the transport document and either one of the documents listed in Article 16(2) of Regulation (EC) No 800/1999 or a bank document issued by approved intermediaries established in the Community, certifying that payment for the export in question has been credited to the account of the exporter opened with them, or the proof of payment.

For the purposes of applying Article 20 of Regulation (EC) No 800/1999 Member States shall take into account the provisions laid down in the first subparagraph.

(*) OJ L 109, 6.5.2000, p. 29.'

Article 2

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

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

Done at Brussels, 20 October 2006.

For the Commission
Günter VERHEUGEN
Vice-President