COMMISSION REGULATION (EEC) No 2117/78

of 7 September 1978

amending Regulation (EEC) No 1380/75 laying down detailed rules for the application of monetary compensatory amounts

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 974/71 of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States (1), as last amended by Regulation (EEC) No 557/76 (2), and in particular Article 6 thereof,

Whereas Council Directive 78/453/EEC of 22 May 1978 (3) contains rules on the harmonization of provisions laid down by law, regulation or administrative action concerning deferred payment of import duties or export duties; whereas it is appropriate to provide in respect of monetary compensatory amounts in intra-Community trade, which are outside the scope of the Directive, rules similar to those laid down in the Directive;

Whereas in certain Member States a monetary compensatory amount is charged as an export duty on some products and for the same product an export refund may be granted; whereas such charges may where appropriate be partly or wholly offset under Article 4a (1) (b) of Regulation (EEC) No 974/71 by the export refund;

Whereas Commission Regulation (EEC) No 1380/75 of 29 May 1975 laying down detailed rules for the application of monetary compensatory amounts (4), as last amended by Regulation (EEC) No 1947/78 (5), and in particular Article 6 thereof, established the monetary compensatory amount due on the completion of export formalities; whereas the amount due is the amount by which the monetary compensatory amount exceeds the refund; whereas it is appropriate to require security in respect of the amounts not due;

Whereas the amount of the refund to be paid is not always established at the time of exportation but is dependent upon the production of the proof required by Articles 4, 6 and 11 of Regulation (EEC) No 192/75 of 17 January 1975 laying down detailed rules for the application of export refunds in respect of agricultural products (6), as last amended by Regulation (EEC) No 2838/77 (7), or by the appropriate Articles in the Regulation containing special provisions for the granting of the export refund; whereas, pending the production of this proof, the full monetary compensatory amount should be secured; whereas it is necessary to release this security on production of the required proof;

Whereas the amount of the security is calculated by reference to the amount by which the monetary compensatory amount is reduced; whereas, if this reduction of the monetary compensatory amount has not been justified by the production of the required proof within the time limits prescribed, the security should be forfeited;

Whereas if the payment of that part of the export duty, which was secured but which has become payable, has been deferred in excess of the period allowed in Directive 78/453/EEC, the provisions of Article 7 thereof may be applied;

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

Regulation (EEC) No 1380/75 is amended as follows:

1. The following paragraphs are added to Article 6:

'3. If the monetary compensatory amount charged at exportation is, in accordance with Article 4a (1) (b) of Regulation (EEC) No 974/71, deducted from the export refund, the amount by which the export refund is reduced must, at the time of completion of customs export formalities, be covered by an appropriate security.

(1) OJ No L 106, 12. 5. 1971, p. 1.
(2) OJ No L 67, 15. 3. 1976, p. 1.
(3) OJ No L 146, 2. 6. 1978, p. 19.
(4) OJ No L 139, 30. 5. 1975, p. 37.
(5) OJ No L 221, 12. 8. 1978, p. 14.
(6) OJ No L 25, 31. 1. 1975, p. 1.
(7) OJ No L 327, 20. 12. 1977, p. 23.

In those cases where the monetary compensatory amount exceeds the export refund and the provisions of paragraph 1 are applied, the amount by which the monetary compensatory amount is reduced must, at the time of completion of customs export formalities, be covered by an appropriate security.

The security may be on the basis of each transaction or of a number of transactions.

4. The appropriate security provided for in paragraph 3 shall be determined having regard to the amount of the reduction of the export refund or the monetary compensatory amount, as appropriate.

However, a security need not be required if :

(a) — the export refund is the same for all destinations, or
— the lowest export refund is in excess of the monetary compensatory amount, and ;

(b) — the products are placed under the Community transit system, or an equivalent system, for exportation to a third country, or
— the products are placed under a national administrative system which ensures their exportation to a third country from the Member State in which customs export formalities have been completed.

5. On production of the proof required by Article 4 and, as appropriate, Articles 6 and 11 of Regulation (EEC) No 192/75 or the appropriate Articles in the Regulations containing special provisions for the granting of the export refund for the particular products, the security is to be released in proportion to the refund that would have been granted against that proof if the monetary compensatory amount had not been chargeable.

If any of the proofs required have not been furnished within the time limits prescribed, the proportion not released by reason of the absence of such proofs shall be forfeited. However, the security shall not be forfeited in cases where the proof is furnished within any period by which the original period has been extended.

In those cases where the security is forfeited, late payment of the amount guaranteed by the security shall be considered as a further payment facility within the meaning of Article 7 of Directive 78/453/EEC of 22 May 1978 on the harmonization of provisions laid down by law, regulation or administrative action concerning deferred payments of import duties or export duties [1]. This facility shall be considered as having been granted from the latest date upon which the monetary compensatory amount would have been paid, under the provisions of the Directive, if Article 4a (1) (b) of Regulation (EEC) No 974/71 had not been applied.

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[1] OJ No L 146, 2. 6. 1978, p. 19.'

2. The following Article is inserted :

'Article 16a

For monetary compensatory amounts which fall due in trade between Member States, payment shall, at the request of the party concerned, be deferred for the period allowed and under the conditions laid down by Directive 78/453/EEC.'

Article 2

This Regulation shall enter into force on 1 January 1979.

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

Done at Brussels, 7 September 1978.

For the Commission

Finn GUNDELACH

Vice-President