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(Acts whose publication is obligatory)

REGULATION (EEC) No 192/75 OF THE COMMISSION

of 17 January 1975

laying down detailed rules for the application of export refunds in respect of agricultural products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation No 120/67/EEC [1] of 13 June 1967 on the common organization of the market in cereals, as last amended by Regulation (EEC) No 85/75 [2], and in particular Articles 16 (6) and 24 thereof and the corresponding provisions of the other Regulations establishing a common organization of the market in respect of agricultural products;

Having regard to Council Regulation No 139/67 EEC [3] of 21 June 1967 laying down general rules for granting export refunds on cereals and criteria for fixing the amount of such refunds, as last amended by Regulation (EEC) No 87/75 [4], and in particular Article 7 (2), second subparagraph, and (3) thereof and the corresponding provisions of Regulations No 142/67/EEC [5] (colza, rape and sunflower seeds), No 171/67/EEC [6] (olive oil), No 175/67/EEC [7] (eggs), No 176/67/EEC [8] (poultrymeat), No 177/67/EEC [9] (pigmeat) and No 366/67/EEC [10] (rice), and Regulations (EEC) No 766/68 [11] (sugar), (EEC) No 876/68 [12] (milk and milk products), (EEC) No 885/68 [13] (beef and veal), (EEC) No 968/68 [14] (cereal-based compound feedingstuffs), (EEC) No 1052/68 [15] (products processed from cereals and rice), EEC No 2518/69 [16] (fruit and vegetables), (EEC) No 957/70 [17] (wine), (EEC) No 165/71 [18] (fishery products), (EEC) No 326/71 [19] (raw tobacco), and (EEC) No 1426/71 [20] (products processed from fruit and vegetables);

Whereas Commission Regulation No 1041/67/EEC [21] of 21 December 1967, as last amended by Regulation (EEC) No 2110/74 [22], lays down detailed rules for the application of export refunds on products subject to a single price system; whereas the provisions of that Regulation have, however, been amended frequently and sometimes substantially; and whereas, therefore, in the interests of clarity and administrative efficiency it is advisable to consolidate the rules in question in a single text, at the same time making certain amendments which experience has shown to be desirable;

Whereas the operative date for determining the amount of the refund should be specified; whereas certain Regulations provide that this date should be the day of exportation; whereas this day should be so determined as to accord with economic requirements, ensure equal treatment for exporters in Member States and reflect the tendency in the

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[1] OJ No 117, 19. 6. 1967, p. 2269/67.
[2] OJ No L 11, 16. 1. 1975, p. 1.
[3] OJ No 125, 26. 6. 1967, p. 2453/67.
[4] OJ No L 11, 16. 1. 1975, p. 3.
[5] OJ No 125, 26. 6. 1967, p. 2461/67.
[6] OJ No 130, 28. 6. 1967, p. 2600/67.
[7] OJ No 130, 28. 6. 1967, p. 2610/67.
[8] OJ No 130, 28. 6. 1967, p. 2612/67.
[9] OJ No 130, 28. 6. 1967, p, 2614/67.
[10] OJ No 174, 31. 7. 1967, p. 34.
[11] OJ No L 143, 25. 6. 1968, p. 6.
[12] OJ No L 155, 3. 7. 1968, p. 1.
[13] OJ No L 156, 4. 7. 1968, p. 2.
[14] OJ No L 166, 17. 7. 1968, p. 2.
[15] OJ No L 179, 25. 7. 1968, p. 8.
[16] OJ No L 318, 18. 12. 1969, p. 17.
[17] OJ No L 115, 28. 5. 1970, p. 1.
[18] OJ No L 23, 29. 1. 1971, p. 1.
[19] OJ No L 39, 17. 2. 1971, p. 1.
[20] OJ No L 151, 7. 7. 1971, p. 3.
[21] OJ No 314, 23. 12. 1967, p. 9.
[22] OJ No L 220, 10. 8. 1974, p. 1.

Community to carry out customs controls at the place of production; whereas the operative date for determining the items used in calculating the refund should accordingly be that on which the customs authority accepts the document in which the declarant states his intention to export the products in question and qualify for a refund;

Whereas the general rules laid down by the Council provide for the refund to be paid upon proof being furnished that the products have been exported from the Community; whereas, in order that the concept of 'exportation from the Community' may be interpreted in a uniform manner, it should be specified that a product shall be regarded as having been exported when it leaves the geographical territory of the Community;

Whereas, in view of the special situation of the commune of Livigno in Italy, products dispatched to that commune should be regarded as having left the geographical territory of the Community;

Whereas in the Member States products imported from third countries for certain uses are exempt from levies or duties; whereas, in so far as those outlets are substantial, Community products should be placed on an equal footing with such products from third countries;

Whereas certain export transactions can lead to abuses; whereas, in order to prevent such abuses, payment of the refund should be subject to the condition that the product has not only left the geographical territory of the Community but has also been imported into a third country;

Whereas it should be verified that products leaving the Community or in transit to a particular destination are in fact those which were the subject of customs export formalities; whereas, to this end, when a product crosses the territory of other Member States before leaving the geographical territory of the Community or reaching a particular destination, use should be made of the control copy referred to in Article 1 of Commission Regulation (EEC) No 2315/69 [1] of 19 November 1969 on the use of Community transit documents for the purpose of applying Community measures for verifying the use and/or destination of goods, as last amended by Regulation (EEC) No 690/73 [2]; whereas, however, it seems desirable, in order to simplify administrative procedures, to provide for more flexible arrangements in the case of transactions coming within the terms of Commission Regulation (EEC) No 304/71 [3] of 11 February 1971, as amended by the Act of Accession [4], which provides that when a carriage operation begins within the Community and is to end outside it no formalities need to be carried out at the customs office of the frontier station;

Whereas it may happen that by reason of circumstances beyond the control of the party concerned the control copy as aforesaid cannot be produced although the product has left the geographical territory of the Community or has reached a particular destination; whereas such a situation may impede trade; whereas in such circumstances other documents should be recognized as equivalent;

Whereas the arrangements provided for in this Regulation may be accorded only to products which come within the terms of Article 9 (2) of the Treaty; whereas in the case of certain compound products the refund is fixed not on the basis of the product itself, but by reference to the basic products of which they are composed; whereas in cases where the refund is thus fixed on the basis of one or more components it is sufficient in order that the refund or the relevant part thereof may be granted that the component or components in question themselves come within the terms of the said Article 9 (2) or do so no longer solely because they have been incorporated in other products;

Whereas products or goods should in the form in which they are exported be of a quality such that they can be marketed on normal terms;

Whereas exports of very small quantities of products are of no economic significance and are likely to overburden the competent authorities unnecessarily; and whereas the competent services of the Member States should be given the option of refusing to pay refunds in respect of such transactions;

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(1) OJ No L 295, 24. 11. 1969, p. 14.

(2) OJ No L 66, 13. 3. 1973, p. 23.
(3) OJ No L 35, 12. 2. 1971, p. 31.
(4) OJ No L 73, 27. 3. 1972, p. 14.

Whereas, where the rate of the refund is varied according to the destination of the product, provision should be made for it to be verified that the product has been imported into the Community or a third country for which the refund was fixed; whereas such a mesaure can be relaxed without difficulty in respect of exports where the refund involved is small and the transaction is such as to offer adequate assurances that the products concerned arrive at their destination;

Whereas, in order to put exports of products for which the refund varies according to destination on an equal footing with other exports, provision should be made for a part of the refund equal to the amount thereof as calculated on the basis of the lowest rate of refund applicable to be paid as soon as the exporter has furnished proof that the product has left the geographical territory of the Community;

Whereas, to enable exporters to finance their transactions more easily, Member States should be authorized to advance all or part of the amount of the refund as soon as customs export formalities are completed, subject to the lodging of a deposit or the giving of some other form of security recognized as equivalent, calculated to guarantee repayment of the amount advanced if it should later be found that the refund ought not to be paid;

Whereas, if use is made of the above facility and it is later found that the refund should not be paid, the exporters will in effect have had the unjustified benefit of an interest-free loan; whereas provision should therefore be made to prevent exporters from benefiting in this way, save in cases of *force majeure;*

Whereas, since the date of exportation for the purpose of determining the rate of the refund is taken to be the day on which customs export formalities are completed, provision should be made for the refund to be paid by the Member State in whose territory such customs formalities were completed;

Whereas in the interests of sound administration applications for payment of the refund, accompanied by all relevant documents, should be required to be made within a reasonable period, save in cases of *force majeure* and in particular when it has not been possible to comply with the time limit because of administrative delays beyond the control of the party concerned;

Whereas in the case of certain goods not listed in Annex II to the Treaty an export refund is granted on the basis of certain agricultural products incorporated therein, and in the case of products listed in Annex II to Regulation (EEC) No 865/68 an export refund is granted on the basis of the sugar, glucose or glucose syrup incorporated in those products; whereas certain provisions of this Regulation concerning refunds granted on agricultural products exported in the unaltered state should be applied in such cases;

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

Without prejudice to the derogations provided for in the specific Community rules for certain products, this Regulation lays down common detailed rules for the application of the system of export refunds (hereinafter called 'refunds') established by:

— Articles 18 and 28 of Regulation No 136/66/EEC (oils and fats),

— Article 16 of Regulation No 120/67/EEC (cereals),

— Article 15 of Regulation No 121/67/EEC (pigmeat),

— Article 9 of Regulation No 122/67/EEC (eggs),

— Article 9 of Regulation No 123/67/EEC (poultrymeat),

— Article 17 of Regulation No 359/67/EEC (rice),

— Article 17 of Regulation No 1009/67/EEC (sugar),

— Article 17 of Regulation (EEC) No 804/68 (milk and milk products),

— Article 18 of Regulation (EEC) No 805/68 (beef and veal),

— Articles 3 and 3a of Regulation (EEC) No 865/68 (products processed from fruit and vegetables),

— Article 9 of Regulation (EEC) No 727/70 (raw tobacco),

— Article 10 of Regulation (EEC) No 816/70 (wine),

— Article 21 of Regulation (EEC) No 2142/70 (fishery products),

— Article 30 of Regulation (EEC) No 1035/72 (fruit and vegetables).

Article 2

1. For the purposes of determining the rate of the refund on products covered by the Regulations mentioned in Article 1 where the refund is not fixed in advance, and of determining any adjustments to be made to the rate of the refund where it is so fixed, the date of exportation shall be the day on which the customs authority accepts the document by which the declarant states his intention to export the products in question and qualify for a refund. At the time of such acceptance the products shall be placed under customs control and shall so remain until they leave the Community or, in any of the cases mentioned in Article 3, until they reach their destination.

2. For the purposes of this Regulation, acceptance of the document referred to in paragraph 1 shall be considered to mark the completion of customs export formalities.

3. The day on which customs export formalities are completed shall be the operative date for determining the quantity, nature and characteristics of the product exported.

Article 3

For the purposes of this Regulation the following operations shall be treated as exports from the Community:

— supplies for victualling within the Community seagoing vessels or aircraft serving on international routes, including intra-Community routes,

— supplies to international organizations established in the Community,

— supplies to armed forces stationed in the territory of a Member State but not coming under its flag,

where like products imported from third countries for those uses are exempted from levies or duties on importation into the Member State in question. The provisions of Article 2 shall apply in respect of such operations.

Article 4

1. Without prejudice to the provisions of Article 6 and 11, the refund shall be paid only upon proof being furnished that the product in respect of which customs export formalities have been completed has, within 45 days from the day of completion of such formalities:

— in cases as referred to in Article 2, left the geographical territory of the Community unaltered,

— in the case specified in Article 3, reached its destination unaltered.

Where a claimant is unable by reason 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 circumstances invoked.

2. For the purposes of this Regulation:

— products shall be considered to have left the geographical territory of the Community when they have left for territories which, although forming part of the geographical territory of a Member State, form part of the customs territory of a third country; conversely, products shall not be considered to have left the geographical territory of the Community if sent to a destination which, although forming part of the geographical territory of a third country, is incorporated in the customs territory of the Community;

— the territory of the commune of Livigno shall be considered not to form part of the geographical territory of the Community.

Article 5

The provisions relating to the advance fixing of refunds, to the payment of refunds in advance under the system laid down in Regulation (EEC) No 441/69 and to the adjustments to be made in the rate of the refund shall apply only to products for which a rate of refund of not less than zero has been fixed.

Article 6

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, third and fourth subparagraphs of Article 11 (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 (a) has been applied. This information shall be examined by the Management Committee.

Article 7

1. If, before leaving the geographical territory of the Community or before reaching one of the destinations specified in Article 3, a product for which customs export formalities have been completed crosses Community territory other than that of the Member State in whose territory such formalities took place, proof that the product has left the geographical territory of the Community or reached the intended destination shall be furnished by production of the control copy referred to in Article 1 of Regulation (EEC) No 2315/69.

2. In the part of the control copy headed 'Additional Information', Sections 101, 103, 104 and where appropriate 105 shall be completed. Section 104 shall be completed by deleting as appropriate and, in respect of cases coming within Article 3, indicating the intended destination.

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 production of proof as provided in paragraph 1.

For the purposes of the preceding subparagraph, the office of departure where 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 to be varied so that carriage ends within the Community only if it is established:

— that, if 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 pursuant to 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 8

1. 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 position with regard to their packaging.

However, with regard to products exchanged in trade among the new Member States or between them and the Community as originally constituted, a refund shall be granted only if any accession compensatory amount applicable to those products in the Member State where customs export formalities were completed has been charged.

When compound products qualifying for a refund fixed on the basis of one or more of their components are exported, that refund shall be paid only in so far as the component or components in respect of which the refund is claimed come within the terms of Article 9 (2) of the Treaty. This provision

shall also apply where the component or components in respect of which the refund is claimed came originally within the terms of the said Article 9 (2) and no longer do so by reason solely of their incorporation in other products.

2. No refund shall be granted for products or goods which are not of sound and fair marketable quality in the form in which they are exported, or for products or goods intended for human consumption if their characteristics or condition exclude or substantially impair their use for that purpose.

Article 9

A refund may be refused if the amount thereof in respect of any one application, which may cover one or more export declarations, does not exceed 10 units of account.

Article 10

1. Where payment of the refund is conditional upon the product being of Community origin, the exporter shall be required to declare that origin in accordance with the Community rules in force.

2. For the purposes of Article 15 (1) of Regulation (EEC) No 766/68, the exporter shall be required to declare that the product in question was produced from sugar beet or sugar cane harvested in the Community.

For the purposes of Article 5 (1) (b) of Regulation (EEC) No 326/71, the exporter shall be required to declare that the tobacco was obtained from the crop in respect of which the refund is claimed.

3. The declarations provided for in paragraphs 1 and 2 shall be verified in the same way as the other items in the export declaration.

Article 11

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 in the country concerned. 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 agency.

The Commission may under the procedure laid down in Article 38 of Regulation No 136/66/EEC and in the corresponding Articles of the other Regulations on the common organization of markets provide in certain specific cases to be determined that the proof of importation referred to in the first subparagraph may be furnished by a single specified document. In addition, the party concerned shall in all cases produce a copy of the transport document.

2. However, without prejudice to the provisions of Article 6, a part of the refund as specified below shall be paid on proof being furnished that the product has left the geographical territory of the Community:

(a) in the case of exports where the refund has not been 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 day on which customs export formalities are completed;

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

(c) in the case of exports where the refund has been fixed in advance and in respect of which a compulsory destination has been specified, that part equal to whichever is the lower of the amounts specified in (a) and (b).

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

— for cases coming within (a) or (c), on the day on which customs export formalities were completed,

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

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 party concerned is able to furnish proof of *force majeure* together with proof, which shall be assessed having regard to the provisions of paragraph 1, of delivery to such other destination he shall be entitled to claim the refund applicable in respect of the said other destination.

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 12

1. Member States may advance to the exporter all or part of the amount of the refund as soon as customs export formalities are completed, provided that he lodges a deposit, or gives some other form of security recognized as equivalent, calculated to guarantee:

— repayment of the amount advanced plus 5% in the event of failure to furnish proof as referred to in Article 4 that the product has within 45 days from the day on which customs export formalities are completed left the geographical territory of the Community or reached its destination;

— repayment of the amount plus 15%, in the event that the proof referred to in Article 4 is furnished but that mentioned in Article 6, in so far as that Article may be applicable, is not furnished within six months from the day on which customs export formalities are completed;

— repayment of that part of the advance to which he is not entitled plus 15%, in the event that the proof referred to in Article 4 is furnished but that mentioned in Article 11 (1), in so far as that Article may be applicable to the operation in question, is not furnished within six months from the day on which customs export formalities are completed.

2. Where, by reason of *force majeure:*

— proof as referred to in paragraph 1 cannot be furnished, the additional percentages specified in that paragraph shall not be charged;

— proof as referred to in paragraph 1 cannot be furnished within the prescribed time limits, these time limits may at the request of the exporter be extended for such period as the competent authority considers necessary in the light of the circumstances invoked;

— the products are delivered to a destination other than that for which the advance was calculated, repayment of that advance shall be limited to any amount to which the exporter is in effect not entitled.

3. The repayments mentioned in paragraphs 1 and 2 shall be required only in proportion to the quantities in respect of which proof as referred to in paragraph 1 has not been furnished.

4. Amounts advanced, plus any additional percentage, shall be repaid as provided in this Article when proof as referred to in paragraph 1 has not been furnished within the prescribed time limits. In such case, if after being requested to make such repayment an exporter fails to do so, any deposit or other security given shall be forfeit.

Article 13

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 customs export formalities were completed. Member States may prescribe a special form to be used for this purpose.

2. Where the control copy as referred to in Article 7 (1) is not returned to the office of departure or relevant central body within three months of its issue owing to circumstances beyond the control of the party concerned, the latter 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. Such supporting documents must include the transport document and one or more of the documents specified in the second, third and fourth subparagraphs of Article 11 (1).

Member States shall each 1 March and 1 September send returns to the Commission showing for each sector subject to common organization of the market 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 customs export formalities were completed.

Article 14

This Regulation shall be applicable without prejudice to the Community provisions providing for the payment of refunds in advance laid down by Regulation (EEC) No 441/69.

Article 15

The provisions of Articles 2 to 9 and 11 to 14 of this Regulation shall apply to products covered by Regulations No 120/67/EEC, No 122/67/EEC, No 359/67/EEC, No 1009/67/EEC and (EEC) No 804/68 exported in the form of goods listed in Annex B to Regulations No 120/67/EEC and No 359/67/EEC respectively, or in the respective Annexes to Regulations No 122/67/EEC, No 1009/67/EEC and (EEC) No 804/68.

The provisions of Articles 2 to 9, 10 (1) and (3) and 11 to 14 of this Regulation shall apply to exports of sugar falling within heading No 17.01 of the Common Customs Tariff and of glucose or glucose syrup falling within subheading 17.02 B II, whether or not in the form of products falling within subheading 17.02 B I used in the products listed in Annex II to Regulation (EEC) No 865/68.

Article 16

1. Regulation No 1041/67/EEC is hereby repealed.

2. In all Community instruments in which reference is made to Regulation No 1041/67/EEC or to Articles of that Regulation such references shall be treated as references to this Regulation or to the corresponding Articles thereof. A table of equivalence in respect of those Articles is annexed hereto.

Article 17

This Regulation shall enter into force on 1 March 1975.

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

Done at Brussels, 17 January 1975.

For the Commission

The President

François-Xavier ORTOLI

ANNEX

TABLE OF EQUIVALENCE

Regulation No 1041/67/EEC	This Regulation
Article 1	Article 2
Article 2	Article 3
Article 3	Article 4
Article 3a	Article 5
Article 4	Article 6
Article 5	Article 7
Article 6	Article 8
Article 6a	Article 9
Article 7	Article 10
Article 8	Article 11
Article 9	Article 12
Article 10	Article 13
Article 12	Article 14
Article 12a	Article 15