

## COMMISSION REGULATION (EC) No 447/2007

of 23 April 2007

**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<sup>(1)</sup>, and in particular the first subparagraph of Article 8(3) thereof,

Whereas:

(1) Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector<sup>(2)</sup> has been repealed and replaced by Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector<sup>(3)</sup>. It is appropriate to amend several provisions of Commission Regulation (EC) No 1043/2005<sup>(4)</sup> which still contain references to Regulation (EC) No 1260/2001, in order to take account of this development.

(2) Article 3 of Regulation (EC) No 1043/2005 establishes the basic products to which certain agricultural products and products derived from the processing of basic products shall be assimilated for the purposes of granting of export refunds in accordance with that Regulation.

(3) The products which are to be assimilated to whole milk powder (Product Group 3) are listed in Article 3(4) of Regulation (EC) No 1043/2005. However, the second subparagraph of Article 3(4) allows the competent authority, on request from the party concerned, to assimilate the products listed in that paragraph to a

combination of skimmed milk powder (Product Group 2), for their non-fat dry matter content, or to butter (Product Group 6), for their milk fat content when determining the refund to be paid.

(4) The rapid decrease in refund rates for whole milk powder and skimmed milk powder relative to the refund rate applicable in respect of butter raises the prospect that operators will increasingly request to avail of the provisions of the second subparagraph of Article 3(4) in order to claim refund in respect of the milk fat element of products which in the normal course would have been assimilated to whole milk powder. This prospect risks the payment of higher refund in respect of agricultural products exported in the form of Non Annex I goods than would be applicable in respect of such products exported without further processing and is therefore not consistent with Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products<sup>(5)</sup> and in particular with the second subparagraph of Article 31(1) thereof.

(5) Accordingly, it is appropriate to delete the second subparagraph of Article 3(4) of Regulation (EC) No 1043/2005, without prejudice to the possibility of introducing a similar measure if the risk in question ceases to exist. Nevertheless, in circumstances where Commission Regulation (EC) No 61/2007 of 25 January 2007 fixing the export refunds on milk and milk products<sup>(6)</sup> has reduced to zero, with effect from 26 January 2007, the export refund rate for whole milk powder, some Member States may already have deemed that it was no longer appropriate to agree to new requests from operators to avail of the derogation provided for in the second subparagraph of Article 3(4) of Regulation (EC) No 1043/2005. In the interest of harmonising the responses of Member States to the requests received since 26 January 2007 it is useful to establish a specific date after which Member States should not agree to new request for assimilation under that provision.

(6) Article 43 of Regulation (EC) No 1043/2005 provides that, other than for food aid operations, applications for refund certificates are valid only if a security equal to 25 % of the amount applied for has been lodged. This security is lodged so as to guarantee that the holder of the refund certificate applies for refunds equal to the

<sup>(1)</sup> 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).

<sup>(2)</sup> OJ L 178, 30.6.2001, p. 1.

<sup>(3)</sup> OJ L 58, 28.2.2006, p. 1. Regulation as last amended by Commission Regulation (EC) No 247/2007 (OJ L 69, 9.3.2007, p. 3).

<sup>(4)</sup> OJ L 172, 5.7.2005, p. 24. Regulation as last amended by Regulation (EC) No 1792/2006 (OJ L 362, 20.12.2006, p. 1).

<sup>(5)</sup> OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).

<sup>(6)</sup> OJ L 19, 26.1.2007, p. 8.

amount for which the certificate has been issued on goods exported during the validity period of the refund certificate. The rate of guarantee was set at a time when the level of certificate applications was considerably greater than the amount which could be granted. Following from the ongoing reduction of refund rates payable in respect of agricultural products exported in the form of Non Annex I goods the level of certificate application has eased considerably. In the circumstances the prospect of operators lodging applications for speculative reasons has reduced. It is appropriate to reduce the level of security accordingly.

- (7) Annex VIII to Regulation (EC) No 1043/2005 contains entries in twenty-one of the twenty-three languages of the Community. That Annex should also contain those entries in the two other languages, namely Irish and Maltese.
- (8) Regulation (EC) No 1043/2005 should therefore be amended accordingly.
- (9) The Management Committee on horizontal questions concerning trade in processed agricultural products not listed in Annex I has not delivered an opinion in the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 1043/2005 is amended as follows:

1. In Article 1, paragraph 1 is amended as follows:

- (a) In the first subparagraph, 'Regulation (EC) No 1260/2001' is replaced by:

'Council Regulation (EC) No 318/2006 (\*)

(\*) OJ L 58, 28.2.2006, p. 1.'

- (b) In the second subparagraph, point (c) is replaced by the following:

'(c) Annex VII to Regulation (EC) No 318/2006.'

2. Article 3 is amended as follows:

- (a) In paragraph 4, the second subparagraph is deleted.
- (b) Paragraph 8 is amended as follows:

- (i) In the introductory words, 'Regulation (EC) No 1260/2001' is replaced by 'Regulation (EC) No 318/2006';

(ii) Points (c) and (d) are replaced by the following:

'(c) the products referred to in Article 1(1)(c) of Regulation (EC) No 318/2006, excluding mixtures obtained partly using products covered by Regulation (EC) No 1784/2003;

(d) the products referred to in Article 1(1)(d) and (g) of Regulation (EC) No 318/2006, excluding mixtures obtained partly using products covered by Regulation (EC) No 1784/2003.'

3. In the first subparagraph of Article 43, '25 %' is replaced by '15 %'.

4. In the first subparagraph of Article 44(4), '25 %' is replaced by '15 %'.

5. In Annex II, footnote 4 concerning column 6, 'Sugar, molasses or isoglucose', is replaced by the following:

'<sup>(4)</sup> Council Regulation (EC) No 318/2006 (OJ L 58, 28.2.2006, p. 1).'

6. In Annex III, under the description for Code NC 2905 43 00 Mannitol, the first paragraph is replaced by the following:

'Obtained from sucrose covered by Regulation (EC) No 318/2006'.

7. Annex VIII is amended as follows:

- (a) After the entry for the French language the following indent is inserted:

'— in Irish: cearta arna n-aistriú ar ais chuig an seallbhóir ainmniúil ar an [dáta]'.

- (b) After the entry for the Hungarian language the following indent is inserted:

'— in Maltese: drittijiet li jkunu trasferiti lura lid-detentur titolari fid- [data]'.

*Article 2*

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

However, the second subparagraph of Article 3(4) of Regulation (EC) No 1043/2005 shall continue to apply in respect of products having obtained, with the agreement of the relevant competent authority, the assimilation referred to in that provision before 17 February 2007 and exported under cover of refund certificates for which advanced fixing, in accordance with Article 29 of that Regulation, was requested before 1 March 2007.

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

Done at Brussels, 23 April 2007.

*For the Commission*  
Günter VERHEUGEN  
*Vice-President*

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