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COMMISSION REGULATION (EC) No 2221/95 of 20 September 1995 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 qualifying for refunds

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COMMISSION REGULATION (EC) No 2221/95
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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European 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]), as amended by Regulation (EC) No 163/94 ([2]), and in particular Article 6 thereof,

Whereas Commission Regulation (EEC) No 2030/90 ([3]) lays down rules for the application of Regulation (EEC) No 386/90; whereas it lays down detailed rules 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;

Whereas account should be taken of existing measures on checking, and in particular those contained in the following instruments:

— 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 ([4]), as amended by Regulation (EEC) No 790/91 ([5]);

— 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 ([6]), as last amended by Regulation (EC) No 1384/95 ([7]);

Whereas in its supplementary report to the Council of the application of Regulation (EEC) No 386/90 ([8]), the Commission stated its intention to define precisely the term 'physical check' as used in Article 2 (a) of Regulation (EEC) No 386/90, in order to achieve uniform application of the Community rules in the Member States;

Whereas measures should be taken allowing verification at any time of whether the check rate of 5% has been reached;

Whereas a measure should be introduced to take account of cases where the number of exports dealt with by a customs office is minimal;

([1]) OJ No L 42, 16. 2. 1990, p. 6.
([2]) OJ No L 24, 29. 1. 1994, p. 2.
([3]) OJ No L 186, 18. 7. 1990, p. 6.
([4]) OJ No L 204, 25. 7. 1987, p. 1.
([5]) OJ No L 81, 28. 3. 1991, p. 108.
([6]) OJ No L 351, 14. 12. 1987, p. 1.
([7]) OJ No L 134, 20. 6. 1995, p. 14.
([8]) OJ No C 218, 12. 8. 1993, p. 14.

Whereas to tackle the risk of substitution in the case of export declarations accepted by an internal customs office within a Member State, a minimum number of 'substitution checks' to be carried out by the customs office of exit from the Community should be laid down; whereas having regard to the place where such 'substitution checks' are carried out, they must take the form of simplified checks;

Whereas, in order to reduce the risk of substitution, all means of transport or packages should be sealed, save in exceptional cases where the products may be identified by some other means;

Whereas, Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community customs code ([1]), as amended by the Act of Accession of Austria, Finland and Sweden, and the rules for the application thereof laid down by Commission Regulation (EEC) No 2454/93 ([2]), as last amended by Regulation (EC) No 1762/95 ([3]), apply to exports of all industrial or agricultural products; whereas special provisions may have to be adopted in the case of agricultural products qualifying for export refunds;

Whereas, in order to facilitate the practical implementation of the new provisions and for the sake of clarity and administrative efficiency, Regulation (EEC) No 2030/90 should be replaced;

Whereas, in the light of experience gained, appropriate, commensurate measures are required, which must be uniformly applied;

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

HAS ADOPTED THIS REGULATION:

([1]) OJ No L 302, 19. 10. 1992, p. 1.
([2]) OJ No L 253, 11. 10. 1993, p. 1.
([3]) OJ No L 171, 21. 7. 1995, p. 8.

Article 1

This Regulation lays down detailed rules for the application of the physical checks referred to in Article 2 (a) of Regulation (EEC) No 386/90 and the substitution checks referred to in Article 3 (a) of that Regulation.

Article 2

1. This Regulation:

(a) shall apply to exports to third countries of agricultural goods and to similar operations as referred to in Articles 34 and 42 of Regulation (EEC) No 3665/87 on which refunds are applied for, save in cases where paragraph 2 is applied;

(b) shall not apply to exports involving Community food aid as referred to in Regulation (EEC) No 2200/87, for which a special control system exists.

2. Without prejudice to the control measures referred to in Articles 35 (4) and 42 (4) of Regulation (EEC) No 3665/87, Member States may opt to waive the physical checks and the substitution checks on the deliveries referred to in Articles 34 and 42 of Regulation (EEC) No 3665/87 in the case of exporters qualifying for the procedure referred to in Article 35 of Regulation (EEC) No 3665/87 and, where applicable, that referred to in Articles 488 to 494 of Regulation (EEC) No 2454/93.

3. When calculating the minimum rate of checks to be carried out in accordance with Article 3 of Regulation (EEC) No 386/90, Member States may opt to disregard export operations involving quantities not exceeding:

— 5 000 kg in the case of cereals and rice,

— 500 kg in the case of other products.

4. Member States which take up the options provided for in paragraph 2 and 3 shall adopt appropriate provisions to prevent deflections and abuses.

Article 3

With a view to determining the basis for calculating the percentage for the physical checks under Article 2 (a) of Regulation (EEC) No 386/90, for the purposes of the first indent of the first subparagraph of Article 3 (2) of the said Regulation ‘customs office’ shall mean all offices competent to complete the export formalities for the products in question.

Article 4

For the purposes of the third indent of the first subparagraph of Article 3 (2) of Regulation (EEC) No 386/90, products covered by the same agricultural market organization shall be regarded as coming under one product sector.

However, products falling within the cereals and rice sectors, and goods falling outside Annex II to the Treaty, shall be deemed to constitute a single product sector.

Article 5

1. For the purposes of Article 2 (a) of Regulation (EEC) No 386/90 'physical check' shall mean verification that the export declaration, including documents submitted in support thereof, and the goods correspond as regards quantity, nature and characteristics.

Where the situation described in the Annex arises, the methods indicated therein shall be applied.

The customs office of export must be mindful of the provisions of Article 13 of Regulation (EEC) No 3665/87.

2. Physical checks of which the exporter has received express or tacit prior warning shall not count as physical checks.

The first subparagraph shall not apply to cases where the accounts of an undertaking are checked in accordance with point 3 (a) of the Annex.

3. If a customs office of export accepts fewer than 20 export declarations per sector per year, at least one export declaration per sector per year must be subjected to a physical check.

4. If the rate of refund depends on a particular content, the customs office of export shall take, as part of the physical check, representative samples for analysis of the ingredients by a competent laboratory.

Article 6

In order to ensure the identity of the goods for export between the customs office of export and the customs office of exit from the customs territory of the Community, the means of transport or packages shall be sealed in accordance with Article 349 of Regulation (EEC) No 2454/93.

Article 7

1. Each customs office of export shall apply measures to ensure that achievement of the check rate of 5% can be verified at any time.

The measures must show, per sector:

— the number of export declarations which are taken into account for the physical checks,

and

— the number of physical checks carried out. 2221/95

2. The competent customs officer must produce a detailed examination account on each physical check carried out.

The examination account shall bear the date and the name of the competent officer. It must be kept at the customs office of export or at another office for three years from the year of export in such a way that it can be readily consulted.

3. On the control copy T 5 which accompanies the goods, the following shall be noted in box D:

(a) '386/90', if the customs office of export has carried out a physical check;

(b) '2200/87', in the case of Community food aid exports.

Where the customs office of exit is situated in the same Member State as the customs office of export, the notation shall be on the national document accompanying the goods.

Article 8

1. In the case of payment of advances on refunds in accordance with Articles 25 to 29 of Regulation (EEC) No 3665/87, the physical checks carried out by the competent authorities:

— on entry into or during storage in the case referred to in Article 28 of that Regulation,

— in the case of processing as referred to in Article 27 of that Regulation: 1167/97

from the time of acceptance of the payment declaration, where the refund is granted for one or more basic products,

after processing, where the refund is granted for the processed product

may be taken into account for calculating the minimum rate of checks referred to in Article 3 Regulation (EEC) No 386/90, provided that the following conditions are fulfilled: 2221/95

(a) the physical checks carried out prior to the completion of the customs export formalities meet the same strict criteria as those to be carried out pursuant to Article 5 of this Regulation;

and

(b) the products or goods or basic products used to manufacture the goods which have been the subject of previous physical checks are identical to those which are the subject of the export declaration. 1167/97

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 either the customs arrangements in question or the manufacturing processes which the products and goods have undergone, paragraph 1 shall apply *mutatis mutandis*. 2221/95

Article 9

1. Where the export declaration has been accepted at a customs office of export which is not the customs office of exit, the customs office of exit from the customs territory of the Community shall perform a substitution check in accordance with the conditions laid down in this Article.

2. Without prejudice to control measures based on other provisions, substitution checks shall be carried out, as far as possible, in the light of a risk analysis, at least once a day, if the customs office of export has not sealed the means of transport or the package.

3. Where, in accordance with the requirements of the third country of destination, a veterinary seal has been applied as well as a customs seal the substitution check shall be carried out only in the event of suspected fraud.

4. The substitution check shall be carried out by checking, visually, whether the goods tally with the document which has accompanied them from the customs office of export to the customs office of exit.

A sample for analysis shall be taken only in cases where the customs office of exit cannot check visually and by means of the information on the packaging and the documentation, whether the goods tally with the document. In these circumstances, Article 5 (4) of this Regulation shall not apply.

5. Each customs office of exit shall apply measures to ensure that:

— the number of export declarations which are taken into account for the substitution checks,

and

— the number of substitution checks carried out,

can be identified at any time.

If the customs office of exit has taken a sample, 'sample taken' shall be noted on the control copy T5, or — where appropriate — on the national document to be returned to the competent authorities.

A duplicate or a copy of the document shall remain at the customs office of exit.

6. The customs office of exit shall inform in writing the competent authorities referred to in paragraph 5 of the result of the analysis, reporting:

— either 'results of analysis conform',

— or the results of the analysis if there is a discrepancy between the result and the product declared.

Article 10

Regulation (EEC) No 2030/90 is hereby repealed.

Article 11

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

It shall apply from 1 January 1996 for export declarations accepted on or after that date.

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ANNEX 2221/95

Methods to be followed for physical checks

1. (a) If the exporter uses closed-circuit automatic loading and calibrated automatic weighing facilities for the loading of bulk goods, the verification that the export declaration and the goods tally is to be carried out in such a way that the quantity is determined by the calibrated automatic weighing and the nature and characteristics are checked at random.

   The customs office of export has also to check at random:

   — that the weighing and loading system does not permit re-routing of the goods in these closed circuits or other manipulations,

   — that the time limits specified for the calibration of weighing equipment have not expired and that the seals are intact where closed-circuit weighing systems are used,

   — that the consignments weighed are actually loaded on the means of transport specified,

   — that the data entered in the weighing records or weighing certificates correspond to the data contained in the loading documents.

   (b) In exceptional cases where the quantity of bulk goods is not recorded by a calibrated automatic weighing system, the customs office has to use any other means of checking which is satisfactory from the commercial point of view.

2. (a) If the exporter has declared goods using automatic bagging, canning, bottling systems, etc., and calibrated automatic weighing/measuring equipment or packaging or bottling in compliance with the provisions of Council Directives 75/106/EEC ([1]), 75/107/EEC ([2]) and 76/211/EEC ([3]), the number of bags, cans, bottles, etc. must in principle be counted in total and the nature and characteristics of the goods must be checked on the basis of a representative selection by the customs office of export. The weight or volume is determined by calibrated automatic weighing/measuring or by the packaging or the bottles within the meaning of the two Directives. The customs office of export can weigh or measure a bag, a can or a bottle. 1167/97

   If the equipment has a calibrated automatic counter, the records of the automatic counter may be taken into account for the physical check with respect to quantity.

   The second subparagraph of point 1 (a) applies *mutatis mutandis*.

([1]) OJ No L 42, 15. 2. 1975, p. 1.
([2]) OJ No L 42, 15. 2. 1975, p. 14.
([3]) OJ No L 46, 21. 2. 1975, p. 1.

If the exporter uses pallets which are loaded with boxes, cans, etc., the customs office of export selects representative pallets and checks whether the number of boxes, cans, etc. declared are really present. It selects from these pallets a number of representative boxes/cans and checks whether the number of bottles, units, etc. is present.

(b) If the exporter does not use the facilities referred to in the first and second subparagraphs, the customs office of export must count the number of bags and cans, etc. The nature, characteristics, weight or volume are checked on the basis of a representative selection. The preceding subparagraph applies *mutatis mutandis*.

3. (a) As regards non-Annex II goods:

— which are either packaged for retail sale or appropriately marked with details concerning content and weight on the immediate packaging, and

— which either meet the requirements of the third subparagraph of Article 3 (2) of Commission Regulation (EC) No 1222/94 ([1]), or for which the quantities of product used are those set out in Annex C to that Regulation,

the customs office of export may proceed as follows:

(aa) To begin with, it checks the weight and content of the non-Annex II good put up in immediate packaging against the details on the immediate packaging. It may weigh a piece without packaging.

(bb) Then it counts and/or weighs — in principle — the total quantity of non-Annex II goods in immediate packaging.

Points 2 (a) and (b) apply *mutatis mutandis*.

It may take a sample to verify that no substitution has taken place. Article 5 (4) of this Regulation does not apply.

(cc) (aaa) The composition of such a non-Annex II good may be assumed by the customs office of export to be correct if the description and the content indicated on the immediate packaging are consistent with the export declaration and the registration identification code of the manufacturing formula, which has already been checked within a year preceding the export by the competent authorities.

In this case the customs office of export must have the auditor of the competent authorities verify *a posteriori* as quickly as possible if the produced goods and the exported goods are identical. Having verified this, he must inform the customs office of export of the result.

([1]) OJ No L 136, 31. 5. 1994, p. 5.

If the manufacturing formula has not yet been checked by the competent authorities, the customs office of export must have the auditor of the competent authorities verify it and the identity as quickly as possible *a posterior*i.

(bbb) For the application of this method for verifying composition, Member States must introduce in advance a procedure whereby:

— the composition of the non-Annex II goods can be checked by virtue of the accounts and the specific documents relating to production,

— the non-Annex II goods manufactured, the export declaration, the manufacturing formula and the goods to be exported can be identified by means of the production documentation of the undertaking,

— the identity of the goods exported, the export declaration in question, the manufacturing formula and the goods manufactured can be verified by the auditor of the competent authority *a posteriori*.

(b) The specific documents relating to the manufacture of a non-Annex II good must be kept by the undertakings concerned for three years from the year of export.

(c) In cases where point 3 (a) is not applied, the customs office of export has to take representative samples without prejudice to Article 7 (1) of Regulation (EC) No 1222/94.

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