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*(Acts whose publication is obligatory)*

# REGULATION (EEC) No 2110/74 OF THE COMMISSION

## of 26 July 1974

## amending Regulation No 1041/67/EEC on detailed rules for the application of export refunds on products subject to a single price system

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to the Regulations mentioned in the citations to Commission Regulation No 1041/67/EEC [1], as last amended by Regulation (EEC) No 131/73 [2];

Whereas Article 3 of Regulation No 1041/67/EEC provides that the refund is to be paid only upon proof that the product in respect of which customs export formalities have been completed has left the geographical territory of the Community; whereas Article 5 of that Regulation provides that if a product crosses Community territory other than that of the Member State in whose territory customs export formalities took place, such proof is to be furnished by production of the control copy provided for in Article 1 of Commission Regulation (EEC) No 2315/69 [3] of 19 November 1969, as last amended by Regulation (EEC) No 690/73 [4]; whereas Commission Regulation (EEC) No 304/71 [5] of 11 February 1971 on simplification of the Community transit procedure for goods carried by rail, as last amended by the Act [6] annexed to the Treaty [7] concerning the accession of new Member States to the European Economic Community and the European Atomic Energy Community, signed at Brussels on 22 January 1972, provides that if a carriage operation starts within the Community and is to end outside the Community no formalities need be completed at the customs office of the frontier station; whereas where recourse is had to these provisions of Regulation (EEC) No 304/71 it seems desirable for the purpose of simplifying administrative procedures to make provision for a more flexible procedure than that involving use of the control copy;

Whereas Articles 4 and 8 of Regulation 1041/67/EEC contain provisions designed to prevent abuses in connection with the payment of export refunds and providing for payment of a certain part of the refund which varies according to the destination of the product; whereas experience has shown that those provisions should be specified in greater detail and made more stringent;

Whereas it may happen that by reason of circumstances beyond the trader's control the control copy as aforesaid cannot be produced although the product has left the geographical territory of the Community or, in the case of operations as specified in Article 2 of Regulation No 1041/67/EEC, has reached its destination; whereas such a situation is likely to prove an obstacle to trade; whereas in such circumstances other documents should be recognized as equivalent;

Whereas experience has shown that certain provisions of Regulation No 1041/67/EEC should be specified in greater detail or amended in the light of technical requirements;

Whereas the measures provided for in this Regulation are in accordance with the Opinions of all the relevant Management Committees,

HAS ADOPTED THIS REGULATION:

*Article 1*

The text of Article 3 (1) of Regulation No 1041/67/EEC is replaced by the following:

'Save as otherwise provided in Article 4 or 8, or in cases of *force majeure*, the refund shall be paid

(1) OJ No 314, 23. 12. 1967, p. 9.
(2) OJ No L 17, 20. 1. 1973, p. 19.
(3) OJ No L 295, 24. 11. 1969, p. 14.
(4) OJ No L 66, 13. 3. 1973, p. 23.
(5) OJ No L 35, 12. 2. 1971, p. 31.
(6) OJ No L 73, 27. 3. 1972, p. 14.
(7) OJ No L 73, 27. 3. 1972, p. 5.

only upon proof that the product in respect of which customs export formalities have been completed has within 45 days from the date of completion of those formalities :

— left the geographical territory of the Community unaltered in the case referred to in Article 1, or

— reached its destination unaltered in the cases referred to in Article 2.

Where a claimant is unable for reasons of *force majeure* to comply with the time limit specified in the preceding subparagraph, such time limit may at his request be extended for such period as the competent agency of the Member State in which customs export formalities were completed considers necessary in view of the reasons given.'

*Article 2*

An Article 3a as follows is added to Regulation No 1041/67/EEC :

*'Article 3a*

The provisions relating to the advance fixing of refunds, to the advance payment, thereof in accordance with the rules laid down by Regulation (EEC) No 441/69 and to the adjustments to be made shall apply only to products in respect of which a rate of refund equal to or greater than zero has been fixed.'

*Article 3*

The text of Article 4 of Regulation No 1041/67/EEC is replaced by the following :

'1. In the following circumstances payment of the refund shall be conditional not only on the product having left the geographical territory of the Community, but also — save where it has perished in transit as a result of *force majeure* — on its having been imported into a third country, and where appropriate into a specific third country :

(a) where there is serious doubt as to the true destination of the product ; or

(b) where, by reason of the difference between the rate of the refund on the exported product and the import charge applicable to the like product on the day when customs export formalities are completed it is possible that the product may be reintroduced into the Community.

In such cases the provisions of the second and third subparagraph of Article 8 (1) shall apply.

2. Where the import charge is determined wholly or partly on an *ad valorem* basis, the Commission, acting in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC and in the corresponding Articles of the other Regulations establishing a common organization of the market, shall determine the cases in which the provisions of paragraph 1 (b) are in practice to apply.

3. The Member States shall inform the Commission each 1 March and 1 September of the kinds of case in which paragraph 1 (b) has been applied. This information shall be examined by the management committee.'

*Article 4*

Paragraph 3 as follows is added to Article 5 of Regulation No 1041/67/EEC :

'3. Where, on completion of customs export formalities, a product is placed under the procedure provided for in Regulation (EEC) No 304/71 for carriage to a station of destination outside the geographical territory of the Community, payment of the refund shall not be subject to the production of proof as provided in paragraph 1.

For the purposes of the preceding subparagraph, the office of departure where the customs formalities are completed shall ensure that the following endorsement is entered on the document issued for the purposes of payment of the export refund :

"Departure from the geographical territory of the Community under Regulation (EEC) No 304/71 procedure".

The office of departure may permit the contract of carriage be varied so that carriage ends within the Community only if it is established :

— that where the export refund has already been paid, such refund has been repaid ; or

— that the necessary steps have been taken by the authorities concerned to ensure that the refund is not paid.

However if the refund has been paid under the first subparagraph and the product has not left the geographical territory of the Community within the prescribed period, the office of departure shall so inform the agency responsible for payment of the export refund and shall provide it as soon as possible with all the necessary particulars. In such cases the refund shall be regarded as having been paid in error.'

*Article 5*

The text of Article 6 (1) of Regulation No 1041/67/EEC is replaced by the following :

'A refund shall be granted only in respect of products which come within the terms of Article 9 (2) of the Treaty, irrespective of the legal situation with regard to their packaging.

However, in the case of products which are the subject of trade between the new Member States themselves or between the new Member States and the Community as originally constituted, the refund shall not be granted unless any accession compensatory amount applicable to such products in the Member State in which the customs export formalities took place has been collected.

When composite products or goods qualifying for a refund fixed on the basis of one or more of their components are exported, that refund shall be granted only to the extent that the component or components on the basis of which the refund was applied for come within Article 9 (2) of the Treaty. This provision shall also apply where the component or components on the basis of which the refund is applied for came previously within Article 9 (2) of the Treaty and no longer does so by reason solely of its incorporation in other products.'

*Article 6*

The text of Article 6a of Regulation No 1041/67/EEC shall be replaced by the following :

'The refund may be withheld if the amount in respect of any one export declaration, or of two or more such declarations submitted together, is 10 units of account or less.'

*Article 7*

The text of Article 8 of Regulation No 1041/67/EEC is replaced by the following :

'1. Where the rate of refund varies according to destination, payment of the refund shall, subject to the provisions of paragraph 2, be made only if the product has been imported into the third country or countries in respect of which the refund is prescribed.

A product shall be considered to have been imported when the customs formalities for entry into free circulation in the third country concerned have been completed. Proof that customs formalities have been completed shall be furnished by production of the relevant customs document, or of a copy or photocopy of such document certified by the competent authorities.

However, if owing to circumstances beyond the control of the importer proof of completion of customs formalities cannot be furnished, or if the proof furnished is considered insufficient in view of the particular circumstances in the country of destination, the competent authorities of Member States shall require proof that the goods have been unloaded. Such proof shall be furnished by production of one or more of the following documents : a copy of the port document made out in the country of destination ; a certificate issued by an official agency of a Member State in that country ; a certificate from an international control and surveillance company.

In addition, the party concerned shall in all cases produce a copy of the transport document.

2. However, without prejudice to the operation of Article 4, a part of the refund as provided below shall be paid on proof being given that the product has left the geographical territory of the Community :

(a) in the case of exports where the refund is not fixed in advance, that part equal to the amount of the refund as calculated on the basis of the lowest rate of refund applicable on the date on which the customs export formalities are completed ;

(b) in the case of exports where the refund is fixed in advance and in respect of which no compulsory destination is specified, that part equal to the amount of the refund as calculated on the basis of the lowest rate of refund applicable on the date on which advance fixing took place, adjusted where necessary to the date on which customs export formalities are completed ;

(c) in the case of exports where the refund is fixed in advance and in respect of which a compulsory destination is specified, that part equal to the amount of the refund as calculated :

— in accordance with (b), if that amount is lower than that as calculated in accordance with (a) ;

— in accordance with (a), if that amount is lower than that as calculated in accordance with (b).

The provisions of the foregoing subparagraph shall apply only where, for a given product, the refund has been fixed for all destinations :

— on the date on which customs formalities were completed, in respect of cases coming within (a) or (c) ;

— on the date on which application for an export licence or advance fixing certificate was lodged, in respect of cases coming within (b).

3. Where as a result of *force majeure* a product exported under an export licence or advance fixing certificate specifying a compulsory destination is delivered to a destination other than that in respect of which such licence or certificate was issued, then where the person concerned so requests and furnishes proof of *force majeure* and proof, satisfying the requirements of paragraph 1 of delivery to such other destination, the refund applicable in respect of the said other destination shall be paid.

4. Where a transaction is the subject of an export declaration giving entitlement to a refund not exceeding 300 units of account and offers adequate assurances that the products in question will reach their destination, the competent authorities of Member States may exempt the party concerned from furnishing the proof required under paragraph 1 other than the transport document.'

*Article 8*

The text of Article 10 of Regulation No 1041/67/EEC is replaced by the following :

'1. The refund shall be paid only on written application by the party concerned and shall be paid by the Member State in whose territory the customs export formalities were completed. Member States may prescribe a special form to be used for this purpose.

2. Where, owing to circumstances beyond the control of the party concerned, the control copy required under Article 5 (1) is not returned to the customs office of departure or relevant central body within three months of its date of issue, such party may make application to the competent agency for other documents to be accepted as equivalent, stating the grounds for such application and furnishing supporting documents. The supporting documents must include the transport document and one or more of the documents specified in the second and third subparagraphs of Article 8 (1).

Member States shall each 1 March and 1 September send returns to the Commission showing for each market subject to common organization the number of applications made under the preceding subparagraph, the reasons, where known, for the failure to return the control copy, the quantities concerned, the amount of the refunds involved and the nature of the documents accepted as equivalent.

3. Except in cases of *force majeure*, no claim for payment of the refund shall be entertained unless the relevant documents are submitted within the six months following the date on which the customs export formalities were completed.'

*Article 9*

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

It shall apply in respect of transactions for which the customs export formalities are completed on or after 1 October 1974.

The provisions of Article 10 (2) of Regulation No 1041/67/EEC may, if those concerned so request, be applied in respect of transactions for which the customs export formalities were completed before the entry into force of this Regulation.

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

Done at Brussels, 26 July 1974.

*For the Commission*

*The President*

François-Xavier ORTOLI