COMMISSION REGULATION (EEC) No 776/78

of 18 April 1978

on the application of the lowest rate of refund on exports of dairy products and repealing and amending certain Regulations

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products (1), as last amended by Regulation (EEC) No 2560/77 (2), and in particular Article 17 (4) thereof,

Having regard to Council Regulation (EEC) No 876/68 of 28 June 1968 laying down general rules for granting export refunds on milk and milk products and criteria for fixing the amounts for such refunds (3), as last amended by Regulation (EEC) No 2429/72 (4), and in particular Article 6 (2) thereof,

Whereas, in the interests of clarity, the following Regulations which need to be amended several times should be repealed and replaced by a single text :

— Commission Regulation (EEC) No 1611/68 of 15 October 1968 making special provision for the lowest rate of the refund applicable to exports of certain cheeses to third countries (5), as amended by Regulation (EEC) No 2786/73 (6),

— Commission Regulation (EEC) No 1578/70 of 4 August 1970 making special provision for the lowest rate of refund on exports of cheeses to third countries (7), and

— Commission Regulation (EEC) No 518/76 of 8 March 1976 concerning the application of the lowest rate of refund on exports of milk products and repealing Regulation (EEC) No 2188/74 (8) ;

Whereas the Annex to Commission Regulation (EEC) No 1324/68 of 29 August 1968 laying down special conditions for the export of certain cheese to Switzerland (9), as last amended by Regulation (EEC) No 2786/73 (10), should be amended to take account of the fact that in future 'Tilsit' and 'Butterkäse' fall within subheading 04.04 E I b) 5 of the Common Customs Tariff when they are exported to non-member countries ;

Whereas, where the rate of export refund varies according to destination, Article 11 (2) of Commission Regulation (EEC) No 192/75 of 17 January 1975 laying down detailed rules for the application of export refunds in respect of agricultural products (11), as last amended by Regulation (EEC) No 1469/77 (12), provides that the part of the refund calculated on the basis of the lowest rate of refund applicable on the day on which customs export formalities are completed is to be paid on proof being furnished that the product has left the geographical territory of the Community ;

Whereas Council Regulation (EEC) No 441/69 of 4 March 1969 laying down additional general rules for granting export refunds on products subject to a single price system, exported unprocessed or in the form of certain goods not covered by Annex II to the Treaty (13), as last amended by Regulation (EEC) No 269/78 (14), provides in the second subparagraph of Article 2 (4) and in Article 3 (1) for the part of the refund calculated on the basis of the lowest rates to be paid as soon as the product has been brought under the special arrangement introduced by the said Regulation ;

Whereas, under the special arrangements with several non-member countries, the refund rate applicable on export to these countries of certain milk products may be lower, sometimes to a substantial degree, than the refund level normally applied ; whereas it might also arise that no refund is fixed ;

Whereas, as regards Switzerland, special arrangements have been introduced both by Regulation (EEC) No 1324/68 in respect of certain cheeses and by Commission Regulation (EEC) No 2074/73 of 31 July 1973 establishing the special conditions for the export of processed cheese to Switzerland (15) ; whereas a special arrangement was also provided for Austria as regards heading No 04.04 by Commission Regulation (EEC)

(1) OJ No L 148, 28. 6. 1968, p. 13.
(2) OJ No L 303, 28. 11. 1977, p. 1.
(3) OJ No L 155, 3. 7. 1968, p. 1.
(4) OJ No L 264, 23. 11. 1972, p. 1.
(5) OJ No L 252, 16. 10. 1968, p. 14.
(6) OJ No L 286, 13. 10. 1973, p. 15.
(7) OJ No L 172, 5. 8. 1970, p. 25.
(8) OJ No L 61, 9. 3. 1976, p. 7.
(9) OJ No L 215, 30. 8. 1968, p. 25.
(10) OJ No L 286, 13. 10. 1973, p. 15.
(11) OJ No L 25, 31. 1. 1975, p. 1.
(12) OJ No L 162, 1. 7. 1977, p. 9.
(13) OJ No L 59, 10. 3. 1969, p. 3.
(14) OJ No L 40, 10. 2. 1978, p. 7.
(15) OJ No L 211, 1. 8. 1973, p. 8.

No 102/78 of 18 January 1978, laying down special conditions for exports of certain cheeses to Austria (1); whereas a special refund rate also applies to cheeses exported to Spain (Zone D), pursuant to Commission Regulation (EEC) No 1579/70 of 4 August 1970 laying down special conditions for the export of certain cheeses to Spain (2), as last amended by Regulation (EEC) No 1300/76 (3);

Whereas the special arrangements for exports to Switzerland, Austria and Spain ensure that products which have received a refund for other destinations cannot be exported to these three countries; whereas consequently, account should be taken of these special arrangements when applying the said provisions of Regulation (EEC) No 192/75 so as to avoid exporters having to bear unnecessary financial costs in trade with other non-member countries, by providing that, when determining the lowest rate of the refund, account should not be taken of the special refund rates fixed for the particular destinations in question at a level lower than that of the lowest refund applicable to other non-member countries; whereas this exemption was provided for, except in the case of Austria, by Regulations (EEC) No 1611/68 and (EEC) No 1578/70;

Whereas the lowest rate of the refund can also result from the non-fixing of a refund;

Whereas as regards exports to the United States (Zone E) there exist cases of non-fixing of the refund for certain milk products; whereas provision should also be made for an exemption when determining the lowest rate of the refund in cases where the measures introduced in the United States guarantee that the products which have benefited from a refund for other destinations may not be imported into Zone E; whereas experience has shown that the products listed in Annex II to this Regulation may be covered by this exemption not only as regards the application of Article 11 (2) of Regulation (EEC) No 192/76 but also that of Articles 2 (4) and 3 (1) of Regulation (EEC) No 441/69; whereas these exemptions should be abolished for the products in respect of which the above conditions are no longer met; whereas such a provision was provided for by Regulation (EEC) No 518/76;

Whereas the destination Zones D and E, corresponding to Spain and the United States respectively, have been defined in the Annex to Commission Regulation (EEC) No 1098/68 of 27 July 1968, on detailed rules for the application of export refunds on milk and milk products (4), as last amended by Regulation (EEC) No 37/75 (5);

(1) OJ No L 16, 20. 1. 1978, p. 8.
(2) OJ No L 172, 5. 8. 1970, p. 26.
(3) OJ No L 156, 17. 6. 1976, p. 14.
(4) OJ No L 184, 29. 7. 1968, p. 10.
(5) OJ No L 5, 9. 1. 1975, p. 7.

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

The non-fixing of a refund or the special refund:

— fixed for the export of the products listed in Annex I to one of the destinations listed therein, and

— the rate of which is lower than the lowest rate fixed for the other destinations,

shall not be taken into consideration when determining the lowest refund rate within the meaning of Article 11 of Regulation (EEC) No 192/75.

Article 2

The non-fixing of a refund for the products listed in Annex II, exported to Zone E, shall not be taken into consideration:

— when determining the lowest refund rate within the meaning of Article 11 (2) of Regulation (EEC) No 192/75,

— when applying the last subparagraph of Articles 2 (4) and 3 (1) of Regulation (EEC) No 441/69.

Article 3

In Annex I to Regulation (EEC) No 1324/68:

(a) subheading 04.04 E I b) 2 is hereby deleted;

(b) subheading 04.04 E I b) 5 is hereby amended as follows:

— the term 'Butterkäse' is inserted before 'Danbo',

— the term 'Tilsit' is inserted after 'Saint-Paulin'.

Article 4

Regulations (EEC) No 1611/68, (EEC) No 1578/70 and (EEC) No 518/76 are hereby repealed.

Article 5

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

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

Done at Brussels, 18 April 1978.

For the Commission

Finn GUNDELACH

Vice-President

ANNEX I

CCT heading No	Description	Destination
04.04	Cheese and curd	Austria Zone D (1)
04.04 D	Processed cheese, not grated or powdered :	
	II. Other than those cheeses made from Emmentaler, Gruyère or Appenzell	Switzerland
ex 04.04 E I b) 5	Products contained in the list to Annex I to Regulation (EEC) No 1324/68	Switzerland

(1) Laid down in the Annex to Regulation (EEC) No 1098/68.

ANNEX II

CCT heading No	Description	Destination
04.01	Milk and cream, fresh, not concentrated or sweetened	Zone E (1)
04.02	Milk and cream, preserved, concentrated or sweetened	Zone E (1)
04.03	Butter	Zone E (1)
23.07	Sweetened forage ; other preparations of a kind used in animal feed :	
	B. Other than fish or marine mammal solubles, containing starch, glucose or glucose syrup falling within subheadings 17.02 B and 21.07 F II, or milk products :	
	I. Containing starch, or glucose or glucose syrup :	
	a) Containing no starch or containing 10 % or less, by weight, of starch :	
	3. Containing 50 % or more but less than 75 %, by weight, of milk products	
	4. Containing 75 % or more, by weight, of milk products	
	II. Containing no starch, glucose or glucose syrup, but containing milk products	Zone E (1)

(1) Laid down in the Annex to Regulation (EEC) No 1098/68.