COMMISSION REGULATION (EEC) No 2030/90

of 17 July 1990

laying down detailed rules for the application of Council Regulation (EEC) No 386/90 as regards physical checks carried out at the time of export of agricultural products attracting refunds or other amounts

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 386/90 of 12 February 1990 on the monitoring carried out at the time of export of agricultural products receiving refunds or other amounts (1), and in particular Articles 6 and 7 (1) thereof,

Whereas, having regard to the importance of agricultural refunds within the Community budget and the shortcoming detected as regards physical checks on products for which refunds of other amounts are granted at the time of export, Regulation (EEC) No 386/90 establishes Community framework arrangements designed to increase the number of physical checks in order to ensure that the operations in question have actually been carried out and executed properly; whereas, however, those minimum requirements established at Community level do not affect the responsability of the national authorities for carrying out physical checks on the agriculturel products concerned so as to avoid undue payments as far as possible by taking into account all the concrete circumstances of the export operations, and in particular the quantities of products and the level of the refund involved, the risk of fraud attaching thereto and the reliability of the exporter;

Whereas the detailed rules for the application of Regulation (EEC) No 386/90 should include transitional measures concerning in particular the minimum rate of 5 % of export declarations which should in principle be subjected to physical checks; whereas, in view of the difficulties of some Member States in achieving this rate, there should be a transitional period up to the end of 1991 during which the above-mentioned minimum rate is to be attained progressively;

Whereas, in these circumstances, those detailed rules should be confined to the specifications strictly necessary for the Community system to be applied rapidly, subject to subsequent additions in the light of experience gained, in particular as regards the quality aspects of the physical checks in question and the fixing of higher scrutiny rates provided for in the second subparagraph of Article 3 (2) of Regulation (EEC) No 386/90 for specific cases and periods, on the basis of objective findings of an increased risk or fraud;

Whereas, it should be specified at this stage which operations are subject to the monitoring rules in question and which may be exempted, having regard, on the one hand, to the monitoring systems already in existence for such operations and, on the other hand, to the limited quantity of certain exports; whereas, in certain cases, the physical checks carried out prior to export may be taken into account where they appear equivalent and the identity of the products is ensured; whereas in the interests of efficiency and consistency, it is basically a matter of synchronizing the arrangements provided for in Regulation (EEC) No 386/90 with the checks already in existence under the following provisions:

— Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community food. aid (2),

— Commission Regulation (EEC) No 2823/87 of 18 September 1987 on the documents to be used for the purpose of implementing Community measures entailing verification of the use and/or destiantion of goods (3),

— Commission Regulation (EEC) No 3665/87 of 27 November laying down common detailed rules for the application of the system of export refunds on agricultural products (4), as last amended by Regulation (EEC) No 1615/90 (5);

Whereas it should be stipulated that where an export declaration covers several agricultural products the particulars relating to each product are to be regarded as a separate declaration for the purposes of determining the representative selection referred to in Article 3 (1) and (2) of Regulation (EEC) No 386/90; whereas special provisions must be adopted for goods exported under the simplified procedures referred to in Articles 17, 18 and 19 of Council Directive 81/177/EEC of 24 February 1981 on the harmonization of procedures for the export of Community goods (6), as amended by Regulation (EEC) No 1854/89 (7);

Whereas it may prove necessary to aggregate the data to be used for determining the basis for calculation of the minimum rate of checks to be carried out where one or more customs offices do not archieve, individually, a significant number of export declarations to be taken into consideration;

(1) OJ No L 42, 16. 2. 1990, p. 6.

(2) OJ No L 204, 25. 7. 1987, p. 1.
(3) OJ No L 270, 23. 9. 1987, p. 1.
(4) OJ No L 351, 14. 12. 1987, p. 1.
(5) OJ No L 152, 16. 6. 1990, p. 33.
(6) OJ No L 83, 30. 3. 1981, p. 40.
(7) OJ No L 186, 30. 6. 1989, p. 1.

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

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation lays down rules for the implementation of the physical checks referred to in Article 2 (a) of Regulation (EEC) No 386/90.

2. The provisions of Regulation (EEC) No 386/90 and of this Regulation relating to physical checks:

(a) shall apply to exports to third countries and save where paragraph 3 is applied, to similar operations as referred to in Articles 34 and 42 of Regulation (EEC) No 3665/87 in respect of which refunds, monetary compensatory amounts or accession compensatory amounts due are applied for, including those in respect of which the negative monetary compensatory amount is equal to or greater than the refund;

(b) notwithstanding other Community provisions, shall not apply, however, to exports involving Community aid as referred to in Regulation (EEC) No 2200/87.

3. Without prejudice to the control measures referred to in Articles 35 (4) and 42 (4) of Regulation (EEC) No 3665/87, Member States shall be authorized not to apply the physical checks to the deliveries referred to in Articles 34 and 42 of Regulation (EEC) No 3665/87 in the case of exporters qualifying for the procedures referred to in Article 35 of Regulation (EEC) No 3665/87 and where applicable, Articles 17 and 19 of Regulation (EEC) No 2823/87.

4. When calculating the minimum rate of checks to be carried out in accordance with Article 3 of Regulation (EEC) No 386/90 and the provisions of this Regulation, Member States shall be authorized not to take into account export declarations relating to export operations involving quantities not exceeding 5 000 kg in the case of cereals and rice or quantities not exceeding 500 kg in the case of other products.

5. Member States which make use of such authorization as provided for in paragraphs 3 and 4 shall adopt the necessary provisions to prevent deflection and abuses; they shall inform the Commission as soon as possible of measures adopted in this respect.

Article 2

1. With a view to determining the basis for calculating the percentage for the checks provided for in Article 2 (a) of Regulation (EEC) No 386/90, for the purposes of the first indent of Article 3 (2) of Regulation (EEC) No 386/90 'customs office' means all offices competent to accept an export declaration for the products in question.

2. However, Member States shall be authorized to aggregate in specific cases the data concerning several customs offices where the number of export operations and the quantities involved dealt with by one or each of them does not attain a significant level for a given calendar year, either by product sector or for all product sectors taken together.

Member States which make use of such authorization shall inform the Commission thereof as soon as possible and provide it with data on actual exports dealt with by the customs offices concerned.

3. Member States shall take the necessary measures so that it may be shown, where appropriate, that the customs offices have carried out the physical checks referred to in Article 3 (1) and (2) of Regulation (EEC) No 386/90.

Article 3

For the purposes of the third indent of Article 3 (2) of Regulation (EEC) No 386/90:

(a) products covered by the same market organization shall be considered as coming under one product sector;

(b) however,

— products covered by Council Regulations (EEC) No 2727/75 [1] (cereals) and (EEC) No 1418/76 [2] (rice) shall constitute one product sector;

— products exported in the form of processed goods listed in Annexes B and C to Council Regulation (EEC) No 3035/80 [3] shall constitute one product sector.

Article 4

1. For the purposes of determining the representative selection required under Article 3 (1) (b) of Regulation (EEC) No 386/90:

(a) where export declarations relate to several different codes of the refund nomenclature, the particulars for each code shall be deemed to the separate declarations;

(b) in the case of the simplified procedures referred to in Articles 17, 18 and 19 of Directive 81/177/EEC, each consignment of goods covered by a separate code of that nomenclature shall be deemed to be a separate export declaration.

2. In the case of products without a refund nomenclature code, and in particular those referred to in the second indent of Article 3 (b), paragraph 1 shall apply, the tariff codes of the combined nomenclature of goods being used as a basis. However, the Member States may lay down a more detailed distinction depending on the composition of the goods.

[1] OJ No L 281, 1. 11. 1975, p. 1.
[2] OJ No L 166, 25. 6. 1976, p. 1.
[3] OJ No L 323, 29. 11. 1980, p. 27.

Article 5

1. The physical checks shall be carried out:

(a) during the period between the lodging of the export declaration and authorization to export the goods; and

(b) under the conditions laid down in Article 3 of Regulation (EEC) No 3665/87.

2. However:

(a) in the case of authorization as referred to in Article 18 (1) of Directive 81/177/EEC the physical checks shall be carried out in the period between the lodging of the commercial and administrative documents referred to in paragraph 2 of that Article and the authorization to export, depending on the particulars in the commercial or administrative document accompanying the export declaration;

(b) in the case of export operations authorized pursuant to Article 19 (1) of Directive 81/177/EEC the physical checks shall be carried out before the authorization to export is granted on the basis of the particulars contained in the records referred to in paragraph 4 of that Article or, where applicable, in the formalities referred to in paragraph 7 of that Article.

3. In the case of the simplified procedure referred to in Article 19 (3) of Directive 81/177/EEC the physical checks shall be carried out after the particulars of the goods have been entered in the records or by a similar formality.

When authorization to make use of the procedure provided for in the first subparagraph is granted, the competent authorities shall lay down the detailed rules required for carrying out such physical checks.

Article 6

1. In cases where the refund is paid in advance in accordance with Articles 24 to 29 of Regulation (EEC) No 3665/87, the physical checks carried out at the time of or during storage and, where appropriate, at the time of processing may be taken into account for calculating the minimum rate of checks referred to in Article 3 of Regulation (EEC) No 386/90 provided the following conditions are fulfilled:

(a) the physical checks carried out prior to the completion of the customs export formalities meet the same criteria of intensity as those to be carried out normally during the periods referred to in Article 5, and.

(b) the products and goods which have been the subject of previous physical checks are identical to those which are the subject of the export declaration.

2. In the case of analyses and other physical checks carried out prior to the completion of the customs export formalities under Community or national provisions governing the customs arrangements in question or manufacturing processes which the products and goods have undergone, paragraph 1 shall apply *mutatis mutandis* as regards calculation of the minimum rate of physical checks.

Article 7

1. The 5 % scrutiny rate referred to in Article 3 (1) (b) of Regulation (EEC) No 386/90:

(a) shall not apply for the period from the entry into force of Regulation (EEC) No 386/90 until 30 September 1990;

(b) shall be reduced to 3 % for the rest of 1990 and to 4 % in 1991.

2. The reduced rates referred to in paragraph 1 (b) shall apply to all sectors taken together for each customs office, or for all the customs offices in one region where Article 2 (2) is applied.

Article 8

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

It shall apply from 1 October 1990.

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

Done at Brussels, 17 July 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission