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COMMISSION REGULATION (EC) No 1501/95

of 29 June 1995

laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals

(OJ L 147, 30.6.1995, p. 7)

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laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European 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 last amended by the Act of Accession of Austria, Finland and Sweden, and by Regulation (EC) No 3290/94 [2], and in particular Articles 13 (11) and 16 (2) thereof,

Whereas the export refunds, corrective amounts and export taxes on products covered by the common organization of the market in cereals must be fixed, as a special measure in the event of a disturbance on the market, in accordance with certain criteria enabling the difference between the quotations and prices for such products in the Community and those on the world market to be covered;

Whereas, given the disparity in the prices at which cereals are offered by the different exporting countries on the world market, account should be taken in particular of the different internal forwarding costs and the refund should be fixed bearing in mind the difference between the representative prices in the Community and the most favourable quotations and prices applying on the world market;

Whereas, in order to make it possible to export flour, groats, meal and malt, the factors to be taken into account when fixing the refund are, on the one hand, the prices of the basic cereals, the quantities needed to manufacture the products concerned and the value of the by-products and, on the other hand, the opportunities and conditions for the sale of the products on the world market;

Whereas it is a requirement of the system of corrective amounts provided for in the second subparagraph of Article 13 (8) of Regulation (EEC) No 1766/92 that they be capable of differentiation according to the destination of the products to be exported;

Whereas, with a view to the efficient administration of Community funds and to take account of the export possibilities for those products, provision should be made for the export refunds and taxes on the products listed in Article 1 (a) and (b) of Regulation (EEC) No 1766/92 to be fixed by invitation to tender covering a given quantity;

Whereas, in order to ensure equal treatment for all interested parties within the Community, invitations to tender must be organized in accordance with uniform principles; whereas, to that end, decisions opening invitations to tender should be published together with a notice of invitation to tender in the *Official Journal of the European Communities*;

Whereas tenders must contain the data needed to assess them and must be accompanied by certain formal undertakings;

Whereas a maximum export refund or minimum export tax should be fixed; whereas that procedure ensures that all the quantities concerned are allocated;

Whereas situations may arise on the market in which the economic aspects of the exports contemplated result in no further action being

[1] OJ No L 181, 1. 7. 1992, p. 21.
[2] OJ No L 349, 31. 12. 1994, p. 105.

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taken in respect of tenders received rather than in the fixing of an export refund or tax;

Whereas a tendering security should ensure that the quantities exported are so exported pursuant to the licence issued under the invitation to tender; whereas that obligation can be met only if tenders submitted are maintained; whereas the security must accordingly be forfeited where tenders are withdrawn;

Whereas detailed rules must be laid down to ensure that tenderers are notified of the outcome of the invitation to tender and that the necessary licences are issued for the export of the quantities allocated;

Whereas, for the purposes of fixing export refunds on the products listed in Article 1 (1) of Regulation (EEC) No 1766/92 and in order to avoid the need to introduce checks to detect the slightest variations in quantities of the basic materials and without any noticeable effect on the quality of the product, a standard method of assessment should be adopted; whereas the analysis of the ash content of products manufactured has proved the most effective technical means of assessing the quantity of basic cereals used; whereas the analysis should be carried out following the same procedure throughout the Community;

Whereas granting export refunds on cereals imported from third countries and re-exported to third countries does not appear justified; whereas refunds should accordingly be granted on Community products only;

Whereas 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 ([1]), as last amended by Regulation (EC) No 1384/95 ([2]), requires that, where refunds vary according to destination, payment of the refund be made conditional in particular on presentation of proof that the product has been imported in its unaltered state into the third country or into one of the third countries for which the refund applies; whereas, as regards cereals, the only refund lower than that applicable to exports to third countries as a whole is that on exports to Switzerland and Liechtenstein; whereas, in order to avoid obstructing most Community exports by requiring proof of arrival at destination, other means must be found to ensure that products on which a refund applying to all third countries has been paid are not exported to the abovementioned countries; whereas, to that end, the need to present proof of arrival should be waived in all cases where export is effected by sea; whereas certificates drawn up by the competent authorities of the Member States stating that the products have left the customs territory of the Community on board a vessel suitable for sea transport are considered to provide a sufficient guarantee;

Whereas Article 16 of Regulation (EEC) No 1766/92 provides that appropriate measures may be taken when the quotations or prices on the world market for one or more of the products referred to in Article 1 of that Regulation reach the level of Community prices, and when that situation is likely to continue or deteriorate, thereby disturbing or threatening to disturb the Community market; whereas to that end sufficient supplies of cereals must be ensured; whereas for that purpose export taxes may be levied and the issuing of export licences totally or partly suspended;

Whereas, since the situation envisaged in Article 16 of Regulation (EEC) No 1766/92 may arise at relatively short notice, the Commission must be able to suspend the issue of export licences at any time;

Whereas this Regulation incorporates, while adjusting them to current market conditions, the provisions of Commission Regulation (EEC) No

([1]) OJ No L 351, 14. 12. 1987, p. 1.
([2]) OJ No L 134, 20. 6. 1995, p. 14.

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1533/93 ([1]), as last amended by Regulation (EC) No 3304/94 ([2]); whereas that Regulation should therefore be repealed;

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

Export refunds, export taxes as provided for in Article 16 of this Regulation, and corrective amounts as provided for in the second subparagraph of Article 13 (8) of Regulation (EEC) No 1766/92, in the case of the products listed in Article 1 (1) (a), (b) and (c) of that Regulation, shall be fixed in the light of the following factors in particular:

(a) the prices charged on the representative Community markets and their trends, and the quotations recorded on the markets of third countries;

(b) the marketing costs and the most favourable costs of transport from the representative Community markets to the port or other place of export, and the costs of forwarding on the world market;

(c) in the case of processed products, the quantity of cereals required for the manufacture thereof;

(d) the prospects for and conditions governing the sale of the relevant products on the world market;

(e) concern to avoid disturbance on the Community market;

(f) the economic aspect of the exports contemplated;

(g) the quantitative and budgetary limits arising from agreements concluded in accordance with Article 228 of the Treaty.

Article 2

The provisions of the first subparagraph of Article 13 (8) of Regulation (EEC) No 1766/92 shall apply to all the products referred to in Article 1 (1) (c) and (d) of that Regulation and to the products referred to in Article 1 thereof exported in the form of goods as listed in Annex B thereto.

The provisions of the second subparagraph of Article 13 (8) of Regulation (EEC) No 1766/92 shall apply to the products referred to in Article 1 (1) (c) thereof.

Article 3

Corrective amounts may vary according to destination.

Article 4

1. Export refunds on the products listed in Article 1 (1) (a) and (b) of Regulation (EEC) No 1766/92 and the export taxes provided for in Article 15 of this Regulation may be fixed by invitation to tender.

The terms of invitations to tender must guarantee equality of access for all persons established in the Community.

Such invitations to tender shall relate to the export refund or tax.

2. Decisions to issue invitations to tender shall be taken in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92.

([1]) OJ No L 151, 23. 6. 1993, p. 15.
([2]) OJ No L 341, 30. 12. 1994, p. 48.

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3. Decisions to issue invitations to tender shall be accompanied by the publication of notices of invitation to tender drawn up by the Commission setting out in particular the dates on which tenders may be submitted and the relevant departments of the Member States to which they are to be sent.

4. Decisions to issue invitations to tender and notices of invitation to tender shall be published in the *Official Journal of the European Communities*.

At least five days must elapse between the publication of the notice of invitation to tender and the first date for the submission of tenders.

Article 5

1. Interested parties shall submit tenders in writing or by any means of written telecommunication to the competent department of the Member State.

2. Tenders shall indicate:

(a) the reference of the invitation to tender;

(b) the name and address of the tenderer;

(c) the type and quantity of product to be exported;

(d) the export refund per tonne or, where applicable, the export tax per tonne, expressed in ecus.

3. Tenders shall be valid only if:

(a) proof is provided before the expiry of the time limit laid down for the submission of tenders that the tenderer has lodged the tendering security;

(b) they are accompanied by a written undertaking to submit, in respect of quantities awarded and within two days of receipt of notification of award pursuant to Article 7 (3), an application for advance fixing of an export refund or, where applicable, an application for advance fixing of an export tax equal to the amount tendered;

(c) they do not include any conditions other than those provided for in the notice of invitation to tender.

4. Tenders submitted may not be withdrawn.

Article 6

Tenders shall be opened by the competent departments of the Member States. They shall not be opened in public. Persons authorized to be present at the opening of the tenders shall be under an obligation of secrecy.

The Commission shall be notified forthwith of the tenders without the tenderers being mentioned by name.

Article 7

1. On the basis of tenders notified, the Commission shall, in accordance with the procedure provided for in Article 23 of Regulation (EEC) No 1766/92, decide to fix a maximum export refund or, where applicable, a minimum export tax or to take no further action in respect of the invitation to tender.

2. Where a maximum export refund is fixed, the contract shall be awarded to the tenderer or tenderers whose bids are equal to or lower than the maximum refund.

Where a minimum export tax is fixed, the contract shall be awarded to the tenderer or tenderers whose bids are equal to or higher than the minimum tax.

3. The competent departments of the Member States concerned shall notify all tenderers in writing of the outcome of their tenders as soon as the Commission has taken a decision.

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Article 8

1. Export licences shall be issued to successful tenderers after their applications for export licences have been received by the competent departments of the Member States and in respect of the quantities awarded to them.

2. In the relevant section of the licence applications, and of the licences themselves, shall be stated the destination specified in the regulation issuing the invitation to tender. Licences shall entail the obligation to export to the stated destination.

Article 9

Tendering securities shall be released:

(a) where tenders are not accepted;

(b) when the successful tenderer has provided proof that the security provided for in Article 10 of Commission Regulation (EC) No 1162/95 ([1]) has been submitted.

Where the undertaking provided for in Article 5 (3) (b) hereof is not fulfilled, the tendering security shall be forfeited except in cases of force majeure.

Article 10

Export refunds on the products listed in Article 1 (1) (a), (b) and (c) of Regulation (EEC) No 1766/92 shall be fixed at least once a month.

Article 11

1. The export refund on wheat flour, meslin flour and rye flour, wheat groats, wheat meal and malt shall be fixed taking account of the quality of the basic cereal necessary to manufacture 1 000 kg of the product in question. The quantities of the basic cereals shall be as set out in Annex I.

2. The ash content of the flour shall be determined using the method of analysis defined in Annex II.

Article 12

Refunds on the products listed in Article 1 (1) (a), (b) and (c) of Regulation (EEC) No 1766/92 shall be paid once proof has been provided that the products are of Community origin.

Article 13

Notwithstanding Article 18 of Regulation (EEC) No 3665/87, proof of completion of customs formalities for release for consumption shall not be required for payment of refunds fixed by invitation to tender, on condition that the operator provides proof that a quantity of at least 1 500 tonnes of cereal product has left the customs territory of the Community on board a vessel suitable for sea transport.

Such proof shall be provided by the following endorsement certified by the competent authority on the control copy referred to in Article 6 of Regulation (EEC) No 3665/87, on the single administrative document or on the national document proving that the goods have left the Community customs territory:

‘Exportación de cereales por vía marítima; artículo 13 del Reglamento (CE) nº 1501/95’

‘Eksport af korn ad søvejen — Artikel 13 i forordning (EF) nr. 1501/95’

‘Ausfuhr von Getreide auf dem Seeweg — Verordnung (EG) Nr. 1501/95 Artikel 13’

([1]) OJ No L 117, 24. 5. 1995, p. 2.

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‘Εξαγωγή σιτηρών δια θαλάσσης — Άρθρο 13 του κανονισμού (ΕΚ) αριθ. 1501/95’

‘Export of cereals by sea — Article 13 of Regulation (EC) No 1501/95’

‘Exportation de céréales par voie maritime — Règlement (CE) nº 1501/95, article 13’

‘Esportazione di cereali per via marittima — Regolamento (CE) n. 1501/95, articolo 13’

‘Uitvoer van graan over zee — Verordening (EG) nr. 1501/95, artikel 13’

‘Exportação de cereais por via marítima — Artigo 13.º, Regulamento (CE) n.º 1501/95’

‘Viljan vienti meriteitse — Asetus (EY) N:o 1501/95 13 artikla’

‘Export av spannmål sjövägen — Artikel 13 i förordning (EG) nr 1501/95’.

Article 14

Where the operator provides proof of completion of customs formalities for release for consumption in Switzerland or Liechtenstein, the amount of the export refund for exports to ‘all third countries’ fixed under an invitation to tender shall be reduced by the difference between that amount and the amount of the export refund in force for the abovementioned destinations on the day the contract is awarded.

Article 15

Where the conditions laid down in Article 16 of Regulation (EEC) No 1766/92 are met in respect of one or more products, the following measures may be taken:

(a) an export tax may be applied. A corrective amount may be fixed. Such taxes and corrective amounts may vary according to destination;

(b) the issuing of export licences may be totally or partly suspended;

(c) the export licence applications pending may be rejected in whole or in part.

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However, no tax shall be applied to exports of cereals or cereal products carried out to implement Community and national food aid measures provided for under international agreements or other supplementary programmes, or to implement other Community free supply measures.

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Article 16

Where there is no invitation to tender, the export tax to be collected shall be that applicable on the day on which customs formalities are completed.

However, export taxes applicable on the day of submission of licence applications shall apply, at the request of the party concerned lodged at the same time as the licence application, to exports to be effected during the term of validity of the licence.

Article 17

In emergencies the Commission may apply the measures referred to in Article 15 (b). It shall notify the Member States of its decision and shall publish it in the *Official Journal of the European Communities*.

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Article 18

Regulation (EEC) No 1533/93 is hereby repealed. However, it shall continue to apply to licences issued before 1 July 1995.

Article 19

This Regulation shall enter into force on 1 July 1995.

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

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ANNEX I

	CN code	Ash content (expressed in mg) per 100 g of flour, groats and meal	Number of kg of cereals per 1 000 kg of products in question
1. Flour of common wheat, spelt or meslin	1101 00 15 100	0 to 600	1 370
	1101 00 15 130	601 to 900	1 280
	1101 00 15 150	901 to 1 100	1 180
	1101 00 15 170	1 101 to 1 650	1 090
	1101 00 15 180	1 651 to 1 900	1 020
2. Rye flour	1102 10 00 500	0 to 1 400	1 370
	1102 10 00 700	1 401 to 2 000	1 080
3. Common wheat groats and meal	1103 11 90 200	0 to 600	1 370
4. Durum wheat groats and meal	1103 11 10 200	0 to 1 300 (sieve with mesh 0,160 mm)	1 500
	1103 11 10 400	0 to 1 300	1 340
	1103 11 10 900	over 1 300	1 260
5. Malt, not roasted	1107 10 19 1107 10 99		1 300
Malt, roasted	1107 20 00		1 520

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ANNEX II

Method of determining the ash content of flour

Apparatus

1. Laboratory scales sensitive to 0,1 mg, box of corresponding weights.
2. Electric muffle kiln, with adequate draught and a temperature gauge and regulator.
3. Round, flat-bottomed incineration dishes (about 5 cm in diameter, maximum height 2 cm); preferably of gold and platinum alloy or of quartz or porcelain.
4. Desiccator (with an internal diameter of about 18 cm) fitted with a neck and a perforated plate, in porcelain or aluminium.

   Dehydration agent: calcium chloride, phosphorous pentoxide or silica gel coloured blue.

Method

1. The weight of the test sample should be between 5 and 6 g. When it is flour of which the ash content referred to dry matter is likely to be over 1 %, the weight of the test sample should be between 2 and 3 g. The weight of the test sample may be rounded up to the nearest 10 mg; all other quantities are weighed to the nearest 0,1 mg.
2. Immediately before use the dishes must be heated in the muffle kiln at incineration temperature to constant weight; a period of 15 minutes is usually sufficient.

   The dishes are then cooled in the desiccator to laboratory temperature under the conditions indicated in paragraph 7.
3. Place the test sample in the dish and spread it out in an even layer, without heaping. Immediately before incineration damp the test sample with 1 to 2 ml of ethyl alcohol.
4. Place the dishes in the mouth of the kiln, leaving the door open. When the substance has ceased to flame, push the dishes into the kiln. When the kiln door has been closed, an adequate draught must be maintained, but not so strong as to blow the substance out of the dishes.
5. Incineration must result in the total combustion of the flour, including any sooty particles among the ashes. It will be considered completed when the residue is almost white after cooling.
6. The incineration temperature must reach 900° C.
7. When incineration is completed, remove the dishes from the kiln and place them on a sheet of eternit for about one minute to cool, then put them in the desiccator (not more than four dishes at a time). The closed desiccator is placed near the analysis scales. Weigh the dishes when they are completely cold (about one hour).

Results

1. Margin of error: if the ash content does not exceed 1 %, the results of a double test should not differ by more than 0,02 units of ash content; if the ash content exceeds 1 %, the difference should not exceed 2 % of the ash content. If the difference exceeds these limits the test must be repeated.
2. The ash content must be expressed per 100 parts of dry matter and rounded up to 0,01.