COMMISSION REGULATION (EC) No 2655/1999

of 16 December 1999

amending Regulation (EC) No 2221/95 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 and amending Regulation (EC) No 3122/94 laying down criteria for risk analysis as regards agricultural products receiving refunds

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:

(1) Commission Regulation (EC) No 2221/95 [3], as last amended by Regulation (EC) No 1167/97 [4] lays down rules for the application of Regulation (EEC) No 386/90; whereas in the light of experience and the recommendations of the Court of Auditors on the matter amendments to these rules are necessary to improve the effectiveness of the controls;

(2) With regard to the total amount of refunds, the share allocated to products not covered by Annex I of the Treaty is of little importance. On the other hand, the proportion of physical checks carried out on non-Annex I products is large. In order to make better use of the means of control this imbalance should be improved upon. This can be attained partially by reducing the control rate for non-Annex I products to 0,5 %. In addition, Member States should also have the possibility, when calculating the minimum rate of checks to be carried out in accordance with Article 3 of Regulation (EEC) No 386/90, to disregard export declarations relating to small quantities or a small amount of refund;

(3) Article 21(1) of Commission Regulation (EC) No 800/1999 [5] stipulates that no refund shall be granted on products which are not of sound and fair marketable quality on the date on which the export declaration is accepted. Although it is not possible to examine all the products presented for export, because the capacity for laboratory analysis is limited, where the sound and fair marketable quality of a product is the object of definite suspicions further verifications should be carried out; if necessary by means of laboratory testing;

(4) An examination of laboratory testing indicated that the requirement for obligatory laboratory testing should be lightened where positive assurance is available on the basis of repeated satisfactory results on the same product from the same exporter;

(5) There is a distinction between the treatment which export consignments receive at large ports, where there is a wide variety of products and a wide range of exporters, and the treatment export consignments receive at customs offices where only a limited range of products from a few exporters are handled. In the latter case export consignments receive a much more intensive level of control. For such customs offices, the selection of consignments for physical check on the basis of a smaller representative sample shall be taken into account;

(6) The provisions dealing with substitution controls should also be made more flexible, in order that the controls can be carried out in accordance with risk analysis;

(7) The evaluation of the application of Regulation (EEC) No 386/90 requires that Member States should be obliged to submit annual evaluations of the execution and effectiveness of the checks carried out under this Regulation;

(8) In order to assist the practical application of the new provisions and with regard for clarity, Article 4 of Commission Regulation (EC) No 3122/94 [6] shall be replaced by Article 5a(1);

(9) The measures provided for in this Regulation are in accordance with the opinion of the relevant Management Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2221/95 is hereby amended as follows:

1. Article 2(3) is replaced by the following sentences:

'When calculating the minimum rate of checks to be carried out in accordance with Article 3(2) of Regulation (EEC) No 386/90, Member States may opt to disregard export declarations involving quantities not exceeding:

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

— 1 000 kg for fruits and vegetables fruits as well as for goods falling outside Annex I to the Treaty,

— 500 kg in the case of other products.

[1] OJ L 42, 16.2.1990, p. 6.
[2] OJ L 24, 29.1.1994, p. 2.
[3] OJ L 224, 21.9.1995, p. 13.
[4] OJ L 169, 27.6.1997, p. 12.
[5] OJ L 102, 17.4.1999, p. 11.
[6] OJ L 330, 21.12.1994, p. 31.

As an alternative Member States may also opt to disregard export declarations referring to refund amounts less than EUR 200.'

2. In Article 5 the following new paragraph shall be added:

'5. Where the sound, fair and marketable quality of a product is namely the object of definite suspicions, the Customs office shall verify the compliance with the applicable Community provisions, in particular those relating to Community sanitary and phytosanitary rules. Where considered necessary by the customs office, it initiates, or causes to be initiated, laboratory testing, indicating the objective of the test.'

3. The following Article shall be inserted:

'*Article* 5a

If the Member State applies a system of risk analysis pursuant to the second subparagraph of Article 3(2) of Regulation (EEC) No 386/90 the following rules shall be applicable:

1. The percentage of physical checks carried out on non-Annex I products shall not be taken into account for the purposes of calculating the overall rate of 5 % for all sectors. In this case, a minimum rate of 0,5 % shall be compulsory for non-Annex I products.

2. If the rate of refund depends on a particular content and a product with the same refund code or CN code is exported on a regular basis by the same exporter, and with regard to the laboratory testing in the past six months there have been no non-conformities with financial consequences greater than EUR 200 relating to the gross amount of the refund, then by derogation of Article 5(4) representative samples need to be taken in only 50 % of the physical checks. If the result of the laboratory testing detects a non-conformity with financial consequences greater than EUR 200 relating to the gross amount of the refund, samples must be taken for all physical checks in the following six months.

3. For customs offices of export where a limited range of products (maximum of two product sectors) from a few exporters (maximum of five exporters) are presented for export, physical checks may be reduced to a minimum rate of 2 % per product sector. Sectors with fewer than 20 export declarations per year per customs office shall not be taken into account for determining the number of sectors. Customs offices may make use of these provisions for a full calendar year, based on the statistics for the previous calendar year, even where export declarations are made by additional exporters or for additional product sectors during the course of the year.'

4. Article 9(2) is replaced by the following sentences:

'If the customs office of export has not sealed the means of transport or the package then:

(a) without prejudice to control measures based on other provisions, substitution checks shall be carried out, as far as possible, in the light of risk analysis,

and

(b) the number of substitution checks shall not be less than the number of days, on. which export refund products leave the customs territory of the Community through the particular customs office of exit.'

5. The following Article shall be inserted:

'*Article* 9a

Each year, before 1 April, the Member States shall send the Commission a report on the evaluation of the execution and effectiveness of this regulation.'

Article 2

Article 4 of Regulation (EC) No 3122/94 is hereby deleted.

Article 3

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 2000.

The provisions of Article 9a shall apply for the first time to the checks, which will be carried out in the year 2000.

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

Done at Brussels, 16 December 1999.

For the Commission

Franz FISCHLER

Member of the Commission