COMMISSION REGULATION (EEC) No 568/85

of 4 March 1985

amending for the 10th time Regulation (EEC) No 2730/79 laying down common detailed rules for the application of the system of export refunds on 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 1018/84 (2), and in particular Article 16 (6) thereof, and to the corresponding provisions of the other Regulations on the common organization of the markets in agricultural products,

Having regard to Council Regulation (EEC) No 2746/75 of 29 October 1975 laying down general rules for granting export refunds on cereals and criteria for fixing the amount of such refunds (3), and in particular the second subparagraph of Article 8 (2) and Article 8 (3) thereof, and to the corresponding provisions of the other Regulations laying down general rules for granting export refunds on agricultural products,

Whereas Article 6 of Commission Regulation (EEC) No 2730/79 (4), as last amended by Regulation (EEC) No 519/83 (5), stipulates that certain information must be entered in the control register provided for in the simplified procedure introduced by that same Article, not later than the first working day after supplies for victualling have been loaded; whereas this requirement cannot always be met where the supplies are loaded in a Member State other than the Member State of export; whereas, therefore, provision should be made so that these particulars must be entered in the register not later than the first working day following that on which the exporter should have been informed that the products had been loaded;

Whereas Article 10 of Regulation (EEC) No 2730/79 should make it clear that the proof of importation into a non-member country may be requested on payment of both differentiated and non-differentiated refunds;

Whereas experience has shown that provision should be made so that it is possible, in a customs office other than that in which customs export formalities were completed, to place products under the procedure provided for in Title IV, Section I, of Commission Regulation (EEC) No 233/77 of 22 December 1976 on provisions for the implementation of the Community transit procedure and for certain simplifications of that procedure (6), as last amended by Regulation (EEC) No 1499/82 (7);

Whereas, in certain cases and in certain circumstances, where supplies are delivered to drilling or extraction platforms, exporters may be exempted from the requirement to produce a certificate of receipt on board; whereas the criterion used to determine such cases is the export declaration; whereas, in view of the nature of the trade in question, it is necessary that deliveries should be taken into account as the criterion for the determination of such cases;

Whereas it should be stated that, for a differentiated refund to be awarded, importation into the non-member country must have taken place within the time limit for providing proof of such importation; whereas extensions of time limits should be allowed for exports which took place before the entry into force of this Regulation, where the exporter shows diligence;

Whereas, in view of the economic objectives which export refunds are designed to achieve and the fact that proof may in some cases be provided that products have been imported into the non-member country of destination, the Regulation should specify that the products imported into the non-member country must be those which were exported from the Community; whereas the competent authorities of the Member States should therefore be allowed to require proof to the effect that the products were, in the unaltered state, imported into and released on the market of the importing non-member countries concerned; whereas, however, a product which is processed in the importing non-member country before being released for home use should be regarded as having been imported in the unaltered state when proof is provided that processing took place in the non-member country in which all the products resulting from such processing have been released for home use;

Whereas certain documents not listed in Article 20 of Regulation (EEC) No 2730/79 may provide proof that the products have been released for home use in a non-member country; whereas other documents already listed in the said Article should attest to more than the mere unloading of the products in the non-member country; whereas, therefore, the said Article should be amended accordingly;

(1) OJ No L 281, 1. 11. 1975, p. 1.
(2) OJ No L 107, 19. 4. 1984, p. 1.
(3) OJ No L 281, 1. 11. 1975, p. 78.
(4) OJ No L 317, 12. 12. 1979, p. 1.
(5) OJ No L 58, 5. 3. 1983, p. 5.
(6) OJ No L 38, 9. 2. 1977, p. 20.
(7) OJ No L 161, 12. 6. 1982, p. 11.

Whereas the consequences of a compulsory destination should be made clear where a single rate of refund applies in respect of all destinations on the day of the advance fixing of the refund ;

Whereas, for the sake of fairness, provision should be made so that, for the purpose of the clearance of advance payments, one export may be replaced by another equivalent export, subject to certain conditions, as is already the case with export licences or advance-fixing certificates ;

Whereas proof equivalent to the control copy may be provided where the purpose of the control copy is to certify that the products concerned have left the geographical territory of the Community ; whereas provision should also be made for equivalent proof in other 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

Regulation (EEC) No 2730/79 is hereby amended as follows :

1. In Article 6

— the text of the second subparagraph of paragraph 4 is replaced by the following :

'The information referred to in the preceding subparagraph must be entered in the register not later than the first working day after the day of loading. However, when loading is carried out in another Member State, the abovementioned information must be entered in the register not later than the first working day following that on which the exporter must be informed that the products have been loaded.'

— the following paragraph 5 is added :

'5. Member States may decide that the register may be replaced by the documents used for each delivery on which the customs authorities have certified the date of loading.'

2. Article 10 (1) is replaced by the following :

'1. In the following circumstances payment of the differentiated or non-differentiated 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 non-member country and where appropriate into a specific non-member country within the time limits referred to in Article 31 :

(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 refund on the exported product and the amount of the import duties applicable to an identical product on the day when customs export formalities are completed, it is possible that the product may be re-introduced into the Community.

In the cases referred to in the preceding subparagraph, the provisions of Article 20 (2), (3), (4), (5) and (6) shall apply.

In addition, the competent authorities of the Member States may require that additional proof be provided which shows, to their satisfaction, that the product has actually been placed on the market in the non-member country of import in the unaltered state.'

3. Article 12 is replaced by the following :

'Article 12

1. Where the product is placed, in the Member State where the customs export formalities were completed, under the procedure provided for in Title IV, Section I of Regulation (EEC) No 223/77 for carriage to a station of destination or delivery to a consignee outside the geographical territory of the Community, the payment of the refund shall not be subject to production of proof as provided for in Article 11.

2. For the purposes of paragraph 1, the competent customs office 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 the simplified Community transit procedure for carriage by rail or large containers.'

3. The customs office where the requisite customs formalities are completed for the products to be placed under the procedure referred to in paragraph 1 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 paragraph 1 and the product has not left the geographical territory of the Community within the prescribed period, the competent customs office 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 wrongly paid.

4. Where the customs export formalities have been completed in one Member State and the product concerned, circulating under the external Community transit procedure, is placed under the procedure provided for in Title IV, Section I of Regulation (EEC) No 223/77 in another Member State for carriage to a station of destination or delivery to a consignee outside the geographical territory of the Community, the office at which the customs formalities for placing the products under the abovementioned procedure are completed shall fill in the section "Control as to the use and/or destination" on the back of the control copy referred to in Article 11 by deleting the first four lines and making one of the following entries under "Remarks" :

„Udført fra Fællesskabets geografiske område i henhold til ordningen for den forenklede procedure for fællesskabsforsendelse med jernbane/store containere.

— Transportdokument : type : .....
nummer : .....
— Dato for overtagelse ved jernbane eller ved det pågældende transportfirma : .....".

„Verlassen des geographischen Gebietes der Gemeinschaft im Rahmen des vereinfachten gemeinschaftlichen Versandverfahrens mit der Eisenbahn oder in Großbehältern.

— Beförderungspapier : Art : .....
Nummer : .....
— Zeitpunkt der Annahme zur Beförderung durch die Eisenbahnverwaltung oder das betreffende Beförderungsunternehmen : .....
....."

„Έξοδος από το γεωγραφικό έδαφος της Κοινότητας υπό το απλοποιημένο καθεστώς της κοινοτικής διαμετακόμισης με σιδηρόδρομο ή μεγάλα εμπορευματοκιβώτια.

— Έγγραφο μεταφοράς: τύπος: .....
αριθ.: .....
— Ημερομηνία αποδοχής για μεταφορά από τη σιδηροδρομική αρχή ή την ενδιαφερόμενη εταιρεία μεταφοράς: .....".

„Departure from the geographical territory of the Community under the simplified Community transit procedure for carriage by rail or large containers.

— Transport document : type : .....
number : .....
— Date of acceptance for carriage by the railway authorities or the transport undertaking concerned : .....".

„Sortie du territoire géographique de la Communauté sous le régime du transit communautaire simplifié par fer ou par grands conteneurs.

— Document de transport : espèce : .....
numéro : .....
— Date d'acceptation pour le transport par l'administration des chemins de fer ou par l'entreprise de transports concernée : .....
....."

„Uscita dal territorio geografico della Comunità in regime di transito comunitario semplificato per ferrovia o grandi contenitori.

— Documento di trasporto : tipo : .....
numero : .....
— Data di accettazione per il trasporto da parte delle ferrovie o dell'impresa di trasporto interessata : .....".

„Heeft het geografisch grondgebied van de Gemeenschap verlaten onder de regeling vereenvoudigd communautair douanevervoer per spoor of in grote containers.

— Vervoerdocument : type : .....
nummer : .....
— Datum van aanneming ten vervoer door de betrokken spoorwegadministratie of de betrokken vervoeronderneming : .....".

Where the transport contract is amended in such a way that the transport operation is terminated within the Community, the provisions of paragraph 3 shall apply *mutatis mutandis*.'

4. The first sentence of the third subparagraph of Article 19b (3) is replaced by the following :

'By way of derogation from paragraph 2, in the case of supplies to platforms, Member States may exempt exporters from the requirement to produce a certificate of receipt on board in the case of a delivery :

— giving entitlement to a refund not greater than 2 500 ECU per exporter,
— for which the Member State concerned is satisfied that it has sufficient evidence that the products have arrived at their destination, and
— for which the transport document and proof of payment are submitted.'

5. Article 20 (1) is replaced by the following :

'1. Where the rate of refund varies according to destination, payment of the refund on exports to non-member countries shall be made, subject to the provisions of Article 21, only if the product has, in the unaltered state, been imported into the non-member country or one of the non-member countries for which the refund is prescribed within the time limits referred to in Article 31. Products shall be regarded as having been imported in the unaltered state if there is no reference, in any of the documents, to the effect that such processing has taken place.

However :

— operations which are designed to ensure that the products remain in the unaltered state, and which are referred to in Article 4 (5) of Regulation (EEC) No 798/80, may be carried out within the time limits referred to in the first subparagraph ; the operations specified in point 4 of the said Article 4 (5) may be carried out only if the product imported into the non-member country concerned does not fall within another subheading in the table of refunds, the refund for which differs from that applicable in respect of the exported product,

— a product which was processed before being imported shall be regarded as having been imported without further processing if the processing took place in the non-member country into which all the products resulting from such processing were imported.'

6. In the Danish version of Article 20 (2) and Annex II, in the space reserved for endorsement by the customs office of the country where the product is released for home use, 'fri omsætning' is replaced by 'frit forbrug'.

7. Article 20 (3) is replaced by the following :

'3. Proof that these formalities have been completed shall be furnished by production of :

(a) the relevant customs document, or a copy or photocopy thereof certified as true by either the body which endorsed the original document, an official agency of the non-member country concerned or an official agency of a Member State ; or

(b) the customs entry certificate made out in accordance with the specimen in Annex II in one or more official languages of the Community and in a language used in the non-member country concerned ; or

(c) any other document endorsed by the customs authorities of the non-member country concerned on which the products are identified and which proves that they have been released for home use in that country.'

8. In the Dutch version of Article 20 (4), point (a) is replaced by the following :

'(a) een kopie van het lossingsdocument afgegeven of geviseerd in het derde land of in één van de derde landen waarvoor de restitutie is vastgesteld ;'.

9. In Article 20 (4), points (b), (c) and (d) are replaced by the following :

'(b) a certificate of unloading issued by an official agency of one of the Member States established in or competent for the country of destination, certifying also that the product has left the port zone or at least that, to its knowledge, the product has not subsequently been loaded for re-export ;

(c) a certificate of unloading drawn up by an international control and supervisory agency approved by the Member State in which customs export formalities were completed, certifying also that the product has left the port zone or at least that, to its knowledge, the product has not subsequently been loaded for re-export ;

(d) a bank document issued by approved intermediaries established in the Community, certifying, in the case of the non-member countries listed in Annex III, that payment for the export in question has been credited to the exporter's account with them ;'.

10. The following point (g) is added to Article 20 (4) :

'(g) a statement of acceptance of delivery issued by a body in a non-member country in respect of which tendering procedures can be accepted for the purposes of Article 43 of Regulation (EEC) No 3183/80 if the goods have been bought by that body.'

11. Article 24 is replaced by the following :

'Article 24

1. Where a single rate of refund applies in respect of all destinations on the day of advance fixing and a compulsory destination is prescribed, the refund shall be treated as varying according to destination if the rate of refund applying on the day customs export formalities are completed is less than the rate fixed in advance, as adjusted, where appropriate, on the date customs export formalities are completed.

2. Refunds fixed under a tendering procedure shall rank as refunds fixed in advance.

3. To qualify for the refund fixed in advance, where a product is exported under a licence or certificate issued pursuant to Article 43 of Regulation (EEC) No 3183/80 and the refund varies according to destination, the exporter must show, in addition to the proof required under Article 20, that the product has been delivered in the non-member country of import to the agency specified under the invitation to tender to which the licence refers.'

12. Paragraphs 2 and 3 of Article 25 are replaced by the following:

'2. Where the amount advanced is greater than the amount actually due in respect of the export operation or the export of equivalent products as defined in paragraph 4, the exporter shall pay the difference between the two amounts plus 15 % of that difference.

Where, however, by reason of *force majeure*:

— the proof referred to in this Regulation to be furnished in order to qualify for the refund cannot be produced, or

— the product reaches a destination other than that for which the advance was calculated,

the additional 15 % shall not be charged.

Securities shall be released in proportion to the amount of refund for which documentary proof, as required by this Regulation to qualify for the refund, has been produced.

3. If the amount payable by the exporter is not repaid after being requested, the security shall be forfeited in the amount outstanding.

4. "Export of equivalent products" shall mean the export, after reimportation under return arrangements, of equivalent products falling within the same subheading of the Common Customs Tariff, provided that the conditions referred to in Article 39 (2) (a) and (b) of Regulation (EEC) No 3183/80 are fulfilled.

This provision shall apply only where the return arrangements have been used in the Member State in which the customs formalities for the first export were completed.'

13. The second subparagraph of Article 30 (2) is replaced by the following:

'The supporting documents to be presented with the request that other documents be regarded as equivalent must include:

— where a control copy has been issued to furnish proof that the products have left the geographical territory of the Community; in addition to the transport document, a document which proves that the product has been presented at a customs office in a non-member country or one or more of the documents referred to in Article 20 (3), (4) and (6);

— where Articles 5, 19b or 26 are applied: confirmation by the customs office responsible for checking the destination in question that the conditions for annotation of the control copy concerned by the said office have been fulfilled.

The extension of time referred to in Article 31 (2) shall apply for the furnishing of the equivalent proof.'

14. In Article 31 (2), that part of the sentence which reads 'paragraphs 3, 4 and 6' is replaced by 'paragraphs 3 to 6'.

15. Annex III is replaced by the Annex to this Regulation.

Article 2

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

It shall apply to operations subject to acceptance of an export declaration and to the loading on board of supplies from 1 April 1985.

At the request of those concerned the provisions of Article 1 (5) and (14) shall apply to cases pending.

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

Done at Brussels, 4 March 1985.

For the Commission

Frans ANDRIESSEN

Vice-President

ANNEX

ANNEX III

List of non-member countries from which funds cannot be transferred until the goods have been imported, as referred to in Article 20 (4) (d)

Algeria
Burundi
Chile
Equatorial Guinea
Guatemala
Hungary
Iceland
Kenya
Lesotho
Malawi
Malta
St Lucia
Senegal
Tanzania