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COMMISSION REGULATION (EEC) No 2825/93

of 15 October 1993

laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards the fixing and granting of adjusted refunds in respect of cereals exported in the form of certain spirit drinks

(OJ L 258, 16.10.1993, p. 6)

Corrected by:

►**C1** Corrigendum, OJ L 321, 23.12.1993, p. 36 (2825/93)

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laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards the fixing and granting of adjusted refunds in respect of cereals exported in the form of certain spirit drinks

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals ([1]), as amended by Regulation (EEC) No 2193/93 ([2]), and in particular Article 13 (5) thereof,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy ([3]), and in particular Article 6 (2) thereof,

Whereas Article 13 (5) of Regulation (EEC) No 1766/92 provides that, in so far as it is necessary to take account of the particular features of the production of certain spirituous beverages obtained from cereals, the criteria for granting export refunds may be adapted to this particular situation; whereas it would appear necessary to provide for such adjustment for certain spirit drinks where, on the one hand, the price of cereals at the moment of export is not linked to the price of cereals at the moment of production and, on the other hand, the final product derives from a mixture of numerous products, so that it has become impossible to monitor the identity of the cereals incorporated in the final product for exportation, all the more so since those spirit drinks are also subject to compulsory ageing of at least three years;

Whereas difficulties of this nature have been encountered in particular in respect of Scotch whisky, Irish whiskey and Spanish whisky;

Whereas the usual system of refunds should, as far as possible, be applied on a similar basis; whereas a refund should therefore be paid for cereals meeting the conditions provided for in Article 9 (2) of the Treaty used pro rata in terms of the quantities of spirit drinks exported; whereas, to this end, the quantities of such distilled cereals should be multiplied by an overall, flat-rate coefficient calculated on the basis of national statistics supplied by the Member States concerned; whereas use of the ratio between the total quantities of spirit drinks concerned which have been exported and the total quantities which have been sold seems to afford a fair and simple basis; whereas it is necessary to define what is meant by 'total quantities exported' and 'total quantities marketed'; whereas, for the purpose of determining the quantities of cereals distilled and the coefficient, the quantities subject to inward processing arrangements should be excluded;

Whereas it is necessary to make provision for the coefficient to be adjusted in particular to guard against the possibility that payments of the refunds might serve to increase stocks abnormally;

Whereas Article 13 (2) of Regulation (EEC) No 1766/92 provides for the possibility of differentiating the refund according to destination; whereas, therefore, objective criteria should be provided for which would lead to the abolition of the refund for certain destinations;

Whereas the day determining the applicable refund rate should be fixed; whereas that day should be linked in the first instance to the time at which the cereals are placed under control and, for the quantities

([1]) OJ No L 181, 1. 7. 1992, p. 21.
([2]) OJ No L 196, 5. 8. 1993, p. 22.
([3]) OJ No L 387, 31. 12. 1992, p. 1.

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distilled subsequently, to each fiscal distillation period; whereas before the refund is paid proof must be furnished in the form of a distillation declaration that the cereals have been distilled; whereas such a declaration must contain the information necessary for the calculation of the refunds; whereas the first day of each fiscal distillation period may also be the operative event for the agricultural conversion rate pursuant to Article 6 of Regulation (EEC) No 3813/92;

Whereas it is necessary for the purposes of this Regulation to record that the products have left the Community and in certain cases to identify their destination as well; whereas it is thus necessary to employ the definition of exportation set out in Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ([1]) and to use the evidence provided for in Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products ([2]), as last amended by Regulation (EEC) No 1708/93 ([3]);

Whereas, in order to establish the coefficient, it should be compulsory to provide proof that the quantities of spirit drinks have been exported; whereas it is appropriate to provide that Article 2 of Council Regulation (EEC) No 754/76 of 25 March 1976 on the customs treatment applicable to goods returned to the customs territory of the Community ([4]), as last amended by Regulation (EEC) No 1147/86 ([5]), should apply to goods returning to Community territory if the special conditions are met;

Whereas the Member States should be required to pass on the necessary information to the Commission;

Whereas, in order to guarantee continuity in the system of granting export refunds for the products concerned, this Regulation should apply from 1 July 1993, with the exception of the new provisions relating to declaration and controls and certain rates and coefficients introduced by this Regulation;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation lays down detailed rules for fixing and granting export refunds for cereals exported in the form of spirit drinks as referred to in Article 13 (5) of Regulation (EEC) No 1766/92 and for which a compulsory ageing period of at least three years is part of the manufacturing process.

2. Save as otherwise provided in Article 6 (1), Council Regulation (EEC) No 3035/80 ([6]) shall not apply to the spirit drinks referred to in paragraph 1.

Article 2

The refunds referred to in Article 1 may be granted for cereals meeting the conditions laid down in Article 9 (2) of the Treaty and used in the production of the spirit drinks falling within CN codes 2208 30 91 and 2208 30 99 manufactured in accordance with Council Regulation (EEC) No 1576/89 ([7]).

([1]) OJ No L 302, 19. 10. 1992, p. 1.
([2]) OJ No L 351, 14. 12. 1987, p. 1.
([3]) OJ No L 159, 1. 7. 1993, p. 77.
([4]) OJ No L 89, 2. 4. 1976, p. 1.
([5]) OJ No L 105, 22. 4. 1986, p. 1.
([6]) OJ No L 323, 29. 11. 1980, p. 27.
([7]) OJ No L 160, 12. 6. 1989, p. 1.

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Article 3

For the purposes of this Regulation:

(a) 'given distillation period' means a period corresponding to a distillation period agreed between the beneficiary and the customs authorities or other competent authorities for the purposes of checks on excise duty (fiscal period);

(b) 'total quantities exported' means the quantities of spirit drinks fulfilling the terms of Article 9 (2) of the Treaty and exported to a destination for which the refund applies. The evidence to be furnished shall be that specified in Article 13 of this Regulation;

(c) Total quantities marketed' means the quantities of spirit drinks fulfilling the terms of Articled 9 (2) of the Treaty which have been finally dispatched from production or storage facilities with a view to their sale for human consumption;

(d) 'placed under control' means the placing under a customs control procedure, or under an administrative procedure offering equivalent assurances, of cereals intended for the manufacture of the spirit drinks referred to in Article 2.

Article 4

1. The quantities of cereals eligible for the refund shall be the quantities placed under control and distilled by those entitled to the refund during a given distillation period, weighted by a coefficient to be fixed annually for each Member State concerned and applicable to all eligible parties concerned; the coefficient shall express the average ratio between the total quantities exported and the total quantities marketed of the spirit drinks concerned, on the basis of the trend noted in those quantities during the number of years corresponding to the average ageing period of the spirit drink in question.

For the purpose of determining the quantities of cereals distilled and the coefficient, quantities which have been subject to inward processing arrangements shall be excluded.

2. When the coefficient is calculated, account shall also be taken of variations in the stocks of one of the spirit drinks in question.

3. The coefficient may differ according to the cereal used.

4. The competent bodies shall at regular intervals check on the volume actually exported and on the volume of stocks.

Article 5

The coefficient referred to in Article 4 (1) shall be fixed before 1 July each year.

It shall apply from 1 July until 30 June of the following year.

The coefficient shall be fixed in accordance with information supplied by the Member States on the period 1 January to 31 December of the years preceding the year of fixing.

Article 6

1. The rate of the refund applicable shall be that fixed in accordance with Article 4 of Regulation (EEC) No 3035/80.

2. The rate of the refund and the agricultural conversion rate shall be those applicable on the day on which the cereals are placed under control.

However, as regards the quantities distilled in each of the fiscal distillation periods following that in which the placing under control occurred, those rates shall be those valid on the first day of each fiscal distillation period concerned.

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Article 7

1. Where the situation on the world market or the specific requirements of certain markets so dictate, the refund shall be abolished for certain destinations.

2. If the refund is abolished pursuant to the first paragraph, or if it is reintroduced, the coefficient referred to in Article 4 (1) shall be reduced or increased, as appropriate, in proportion to the ratio between the quantities exported the previous year to the destinations for which the refund is abolished or reintroduced and the total quantities exported that year.

Article 8

For the purposes of this Regulation, cereals may be replaced by malt.

In that case the coefficient for calculating the barley equivalent of malt shall be 1,30.

However, where the malt that is placed under control is green malt with a moisture content of between 43 and 47 %, the coefficient for calculating the equivalent weight of malt with a moisture content of 7 % shall be 0,57.

Article 9

1. Only distillers established in the Community shall be entitled to the refund.

2. The distiller shall communicate to the competent authorities prior to the commencement of each fiscal distillation period a declaration including all the particulars necessary for determining the refund, in particular:

(a) a description of the cereals or malt in accordance with the nomenclature of the common customs tariff, where necessary broken down by homogeneous lot;

(b) the net weight of the products and the moisture content, broken down for each lot listed under (a);

(c) confirmation that the cereals fulfil the conditions laid down in Article 9 (2) of the Treaty;

(d) the place of storage and distillation.

During the fiscal distillation period the declaration may be updated as the distillation process proceeds in order to take account of the larger or smaller quantities actually being distilled.

3. After each fiscal distillation period the distiller shall lodge with the competent authorities a declaration, hereinafter called a ‘distillation declaration’, in which he confirms that he has distilled, during the distillation period concerned, the cereals set out in the declaration referred to in paragraph 2, in order to produce one of the spirit drinks in question; he shall indicate the quantity of distilled products obtained. This declaration shall be certified by the authorities carrying out the placing under control.

4. The refund shall be paid once proof has been furnished that the cereals have been placed under control and distilled.

5. The weight of cereals to be taken into consideration for calculation of the payment shall be the net weight, if the moisture content is not more than 15 %. If the moisture content of the cereals used is more than 15 % but not more than 16 %, the weight to be taken into consideration shall be the net weight reduced by 1 %. If the moisture content of the cereals used is more than 16 % but not more than 17 %, the reduction shall be 2 %. If the moisture content of the cereals used is more than 17 % the reduction shall be two percentage points for each percentage point of moisture above 15 %.

The weight of malt other than green malt, as referred to in Article 8, which is to be taken into consideration for calculation of the payment shall be the net weight, if the moisture is not more than 7 %. If the

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moisture content of the malt used is more than 7 % but not more than 8 %, the weight to be taken into consideration shall be the net weight reduced by 1 %. If the moisture content of the malt used is more than 8 % the reduction shall be two percentage points for each percentage point of moisture above 7 %.

The Community reference method for determining the moisture content of cereals and malt intended for production of the spirit drinks referred to in this Regulation shall be that shown in Annex II to Commission Regulation 1908/84 ([1]).

Article 10

Member States shall take the measures necessary to verify the accuracy of the declarations referred to in Article 9 and those relating to the physical control of the cereals, the distillation process and the use of the distilled product obtained.

Article 11

1. The by-products of processing shall be exempt from control if it has been established that they do not exceed the quantity of by-products normally obtained.

2. No refund shall be granted where the cereals or malt are not of sound and fair merchantable quality.

Article 12

1. The refund shall be paid by the Member State in which the declarations referred to in Article 9 are accepted.

2. The refund shall be paid only on written application by the trader. Member States may prescribe a special form to be used for this purpose.

3. Except in cases of *force majeure* the documents required for the granting of the refund must be lodged within 12 months of the day on which the authorities carrying out the placing under control accepted the distillation declaration, otherwise entitlement to the refund shall be lost.

Article 13

1. For the purposes of Article 4, proof shall be provided that the quantities of spirit drinks which fulfil the conditions laid down in Article 9 (2) of the Treaty have been exported.

2. The proof applicable shall be that provided for in Regulation (EEC) No 3665/87.

3. For the purposes of this Regulation, ‘export’ means:

— export within the meaning of Articles 161 and 162 of Regulation (EEC) No 2913/92,

and

— deliveries to destinations covered by Article 34 of Regulation (EEC) No 3665/87.

4. Products having been placed in a victualling warehouse approved pursuant to Article 38 of Regulation (EEC) No 3665/87 shall also be considered to have been exported. When products have been placed in such warehouses, Articles 38 to 41 of the abovementioned Regulation shall apply *mutatis mutandis*.

Article 14

1. Spirit drinks shall be deemed to have been exported on the day on which customs export formalities were completed.

([1]) OJ No L 178, 5. 7. 1984, p. 22.

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2. The declaration submitted when the customs export formalities are completed must contain:

(a) a description of the spirit drinks concerned, in accordance with the combined nomenclature;

(b) the quantities, expressed in litres of pure alcohol, of spirit drinks being exported;

(c) a description of, or other reference to, the composition of the spirit drinks such that the type of cereals used can be determined;

(d) the Member State of production.

3. For the purposes of paragraph 2 (c), if the spirit drink is obtained from different types of cereals and it results from a subsequent blending it shall be sufficient to state this in the declaration.

Article 15

1. For a quantity of a spirit drink to be deemed to have been exported, the proof referred to in Article 13 must be submitted to the designated authorities within six months of the date on which the customs export formalities are completed.

2. If proof has not been produced within the prescribed time limit despite the exporter's best endeavours to obtain it within that time limit, extensions to the time limit, not exceeding six months altogether, may be granted.

However, if proof of export is provided outside the time limit which would permit the export operation to be included with exports performed during the same calendar year, the export operation in question shall be aggregated with exports performed during the following calendar year.

Article 16

1. Where the Community transit procedure applies, the drinks referred to in Article 13 (1) shall be placed under the Community external transit procedure.

2. For the purposes of Regulation (EEC) No 754/76, the spirit drinks referred to in Article 13 (1) shall be deemed to be goods in respect of which the requisite customs export formalities for the granting of export refunds have been completed. Such drinks may not be placed in free circulation unless an amount corresponding to the export refund paid is reimbursed.

Article 17

Where Article 7 applies, proof must also be provided that the spirit drinks concerned have reached the destination for which the refund was fixed.

In that event, the proof of importation into a third country in respect of which the refund applies shall be the proof provided for in Articles 17 and 18 of Regulation (EEC) No 3665/87.

Article 18

1. The Member States concerned shall inform the Commission of the names and addresses of the bodies competent to apply this Regulation.

2. The Member States concerned shall provide the Commission with the following information before 16 July each year;

(a) the quantities of cereals and malt fulfilling the terms of Article 9 (2) of the Treaty and distilled in the period from 1 January to 31 December of the preceding year, broken down in accordance with the combined nomenclature;

(b) the quantities of cereals and malt, broken down in accordance with the combined nomenclature, which were the subject of inward processing arrangements during the same period;

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(c) the quantities of spirit drinks covered by Article 2, broken down in accordance with the categories given in Article 19, including both quantities exported and quantities marketed during the same period;

(d) the quantities of spirit drinks produced under inward processing arrangements and exported to third countries during the same period, broken down in accordance with the categories given in Article 19;

(e) the quantities of spirit drinks in store on 31 December of the preceding year and the quantities produced during that period.

3. The Member States concerned shall also provide the Commission with the information listed under (a) to (d) for each calendar quarter before 16 October, 16 January and 16 April, where available.

Article 19

For the purposes of Article 18:

(a) 'grain whisky' means whisky made from malt and cereals;

(b) 'malt whisky' means whisky made exclusively from malt;

(c) 'Irish whiskey, category A' means whiskey made from malt and cereals, with ►**C1** less than ◄ 30 % malt;

(d) 'Irish whiskey, category B' means whiskey made from barley and malt, with at least 30 % malt;

(e) the percentages of the various types of cereals used in the manufacture of the spirit drinks referred to in Article 14 (3) shall be determined on the basis of the total quantities of the various types of cereals used in manufacturing the spirit drinks referred to in Article 2.

Article 20

The provisions of Articles 1, 4 (1) and 10 of Commission Regulation (EEC) No 1842/81 ([1]) shall remain applicable between 1 July 1993 and the date of application of Articles 8, 9 (2), (3) and (5) and 10 of this Regulation.

Article 21

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

It shall apply with effect from 1 July 1993, with the exception of Articles 8, 9 (2), (3) and (5) and 10, which shall apply from the first fiscal distillation period after the entry into force of this Regulation.

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

([1]) OJ No L 183, 4. 7. 1981, p. 10.