

COMMISSION REGULATION (EEC) No 3947/89
of 20 December 1989

amending Regulation (EEC) No 3665/87 as regards the grant of export refunds in the case of transshipment or transit operations within the Community of products deemed to have left the customs territory of the Community

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION :

Having regard to the Treaty establishing the European Economic Community,

Article 1

The following Article is inserted in Regulation (EEC) No 3665/87 :

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EEC) No 3707/89 ⁽²⁾, and in particular Article 16 (6) thereof, and to the corresponding provisions of the other Regulations on the common organization of the markets in agricultural products,

Article 6a

1. For the purpose of the granting of a refund in the case of export by sea, the following special provisions shall apply :

Having regard to Council Regulation (EEC) No 2746/75 of 29 October 1975 laying down general rules for granting export refunds on cereals and criteria for fixing the amount of such refunds ⁽³⁾, and in particular the second subparagraph of Article 8 (2) and Article 8 (3) thereof, and to the corresponding provisions of the other Regulations laying down general rules on the grant of export refunds for agricultural products,

- (a) When the control copy referred to in Article 6 or the national document showing that the product has left the customs territory of the Community has been endorsed by the competent authorities, the product may not, except in cases of *force majeure*, remain for the purposes of transshipment in one or more other ports located within the customs territory of the Community for more than 28 days.
- (b) The 28-day time limit in subparagraph (a) shall not apply in cases where the products left the last port within the customs territory of the Community within the initial 60-day period.
- (c) The refund shall be paid subject to :
 - a declaration by the exporter that the product is not to be transhipped in another port, or
 - the production of proof to the paying agency of compliance with the provisions of subparagraph (a). This proof shall include the transport document(s), or a copy or photocopy thereof covering the products from its departure from the first port at which the said documents were endorsed up to its arrival in the third country in which the product is to be unloaded.

Whereas in some instance a refund may be claimed in respect of products which have been exported and which have left the customs territory of the Community, but which are returned for the purposes of transshipment or a transit operation before reaching a final destination outside the said territory; whereas such returns may conceivably also occur for reasons other than transport requirements, and more particularly for the purpose of speculation from the customs territory of the Community; whereas in such cases the purpose of the time limit specified in Article 4 and Article 32 (1) of 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 ⁽⁴⁾, as last amended by Regulation (EEC) No 3993/88 ⁽⁵⁾, is undermined; whereas, in order to avoid such situations, there is a need to define clearly the conditions under which such returns may take place;

The declarations referred to in the first indent shall be subject to appropriate spot checks by the paying agency, for the purpose of which the means of proof referred to in the second indent shall be required.

Whereas the Management Committees concerned have not delivered an opinion within the limit laid down by their chairmen,

- (d) As an alternative to the conditions in subparagraph (c), the Member State of departure may stipulate that the control copy referred to in Article 6 or the national document showing that the product has left the customs territory of the Community is to be accepted only on production of a transport document indicating a final destination outside the customs territory of the Community.

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 363, 13. 12. 1989, p. 1.

⁽³⁾ OJ No L 281, 1. 11. 1975, p. 78.

⁽⁴⁾ OJ No L 351, 14. 12. 1987, p. 1.

⁽⁵⁾ OJ No L 354, 22. 12. 1988, p. 22.

In that case the box headed "Control of use and/or destination" of the control copy shall be completed under the heading "Remarks" or in the corresponding box of the national document with the following entry by the competent authority in the Member State of departure :

- Documento de transporte con destino fuera de la CEE presentado
- Transportdokument med destination uden for EØF forelagt
- Beförderungspapier mit Bestimmung außerhalb der EWG wurde vorgelegt
- Υποβαλλόμενο έγγραφο μεταφοράς με προορισμό εκτός ΕΟΚ
- Transport document indicating a final destination outside the customs territory of the Community has been presented
- Document de transport avec destination hors CEE présenté
- Documento di trasporto con destinazione fuori CEE presentato
- Vervoerdocument voor bestemming buiten EEG voorgelegd
- Documento de transporte com destino fora da CEE apresentado

- (e) The provisions of this paragraph shall be the subject of suitable spot checks by the paying agency.

In cases where it is found that the conditions set out in subparagraph (a) have not been complied with, for the purposes of Articles 33 and 48, the day/days by which the 28-day limit is exceeded shall be deemed to be days by which the time limit laid down in Articles 4 and 32 is exceeded.

2. For the purposes of granting a refund in the case of export by road, by inland waterway or by railway, the following special provisions shall apply :

- (a) When the control copy referred to in Article 6 or the national document showing that the product has left the customs territory of the Community has been endorsed by the competent authorities, the products may not, except in cases of *force majeure*, be returned to such territory other than for the purpose of a transit operation and for not more than 28 days.
- (b) The 28-day time limit in subparagraph (a) shall not apply in cases where the product concerned has left the customs territory of

the Community definitively within the initial 60-day period.

- (c) The application of the provisions of subparagraph (a) shall be the subject of suitable spot checks by the paying agency. In such cases the transport documents covering the product up to its arrival in the third country in which it is to be unloaded shall be required.

In cases where it is found that the conditions set out in subparagraph (a) have not been complied with, for the purposes of Articles 33 and 48, the day/days by which the 28-day time limit is exceeded shall be deemed to be days by which the time limit laid down in Articles 4 and 32 is exceeded.

3. For the purposes of granting a refund in the case of export by air, the following special provisions shall apply :

- (a) The control copy referred to in Article 6 or the national document showing that the product has left the customs territory of the Community may be endorsed by the competent authorities only on production of a transport document indicating a final destination outside the customs territory of the Community.
- (b) In cases where it is found that, after completion of the formalities referred to in subparagraph (a), the product has remained for the purpose of transshipment in one or more other airport within the customs territory of the Community for more than 28 days, except in cases of *force majeure*, for the purposes of Articles 33 and 48, the day/days by which the 28-day time limit is exceeded shall be deemed to be days by which the time limit laid down in Articles 4 and 32 is exceeded.
- (c) The application of the provisions of this paragraph shall be subject of suitable spot checks by the paying agency.
- (d) The 28-day limit laid down in subparagraph (b) shall not apply in cases where the product concerned has left the customs territory of the Community definitively within the initial 60-day period.

Article 2

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

It shall apply to transactions the export declaration for which is accepted as from 1 February 1990.

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

Done at Brussels, 20 December 1989.

For the Commission
Ray MAC SHARRY
Member of the Commission
