COMMISSION REGULATION (EEC) No 1053/88

of 21 April 1988

amending Regulation (EEC) No 1729/78 laying down detailed rules of application in respect of the production refund for sugar used in the chemical industry

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector (1), as last amended by Regulation (EEC) No 3993/87 (2), and in particular the fifth indent of Article 9 (6) thereof,

Whereas Article 4 (3) of Commission Regulation (EEC) No 1729/78 (3), as last amended by Regulation (EEC) No 3834/86 (4), provides that when one of the chemical products listed in the Annex to Council Regulation (EEC) No 1010/86 (5) is not obtained by virtue of its method of manufacture directly from the basic in question but from an intermediate product which is itself obtained from that basic product, the granting of the production refund cannot take place unless the verification covers all of the stages of the processing in order to ensure that the intermediate product as well as the said chemical product have been properly obtained from the basic product for which the production refund is requested;

Whereas this provision does not allow, particularly for verification reasons, the granting of production refunds when the intermediate product is obtained from a basic product in one Member State and is utilized for the manufacture of one of the chemical products listed in the Annex to Regulation (EEC) No 1010/86 in another Member State; whereas, conversely, the same intermediate products obtained from starch products can benefit directly from the production refunds when they are utilized for the manufacture of identical chemical products which are listed in the Annex to Council Regulation (EEC) No 1009/86 (6); whereas this situation is likely to create discrimination to the disadvantage of products in the sugar sector; whereas in order to avoid this situation it is appropriate to provide that, when properly defined intermediate products are on the one hand obtained in the Community directly from a basic product referred to in Regulation (EEC) No 1010/86 with the exception of any product covered by another production refund system and on the other hand are used for the manufacture of a chemical product listed in the Annex to that Regulation, a production refund may be granted to those intermediate products takes place in a Member State other than that in which they were manufactured; whereas, with this in view, it is necessary to provide on the one hand that the production refund should be granted for the basic product which went into the manufacture of the quantity of the intermediate product used as indicated above and on the other that the production refund should be determined by making use of the same yield coefficients as have been established for the calculation of the export refunds for the same intermediate products;

Whereas the application of the production refund arrangements to the intermediate products in question requires that those products should be defined and that an appropriate verification system should be implemented in particular by way of prior approval both at the stage of the manufacture of the intermediate product and at that of processing into the final chemical product, to ensure in particular that the basic product as defined in Regulation (EEC) No 1010/86 is indeed used for the manufacture of the chemical product provided for in that Regulation and that any duplicate payment of the production refund is avoided;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee on Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1729/78 is hereby amended as follows:

1. The following Article 1a is added:

'*Article 1a*

For the purposes of this Regulation, the intermediate products set out in the Annex which, on the one hand, are obtained in the Community directly from the basis products defined in Article 1 (1) of Regulation (EEC) No 1010/86, with the exception of any product covered by another production refund system, and which, on the other hand, are used for the manufacture of chemical products as set out in the Annex to Regulation (EEC) No 1010/86 shall be treated in the same way as those basic products.'

(1) OJ No L 177, 1. 7. 1981, p. 4.
(2) OJ No L 377, 31. 12. 1987, p. 24.
(3) OJ No L 201, 25. 7. 1978, p. 26.
(4) OJ No L 356, 17. 12. 1986, p. 13.
(5) OJ No L 94, 9. 4. 1986, p. 9.
(6) OJ No L 94, 9. 4. 1986, p. 6.

2. The following second and third subparagraphs are added to Article 2 (1):

'For the purposes of paragraph 2a:

(a) the issue of the document referred to under (b) of the first subparagraph of the said paragraph 2a shall be made conditional upon the granting of prior approval to the manufacturer of the intermediate product by the Member State on the territory of which that product must be manufactured;

(b) entitlement to the production refund shall be made conditional upon the granting ofprior approval to the processor by the Member State on the territory of which the said procesoor must process the intermediate product into a chemical product referred to in the Annex to Regulation (EEC) No 1010/86.

The approvals referred to in the second subparagraph shall be granted by the Member State in question if the applicant gives the latter every oppoortunity conduct the necessary verifications.'

3. The following paragraph 2a is inserted in Article 2:

'2a. When the application for a production refund made by the processor concerns an intermediate product:

(a) it must specify, in addition to the information required under paragraph 2:

— the nature and the quantity of the basic product which went into the manufacture of the intermediate product,

— the name or the corporate name and the address of the manufacturer of the intermediate product,

— the place of manufacture of the intermediate product;

and

(b) it must be accompanied, without prejudice to the second subparagraph of Article 2 (1):

— by an original document, issued to the manufacturer of the intermediate product, at his request, by the competent authority of the Member State on the territory of which the manufacture of the intermediate product took place, certifying that the intermediate product has been manufacturer directly and exclusively, within the meaning of Article 1a, from one of the basic products defined in Article 1 (1) of Regulation (EEC) No 1010/86,

— or by a declaration from the processor in which he undertakes to provide, before the expiry of the period of validity of the refund certificate applied for, the document referred to in the first indent.

The document referred to under (b) of the first subparagraph must show at least:

(a) the nature and the quantity of the basic product which went into the manufacture of the intermediate product in question;

(b) the nature and the quantity of the intermediate product in question;

(c) the name or the corporate name and the address of the manufacturer of the intermediate product;

(d) the place of manufacture of the intermediate product.

For the issue of the document referred to under (b) of the first subparagraph, the Member State may provide for conditions supplementary to those referred to under the second subparagraph of Article 2 (1).'

4. The following second subparagraph is added to Article 2 (5):

'When an intermediate product is concerned, the security per 100 kilograms of product shall be equal to the amount referred to in the first subparagraph multiplied by the coefficient specified in the Annex for the intermediate product in question, the coefficient being adjusted as the case may be according to the dry matter content by the application *mutatis mutandis* of the corresponding formula to the coefficient provided for in the Annex.'

5. Article 2 (6) is replaced by the following:

'(6) Within the meaning of Article 20 of Regulation (EEC) No 2220/85 (*), the primary requirement to be satisfied for the release of the security referred to in paragraph 5 shall be:

(a) in the case of an intermediate product, that the document referred to under (b) of the first subparagraph of Article 2a has been submitted by the processor and that the quantity of intermediate product stated in the application has been processed into one of the chemical products listed in the Annex to Regulation (EEC) No 1010/86 within the period of validity of the refund certificate in question,

or

(b) in all other cases, that the quantity of basic product stated in the application has been processed into one of the chemical products listed in the Annex to Regulation (EEC) No 1010/86 within the period of validity of the refund certificate in question.

However, with regard to the primary requirement for processing, if the person concerned has processed within the period of validity of the refund certificate at least 95 % of the quantity of the basic product or of the quantity of the intermediate product indicated in the application, he shall be deemed to have complied with the primary requirement indicated under (a) of (b) of the first subparagraph.

(*) OJ No L 205, 3. 8. 1985, p. 5.'

6. The following second subparagraph is added to Article 3 (2):

'When the certificate referred to in paragraph 1 concerns an intermediate product, it must indicate, in addition to the information required under paragraph 3 (a), (b), (d), (e), and (f), the details contained in the application for the certificate referred to in Article 2 (2a);'.

7. Article 4 (1) is replaced by the following :

'1. The issue of a refund certificate shall give entitlement to payment of the prodsuction refund indicated in the certificate :

(a) in the case of an intermediate product, when the document referred to under (b) of the first suparagraph of Article 2a is submitted within the prescribed period and after the intermediate product has been processed in accordance with the conditions laid down in the refund certificate,

(b) in all other cases, after the basic product has been processed in accordance with the conditions laid down in the refund certificate.'

8. Article 4 (3) is deleted.

9. The following second paragraph is added to Article 10 :

'The amount of the production refund granted per 100 kilograms of intermediate product used shall be equal to the production refund applicable per 100 kilograms of white sugar on the day on which the application was lodged multiplied by the coefficient fixed in the Annex for the intermediate product in question, the coefficient being adjusted as the case may be according to the dry matter content by the application of the corresponding formula to the coefficient provided for in the Annex.'

10. The Annex hereto is added.

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 with effect from the 1988/89 marketing year.

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

Done at Brussels, 21 April 1988.

For the Commission

Frans ANDRIESSEN

Vice-President

ANNEX

'ANNEX

CN code	Description	Coefficient
1	2	3
ex 1702 90 71	Caramel containing 50 % or more by weight of sucrose in the dry matter	1,00 (1)
ex 1702 90 90	Invert sugar	1,00 (1)
2905	Acyclic alcohols and their halogenated, sulphonated, nitrated or nitrosated derivatives :	
	– Other polyhydric alcohols :	
2905 43 00	– – Mannitol	1,06
2950 44	– – D-Glucitol (sorbitol)	
	– – – In aqueous solution :	
2905 44 11	– – – – Containing 2 % or less by weight of mannitol calculated on the D-glucitol content	0,74 (2)
2905 44 19	– – – – Other	0,74 (2)
	– – – – Other :	
2905 44 91	– – – – Containing 2 % or less by weight of mannitol calculated on the D-glucitol content	1,06
2905 44 99	– – – – Other	1,06
3823 60	– Sorbitol other than that of subheading 2905 44 :	
	– – In aqueous solution :	
3823 60 11	– – – Containing 2 % or less by weight of mannitol, calculated on the D-glucitol content	0,74 (2)
3823 60 19	– – – Other	0,74 (2)
	– – Other :	
3823 60 91	– – – Containing 2 % or less by weight of mannitol, calculated on the D-glucitol content	1,06
3823 60 99	– – – Other	1,06

(1) The production refunds determined according to this coefficient shall be understood to be calculated for an invert sugar or for a caramel having respectively a dry matter content by weight of 100 %.

For invert sugars or caramels respectively with a different dry matter content, the refunds shall be calculated per 100 kilograms of intermediate product by applying the following formula :

$$(a) \times 1{,}00 \times (b)$$

(2) The production refunds determined according to this coefficient shall be understood to be calculated for an aqueous solution of D-glucitol (sorbitol) with a dry matter content by weight of 70 %.

For aqueous solutions of D-glucitol (sorbitol) with a different dry matter content, the refunds shall be calculated per 100 kilograms of intermediate product by applying the following formula :

$$(a) \times 0{,}74 \frac{(b)}{0{,}70}$$

Where :

(a) = white sugar production refund in question ;

(b) = dry matter content of the product, in % by weight.'