COMMISSION REGULATION (EEC) No 1955/79

of 5 September 1979

amending Regulation (EEC) No 193/75 laying down detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals (1), as last amended by Regulation (EEC) No 1547/79 (2), and in particular Articles 12 (2), 15 (5) and 16 (6) thereof, and of the corresponding provisions of the other Regulations establishing a common organization of the markets for agricultural products,

Whereas the third indent of Article 4 (3) of Commission Regulation (EEC) No 193/75 of 17 January 1975 (3), as last amended by Regulation (EEC) No 1118/79 (4), provides that no licence shall be required for the purposes of operations relating to quantities such that the amount of the security for the corresponding licence would be two units of account or less ; whereas the third subparagraph of Article 5 (4) of Regulation (EEC) No 193/75 provides that no security shall be required in respect of a licence or certificate where the amount involved is two units of account or less ; whereas the third subparagraph of Article 18 (2) of Regulation (EEC) No 193/75 provides that if the security which would be forfeit is two units of account or less the whole of the security may be released ;

Whereas, without prejudice to the provisions which derogate from the third indent of Article 4 (3) of Regulation (EEC) No 193/75 in respect of olive oil and hybrid maize for sowing and products of the sugar, isoglucose and wine sectors it is desirable, in order to simplify procedures where small quantities are involved, to increase these limits ;

Whereas, where the limit is increased to 25 ECU, it is necessary to ensure that the absence of a security does not result in abuses and hence to require the licences and certificate to be returned after use so that compliance with the obligation to import or export may be checked ;

Whereas Council Regulation (EEC) No 652/79 of 29 March 1979 (5) laid down the coefficient for expressing amounts, fixed in units of account, in ECU ;

Whereas in Case 122/78 the Court of Justice of the European Communities has declared that, in its present version, Article 18 (4) of Regulation (EEC) No 193/75 is not valid in that forfeiture of the security in respect of a licence or certificate security is not justified where the proof of fulfilment of the relevant obligations is supplied outside the prescribed period ;

Whereas it is necessary to know whether the obligation to import or export has been fulfilled ;

Whereas in the event of the proof not being submitted within a reasonable period it is fair to assume that the obligation to import or export has not been fulfilled and, except in cases of *force majeure,* to treat the security as forfeit ;

Whereas if, during a further period in which a competent trader can be expected to take action to have the security recovered, the proof is furnished, the amount forfeit shall be repaid, less a suitable proportion to mark the late submission of the proof and the additional administration involved ;

Whereas for these reasons Article 18 (4) of Regulation (EEC) No 193/75 must be amended ;

Whereas, since the existing provision no longer applies, it is reasonable to apply the amended provision to any case where at the time of entry into force of the Regulation the question of the release of the security has not finally been decided upon ;

Whereas the measures provided for in the Regulation are in accordance with the opinions of all the management committees concerned,

(1) OJ No L 281, 1. 11. 1975, p. 1.
(2) OJ No L 188, 26. 7. 1979, p. 1.
(3) OJ No L 25, 31. 1. 1975, p. 10.
(4) OJ No L 139, 7. 6. 1979, p. 12.
(5) OJ No L 84, 4. 4. 1979, p. 1.

HAS ADOPTED THIS REGULATION :

Article 1

Regulation (EEC) No 193/75 is amended as follows :

1. The last indent of Article 4 (3) is amended to read as follows :

   '— relating to quantities such that the amount of security for the corresponding licence would be 5 ECU or less.'

2. The last subparagraph of Article 5 (4) is amended to read as follows :

   'Where the total amount of security in respect of any licence or certificate would be 5 ECU or less no security shall be required.'

3. A futher subparagraph as follows is added to Article 5 (4) :

   'In addition, Member States may issue licences or certificates without security where the amount of security involved is 25 ECU or less, provided the applications are lodged with the competent agency in the Member State in which the applicant is established. Such licences and certificates shall be returned to the issuing agency as soon as possible and not later than on expiry of their period of validity.'

4. In Article 8 (1) and (2) the expression 'units of account' is replaced by 'ECU'.

5. The last subparagraph of Article 18 (2) is amended to read as follows :

   'Furthermore, if the total amount of the security which would be forfeit is 5 ECU or less for a given licence or certificate the Member State concerned may release the whole of the security.'

6. Article 18 (4) is replaced by the following :

   '4. (a) Where the proofs referred to in Article 17 have not been furnished within six months following the expiry of the licence or certificate then, save in case of *force majeure*, the security shall be forfeit.

   (b) However, where such proofs are furnished between six and 24 months following the expiry of the licence or certificate a sum shall be repaid. The sum to be repaid shall be 80 % of : the amount forfeited in accordance with subparagraph (a), less any amount to be forfeited pursuant to paragraph 2.'

Article 2

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

The provisions set out in points 1, 2, 3, 4 and 5 of Article 1 shall apply with effect from 1 October 1979.

The provisions set out in point 6 of Article 1 shall apply in respect of any licence of certificate issued prior to the date of entry free of this Regulation where the release of the security has not finally been decided upon.

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

Done at Brussels, 5 September 1979.

For the Commission

Finn GUNDELACH

Vice-President