COMMISSION REGULATION (EEC) No 2082/87

of 15 July 1987

amending Regulation (EEC) No 3183/80 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products and Regulation (EEC) No 548/86 laying down detailed rules for the application of accession 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 2727/75 of 29 October 1975 on the common organization of the market in cereals (1), as last amended by Regulation (EEC) No 1900/87 (2), and in particular Articles 12 (2), 15 (5) and 16 (6) thereof, and to the corresponding provisions of the other Regulations establishing a common organization of the market in respect of agricultural products,

Having regard to Council Regulation (EEC) No 467/86 of 25 February 1986 laying down general rules for the system of accession compensatory amounts for cereals (3), and in particular Article 8 thereof, and to the corresponding provisions of the other Regulations laying down general rules for the system of accession compensatory amounts applicable to agricultural products;

Whereas Commission Regulation (EEC) No 2220/85 of 22 July 1985 laying down common detailed rules for the application of the system of securities for agricultural products (4), as last amended by Regulation (EEC) No 1181/87 (5), makes certain provisions common to all agricultural securities; whereas Commission Regulation (EEC) No 3183/80 (6), as last amended by Regulation (EEC) No 3913/86 (7), should be amended to take account of Regulation (EEC) No 2220/85;

Whereas Council Regulation (EEC) No 2151/84 (8), as last amended by the Act of Accession of Spain and Portugal, gives a precise definition of the 'customs territory of the Community'; whereas, therefore, it is appropriate to make use of this definition in the interests of legal certainty; whereas, therefore, Regulation (EEC) No 3183/80 should be amended accordingly;

Whereas, in order to avoid doubt, each context in which it is relevant to consider whether or not a case of *force majeure* has arisen should be specified;

Whereas the detailed requirements on communicatons laid down by Regulation (EEC) No 3183/80 should be amend to take account of modern forms of written telecommunications;

Whereas evidence of entry for consumption in a Member State is required for the release of the security for certain export licences or to obtain payment of accession compensatory amounts, the detailed rules of application of which are laid down by Commission Regulation (EEC) No 548/86 (9), as amended by Regulation (EEC) No 492/87 (10); whereas experience has shown that such evidence should be provided in accordance with the detailed rules laid down in Article 20 (3) of Commission Regulation (EEC) No 2730/79 (11), as last amended by Regulation (EEC) No 1180/87 (12);

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 3183/80 is hereby amended as follows:

1. Article 8 (1) and (2) is replaced by the following:

'1. The import or export licence shall constitute authorization and give rise to an obligation respectively to import or to export under the licence, and, except in case of *force majeure*, during its period of validity, the specified quantity of the relevant product. Such licence shall or may as the case requires include provision for advance fixing of the levy or refund, the monetary compensatory amount and the accession compensatory amount under the conditions laid down by the rules relating to the relevant sector.

The obligations referred to in this paragraph shall be primary requirements within the meaning of Article 20 of Commission Regulation (EEC) No 2220/85 (1).

(1) OJ No L 281, 1. 11. 1975, p. 1.
(2) OJ No L 182, 3. 7. 1987, p. 40.
(3) OJ No L 53, 1. 3. 1986, p. 25.
(4) OJ No L 205, 3. 8. 1985, p. 5.
(5) OJ No L 113, 10. 4. 1987, p. 31.
(6) OJ No L 338, 13. 12. 1980, p. 1.
(7) OJ No L 364, 23. 12. 1986, p. 31.
(8) OJ No L 197, 27. 7. 1984, p. 1.
(9) OJ No L 55, 1. 3. 1986, p. 52.
(10) OJ No L 50, 19. 2. 1987, p. 11.
(11) OJ No L 317, 12. 12. 1979, p. 1.
(12) OJ No L 113, 30. 4. 1987, p. 27.

2. The advance fixing certificate shall give rise to an obligation to import or to export under that certificate, and, except in case of *force majeure,* during its period of validity, the specified quantity of the relevant product.

The advance fixing certificate as referred to in Article 6 of Council Regulation (EEC) No 3035/80 [2] shall give rise to an obligation to export under that certificate and, except in case of *force majeure,* during its period of validity, the quantity of the basic products, as specified in Annex A to that Regulation as stated in the certificate, in the form of one or more of the goods listed in Annex B or C to that Regulation also as stated on the certificate.

The obligations referred to in this paragraph shall be primary requirements within the meaning of Article 20 of Regulation (EEC) No 2220/85.

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[1] OJ No L 205, 3. 8. 1985, p. 5.
[2] OJ No L 323, 29. 11. 1980, p. 27.'

2. Article 12 is replaced by the following:

'*Article 12*

1. No application for a licence or certificate shall be accepted unless it is forwarded to or lodged with the competent agency on forms printed and made out in accordance with Article 16.

However, the competent agency may accept a written telecommunication as a valid application, provided all the information which would have appeared on the form, had it been used, is included. Member States may require that before any such written telecommunication can be accepted as a valid application, an application on a form printed or made out in accordance with Article 16 must subsequently be forwarded or delivered direct to the competent agency; in these circumstances the date of the written telecommunication shall be taken as the day the application is lodged.

2. An application for a licence or certificate may be cancelled only by letter or by written telecommunication received by the competent agency, except in case of *force majeure* not later than 1 p.m. at the latest on the day the application is lodged.

3. Article 13 (2) is replaced by the following:

'2. No application for a licence or certificate shall be accepted unless a security has been furnished to the competent agency not later than 1 p.m. on the day the application is lodged.'

4. Article 13 (3) is repealed.

5. Article 14 is replaced by the following:

'*Article 14*

1. The day an application for a licence or certificate is lodged shall mean the day on which it is received by the competent agency, provided it is received not later than 1 p.m., regardless of whether the application is delivered direct to the competent agency or is forwarded to the competent agency by letter or written telecommunication.

2. An application for a licence or certificate received either on a non-working day of the competent agency, or on a working day of that agency but after 1 p.m., shall be deemed to have been lodged on the first working day of the agency following the day on which it was in fact received.

3. The time limits specified in this Regulation are in Belgian local time.'

6. Article 15 is repealed.

7. Article 30 is replaced by the following:

'*Article 30*

1. Fulfilment of a primary requirement shall be shown by production of evidence:

(a) for imports, of completion of customs formalities as referred to in Article 22 (1) (a) relating to the product concerned;

(b) for exports, of completion of customs formalities as referred to in Article 22 (1) (b) relating to the product concerned; furthermore:

(i) in the case of either an export from the customs territory of the Community, or supplies treated as exports in accordance with Article 5 of Regulation (EEC) No 2730/79, evidence shall be required that the product has, within 60 days from the day of completion of customs export formalities, unless *force majeure* has prevented it, as the case may be, either, in the case of supplies treated as exports, reached its destination, or, in other cases, left the customs territory of the Community; for the purposes of this Regulation deliveries of any products intended solely for consumption on board drilling or extraction platforms, including work points providing support services for such operations, situated within the area of the European continental shelf, or within the area of the continental shelf of the non-European part of the Community, but beyond a three-mile zone starting from the base line used to determine the width of a Member State's territorial sea, shall be deemed to have left the customs territory of the Community;

(ii) in cases where products have been placed under the victualling warehouse procedure provided for in Article 26 of Regulation (EEC) No 2730/79, evidence shall be required that the product has, within 30 days of the day when customs formalities were completed and unless *force majeure* has prevented it, been placed in a victualling warehouse.

During the first stage and notwithstanding point (i), products covered by Article 259 of the Act of Accession of Spain and Portugal which are exported to Portugal from 1 March 1986 onwards shall be deemed to have left the customs territory of the Community, provided that, within 12 months of the day when customs formalities were completed, the relevant documents are submitted showing that the products have been released for consumption in Portugal. Evidence of release for consumption shall be provided in accordance with Article 20 (3) of Regulation (EEC) No 2730/79.

2. Where products are placed under one of the procedures provided for in Articles 4 or 5 of Regulation (EEC) No 565/80, the primary requirement shall be deemed to be fulfilled by the production of evidence that the customs formalitites for so placing the products have been completed; however, the security thereby released shall be renewed in accordance with Article 42 of this Regulation where that Article so requires.'

8. Article 31 (2) (a) is replaced by the following:

'(a) shall be left to the choice of the Member State concerned where the following operations take place within that Member State:

(i) the licence or certificate is issued, and

(ii) the customs formalitities listed in Article 22 (1) (b) are completed, and

(iii) the product either:

— leaves the customs territory of the Community; for the purposes of this Regulation deliveries of any products intended solely for consumption on board drilling or extraction platforms, including workpoints providing support services for such operations, situated within the area of the European continental shelf, or within the area of the continental shelf of the non-European part of the Community, but beyond a three-mile zone starting from the base line used to determine the width of a Member State's territorial sea, shall be deemed to have left the customs territory of the Community; or

— is delivered for one of the purposes listed in Article 5 of Regulation (EEC) No 2730/79;

or,

— is placed in a victualling warehouse in accordance with Article 26 of Regulation (EEC) No 2730/79.'

9. The first subparagraph of Article 31 (3) is replaced by the following:

'3. Where, on completion of cutoms export formalities as referred to in the first indent of Article 22 (1) (b), a product is placed under one of the procedures 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 customs territory of the Community, the control copy required under paragraph 2 (b) shall be sent through official channels to the issuing agency. One of the following endrsement shall be entred in the section "Control as to use and/or destination":

— Salida del territorio aduanero de la Comunidad bajo el régimen de tránsito comunitario simplificado por ferrocarril o en contenedores grandes

— Udgang fra Fællesskabets toldområde i henhold til ordningen for den forenklede procedure for fællesskabsforsendelse med jernbane eller store containere

— Ausgang aus dem Zollgebiet der Gemeinschaft im Rahmen des vereinfachten gemeinschaftlichen Versandverfahrens mit der Eisenbahn oder in Großbehältern

— Έξοδος από το τελωνειακό έδαφος της Κοινότητας υπό το απλοποιημένο καθεστώς της κοινοτικής διαμετακόμισης με σιδηρόδρομο ή μεγάλα εμπορευματοκιβώτια

— Exit from the customs territory of the Community under the simplified Community transit procedure for carriage by rail or large containers

— Sortie du territoire douanier de la Communauté sous le régime du transit communautaire simplifié par fer ou par grands conteneurs

— Uscita dal territorio doganale della Comunità in regime di transito comunitario semplificato per ferrovia o grandi contenitori

— Vertrek uit het douanegebied van de Gemeenschap onder de regeling vereenvoudigd communautair douanevervoer per spoor of in grote containers

— Saída do território aduaneiro da Comunidade ao abrigo do regime do trânsito comunitário simplificado por caminho-de-ferro ou em grandes contenores.'

10. (a) Article 33 (1) is repealed.

(b) Article 33 (2) to (5) is replaced by the following:

'2. On application by the titular holder of the document Member States may release the security by instalments in proportion to the quantities of products in respect of which the evidence referred to in Article 30 has been produced, provided that evidence has been produced that a quantity equal to at least 5 % of the quantity indicated in the licence or certificate has been imported or exported.

3. Subject to application of the provisions of Article 36, 37 or 43 where the obligaion to import or export has not been met, the security shall be forfeited in an amount equal to the difference between:

(a) 95 % of the quantity indicated in the licence or certificate, and

(b) the quantity actually imported or exported.

However, if the quantity imported or exported amounts to less than 5 % of the quantity indicated in the licence or certificate, the whole of the security shall be forfeited.

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

4. (a) The evidence referred to in Article 30 must be produced within six months following expiry of the licence or certificate expired unless *force majeure* prevented it.

(b) However, where this evidence is produced between six and 24 months of the day on which the licence or certificate expired, a proportion of the sum forfeited shall be retained and the rest repaid.

The sum to be retained in respect of the quantities for which evidence has not been produced within the time limit laid down under (a) shall be 15 % of the amount which would have been definitively forfeited if the products had not been imported or exported; where, for a given product, there were licences or certificates with different rates of security, the lowest rate applicable for the import or export operation shall be used to calculate the amount to be retained.

If the total amount that would be retained is 5 ECU or less, the full amount shall be repaid.

5. Where it is stipulated that an obligation shall be fulfilled by producing evidence that the product has reached a specified destination, that evidence shall be produced in accordance with Article 20 of Regulation (EEC) No 2730/79.

That evidence shall also be produced within six months of the expiry of the licence or certificate. However, where the documents required under Article 20 of Regulation (EEC) No 2730/79 cannot be submitted within the prescribed period although the exporter has acted with all due diligence to obtain them within that period, he may be granted an extension of time for the submission of those documents.'

11. The expression 'customs territory of the Community' shall replace the expression 'geographical territory of the Community' in the second subparagraph of Article 34 (11) and in Article 39 (3) (b).

12. Article 43 (5) is replaced by the following:

'5. Within 21 days of the closing date for submitting tenders except, in case of *force majeure,* the applicant shall inform the issuing agency by letter or by written telecommunication either:

(a) that he has himself been awarded a contract;

(b) that he has not been awarded a contract;

(c) that he has not submitted a tender; or

(d) that he is not in a position to know the outcome of the invitation to tender within the time limit specified for reasons which may not be ascribed to him.'

Article 2

The first indent of Article 7 (2) (a) of Regulation (EEC) No 548/86 is hereby replaced by the following:

'— as specified in Article 20 (3) of Regulation (EEC) No 2730/79 *mutatis mutandis*,'.

Article 3

This Regulation shall enter into force on 1 August 1987.

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

Done at Brussels, 15 July 1987.

For the Commission

Frans ANDRIESSEN

Vice-President