COMMISSION REGULATION (EEC) No 798/80

of 31 March 1980

laying down general rules on the advance payment of export refunds and positive monetary compensatory amounts 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 (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 16 (6) and 24 thereof, and to the corresponding provisions of the other Regulations on the common organization of markets in agricultural products,

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 (3), as last amended by Regulation (EEC) No 987/79 (4), and in particular Article 6 thereof,

Having regard to Council Regulation (EEC) No 565/80 of 4 March 1980 on the advance payment of export refunds in respect of agricultural products (5),

Whereas Regulation (EEC) No 565/80 lays down general rules for paying in advance of export an amount equal to the export refunds; whereas the right to export refunds shall be established in accordance with the rules laid down to that end, in particular those of Commission Regulation (EEC) No 2730/79 of 29 November 1979 laying down common detailed rules for the application of the system of export refunds on agricultural products (6);

Whereas Article 2 of Regulation (EEC) No 2730/79 provides that that Regulation shall be applicable without prejudice to the Community provisions for the payment in advance of refunds;

Whereas Article 3 of Regulation (EEC) No 565/80 provides that products for which a refund equal to or greater than 0 has been fixed shall be eligible to benefit from that Regulation; whereas, to ensure equal treatment of traders within the Community, negative monetary compensatory amounts should not be taken into consideration when determining whether or not a refund of 0 or more has been fixed; whereas, as a consequence thereof, products and goods may also benefit from that Regulation in cases where a negative monetary compensatory amount is greater than the refund;

Whereas Article 4 (5) and (6) of Regulation (EEC) No 565/80 provides that the day on which basic products are brought under customs control shall determine the rate of refund or where the refund is fixed in advance, any adjustment to be made to that rate; whereas that day, as well as the operative day for determining the rate of refund and any adjustment in respect of products brought under the customs warehousing or free zone procedure, should be specified; whereas the dates should be so determined as to accord with economic requirements and ensure equal treatment for exporters in the Member States;

Whereas the operative date should accordingly be the day on which the customs authorities accept the declaration from the person concerned, in which he declares his intention to export the products and to qualify for a refund; whereas that declaration must include the necessary particulars for the calculation of refunds and any compensatory amounts;

Whereas a security shall be furnished to ensure that reimbursement will be made if the conditions for granting the refund are not fulfilled; whereas negative monetary compensatory amounts shall be deducted from the refunds; whereas, in cases where no right to a refund is proved, the negative compensatory amounts may have fallen due; whereas the collection of such amounts must be ensured;

Whereas positive monetary compensatory amounts have an effect similar to refunds in trade with third countries; whereas such amounts should be paid in advance on similar conditions to refund; whereas the advance payment of refunds has consequences for the period of validity for export licences; whereas to ensure equal treatment in all Member States, positive monetary compensatory amounts should be paid in advance only if they are granted in addition to a refund;

Whereas reimbursement of the amount paid in advance of export shall be made if there proves to be no right to the export refund or if there was a right to a smaller refund; whereas the reimbursement must include an additional amount to avoid abuses; whereas in cases of *force majeure* the additional amount shall not be reimbursed;

(1) OJ No L 281, 1. 11. 1975, p. 1.
(2) OJ No L 188, 26. 7. 1979, p. 1.
(3) OJ No L 106, 12. 5. 1971, p. 1.
(4) OJ No L 123, 19. 5. 1979, p. 9.
(5) OJ No L 62, 7. 3. 1980, p. 5.
(6) OJ No L 317, 12. 12. 1979, p. 1.

Whereas a time limit shall be set for the export of the products concerned; whereas that time limit shall be set taking into consideration the system of export licences and advance fixing certificates; whereas the time limit laid down in Article 9 (1) of Regulation (EEC) No 2730/79 should also be taken into consideration;

Whereas Article 5 (1) of Regulation (EEC) No 2730/79 provides that certain destinations shall be treated as exports from the Community; whereas products and goods delivered to victualling warehouses referred to in Article 26 (1) of that Regulation must subsequently be delivered for the victualling within the Community; whereas deliveries to such warehouses cannot be treated as final exports for refund purposes;

Whereas the Member States should communicate to the Commission the particulars necessary to follow the application of the arrangements;

Whereas the provisions of the present Regulation will replace the provisions of Regulation (EEC) No 1957/69 [1];

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

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation lays down detailed rules for the application of the arrangements introduced by Regulation (EEC) No 565/80.

2. For the application of Article 3 of that Regulation the negative monetary compensatory amounts shall not be taken into consideration when determining whether or not a refund of 0 or more has been fixed.

3. The arrangements referred to in paragraph 1 shall also apply to positive monetary compensatory amounts when they are granted in addition to a refund.

Article 2

1. Admission under the arrangements shall be subject to the lodging with the customs authorities of a declaration, hereinafter referred to as the 'payment declaration', in which the exporter states his intention to place the products or goods under one of the arrangements referred to in Articles 4 and 5 of Regulation (EEC) No 565/80 and to export them after processing or storage and to qualify for a refund.

Member States may give the 'payment declaration' another title.

2. The payment declaration shall include all such particulars as are necessary for determining the refund and, where applicable, the monetary compensatory amount in respect of the products or goods to be exported, in particular:

(a) a description of the products or goods in accordance with the nomenclatures used for refunds and monetary compensatory amounts;

(b) the net weight of the products or goods, or, where applicable, the unit of measurement to be taken into account in calculating the refund or the monetary compensatory amount;

(c) in so far as it is necessary for determining the refund or the monetary compensatory amount, particulars of the composition of the products or goods or the relevant reference.

Furthermore, in cases where basic products are to be processed, the payment declaration shall include:

— a description of the basic products,

— the quantity of basic products,

— the rate of yield or similar information.

3. Notwithstanding the provisions of paragraph 2, provisional particulars of the goods to be obtained from basic products may where circumstances so warrant and on request from the exporter be included in the payment declaration. In such cases the exporter shall declare to the competent authorities the final particulars when the processing is completed.

4. The payment declaration shall also include indication of the use or destination of the products or goods:

(a) where the exporter requests payment of an amount equal to the refund applicable for the use or destination to which the product or goods are intended;

(b) where the use or destination is necessary for determining the period under which the products or goods may remain under customs control for processing or a customs warehousing or free zone procedure.

5. The use or destination shall be indicated as:

— a specific use or a specific country of destination, or

— a group of countries of destination for which the same rate of refund is applicable.

[1] OJ No L 250, 4. 10. 1969, p. 1.

Article 3

1. At the time of acceptance of the payment declaration, the products or goods shall be placed under customs control.

2. The date of acceptance of the payment declaration shall determine :

(a) the rates of the refund and the monetary compensatory amount where the rates are not fixed in advance ;

(b) any adjustments to be made to the rates of refund and the monetary compensatory amount where they are so fixed.

Article 4

1. In respect of processed products or goods obtained from basic products, the result of the examination of the payment declaration whether or not combined with the examination of the basic products, shall be used for determining the refund and monetary compensatory amount.

2. In respect of products or goods to be exported after having been under a customs warehousing or free zone procedure, the result of the examination of the payment declaration and of the products or goods themselves shall be used for determining the refund and monetary compensatory amount.

3. Paragraphs 1 and 2 shall not preclude any subsequent verification by the competent authorities of the Member State concerned nor any consequences of such verification in the application of existing provisions.

4. Loss of weight of products or goods occurring through natural shrinkage during their storage in customs warehouses or free zones shall not give rise to any reimbursement mentioned in Article 10.

Damage to products or goods is not considered to be natural shrinkage.

Article 5

1. The customs export formalities shall be completed in the Member State in which the payment declaration was accepted.

2. Belgium, Luxembourg and the Netherlands shall be considered as a single Member State in respect of the application of Article 5 of Regulation (EEC) No 565/80.

Article 6

1. The amount to be paid in advance of export shall be paid by the Member State in which the payment declaration was accepted.

2. The amount shall be paid only on written application by the exporter. Member States may prescribe a special form to be used for that purpose.

3. The amount shall be calculated by using the rate of refund applicable for the use or destination if that is indicated. In other cases the lowest rate of refund shall be used.

The rate used, reduced or increased, as the case may be, by any accession compensatory amounts, shall be multiplied by the coefficient fixed pursuant to Article 4 (3) of Regulation (EEC) No 1380/75.

4. The amount established pursuant to paragraph 3 shall be reduced or increased, as the case may be, by any monetary compensatory amounts applicable in the Member State in which the payment declaration is accepted.

Where Article 2 (3) applies the reduction or the increase shall be made by using :

— the highest monetary compensatory amount concerned when a reduction is involved, and

— the lowest one when an increase is involved.

These provisional amounts shall be adjusted accordingly when the final amounts are known.

Article 7

1. A security equal to the amount calculated in accordance with Article 6 (3) plus any positive monetary compensatory amount, and increased by 20 % of these amounts, shall be furnished prior to the acceptance of the payment declaration.

The increase shall not be less than 3 ECU per 100 kilograms net.

2. Notwithstanding the provisions of paragraph 1, the competent authorities of the Member States may allow acceptance of the payment declaration on the prior lodgement of a provisional security at least equal to the increase referred to in paragraph 1 based on the refund and any positive monetary compensatory amounts applicable on the day on which the security is furnished. In such cases the provisional security shall be adjusted to the amount referred to in paragraph 1 before the advance payment may be made.

3. Member States applying negative monetary compensatory amounts may calculate the securities provided for in paragraphs 1 and 2 on the basis of the refund reduced by any negative monetary compensatory amount on condition that a national administrative procedure shall ensure the collection of the monetary compensatory amounts falling due if there is no entitlement to a refund or an entitlement to a refund lower than the monetary compensatory amount.

4. Member States may allow the security referred to in paragraph 1 to be furnished after the acceptance of the payment declaration provided that national provisions :

— oblige the exporter to lodge the security within a maximum period of 30 days after this acceptance and before the advance payment is made,

— ensure the payment of an amount equal to the increase referred to in paragraph 1 if the security is not furnished in time, save in cases of *force majeure.* Such payments shall, for the purpose of Regulation (EEC) No 352/78, be considered as forfeited securities.

Article 8

1. In cases where any additional security necessary pursuant to Article 7 (2) is not presented within 30 days after the acceptance of the payment declaration, an amount of the provisional security equal to the increase referred to in Article 7 (2) shall be forfeited unless an equivalent amount is paid by the declarant within two weeks of its being requested.

2. In the cases referred to in paragraph 1, the payment declaration concerned shall be considered as cancelled. Such cancellation shall in no way preclude the application of sanctions for an offence committed by the declarant.

3. Where the additional security referred to in paragraph 1 is not presented within the prescribed period although the declarant has acted with all due diligence, he may be granted an extension of time.

Article 9

When the entitlement to a refund and/or a monetary compensatory amount has been proved in respect of products or goods admitted under the arrangements, the sum due shall be set off against the amount paid in advance. In cases where the entitlement for the quantity exported is for an amount higher than that paid in advance, the difference is to be paid to the person concerned.

Article 10

1. The release in full of the security shall be subject to the production of proof that :

(a) the time limits laid down in Article 11 have been respected ;

(b) the products concerned have an entitlement to a refund equal to or higher than the amount determined in accordance with Article 6 (3).

2. The security shall also be released in full :

— in cases where the conditions of paragraph 1 (b) have been fulfilled but where, as a case of *force majeure,* the time limits laid down in Article 11 have not been respected,

— in other cases where the time limits laid down in Article 11 have not been respected or the conditions of paragraph 1 (b) have not been fulfilled but where any amounts requested to be reimbursed in accordance with the present Article have been paid within weeks of their being requested.

3. On application by the person concerned, Member States may release the security by instalments in proportion to the quantities of products or goods in respect of which the proofs referred to in paragraph 1 have been provided.

4. Without prejudice to cases of *force majeure,* reimbursement of the following amounts shall be requested :

(a) where the time limits laid down in Article 11 have not been respected :

— an amount equal to the security ;

(b) where the time limits laid down in Article 11 have been respected but the entitlement to refund covers a smaller amount than that referred to in paragraph 1 (b) :

— where Article 7 (3) applies, an amount equal to the security, less the amount of the actual refund reduced by any negative monetary compensatory amount, increased by 20 %,

— in other cases, an amount equal to the security, less the amount of the actual refund and any positive monetary compensatory amount due, increased by 20 %.

5. Where, as a case of *force majeure,* the entitlement to refund covers a smaller amount than that referred to in paragraph 1 (b), the reimbursement of an amount equal to the difference between :

— the amount referred to in paragraph 1 (b), and

— the amount of the actual refund due,

shall be requested.

This provision shall also apply in cases where the entitlement to refund covers a smaller amount than that referred to in paragraph 1 (b) and where the time limits laid down in Article 11 have not, as a case of *force majeure,* been respected.

6. Where paragraph 4 (a) applies and it is established that the products or goods :

— have not left the territory of the Member State in which the payment declaration was accepted, the reimbursement to be requested shall be reduced by any negative monetary compensatory amount, unless the Member State applies the provisions of Article 7 (3),

— have left the territory of the Member State in which the payment declaration was accepted, the reimbursement to be requested shall be reduced by any positive monetary compensatory amount increased by 20 %.

7. In cases where the amounts referred to in paragraphs 4 and 5 are not paid within the fixed time limit, that part of the security equal to the reimbursement due shall be forfeited.

8. Entitlement to refunds and monetary compensatory amounts shall be established in accordance with the provisions laid down to that end. Except in cases of *force majeure,* the relevant documents shall be submitted to the competent authorities within six months from the expiry of the time limits laid down in Article 11 (1) and (2). In respect of the documents referred to in Article 31 (2) of Regulation (EEC) No 2730/79, the period may be extended in accordance with the provisions of that paragraph.

Article 11

1. The time limit during which the basic products may remain under customs control with a view to their being processed shall be six months from the date of acceptance of the payment declaration.

However, where the export is subject to the presentation of an export licence or where an advance fixing certificate is submitted, the time limit shall be equal to the remainder of the period of validity of the licence or the certificate. In cases where this would result in a time limit of :

— less than three months, that period shall be increased to three months,

— more than one year, that period shall be limited to one year.

2. The time limit during which the products or goods may remain under a customs warehousing or free zone procedure shall be six months from the date of acceptance of the payment declaration.

3. Within 60 days from the date on which the products or goods are no longer subject to the customs control or procedure provided for in Articles 4 and 5 of Regulation (EEC) No 565/80 they shall :

— leave the geographical territory of the Community, unaltered, or

— in the cases specified in Article 5 (1) of Regulation (EEC) No 2730/79, reach their destination, unaltered.

4. Where products or goods are placed under the procedure provided for in Section I of Title IV of Regulation (EEC) No 223/77 for carriage to a station of destination outside the geographical territory of the Community, they shall be considered as exported from the moment when they are placed under the said procedure.

Article 12

1. Member States shall communicate to the Commission separately for the processing under customs control and the warehousing of free zone procedure the quantities of products which are admitted under the arrangements :

— without advance fixing of the refund,

— with advance fixing of the refund.

The information shall be broken down by subheading of the refund nomenclature and by destination, if indicated in the payment declaration.

2. These communications shall be made for the six month periods ending 31 March and 30 September each year not later than the end of the month following each period.

Article 13

Regulation (EEC) No 1957/69 is hereby repealed. It shall however continue to apply to transactions entered into under that Regulation.

Article 14

This Regulation shall enter into force on 1 April 1980.

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

Done at Brussels, 31 March 1980.

For the Commission

Finn GUNDELACH

Vice-President