

**COMMISSION REGULATION (EC) No 495/97**  
of 18 March 1997

**amending Regulation (EEC) No 3665/87 laying down common detailed rules for the application of the system of export refunds on agricultural products and Regulation (EEC) No 3719/88 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products**

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<sup>(1)</sup>, as last amended by Commission Regulation (EC) No 923/96<sup>(2)</sup>, and in particular Article 9 (2), and Article 13 (11) thereof, and to the corresponding provisions in other Regulations on the common organization of the market in agricultural products,

Whereas pursuant to Article 2a of Commission Regulation (EEC) No 3665/87<sup>(3)</sup>, as last amended by Regulation (EC) No 313/97<sup>(4)</sup>, the entitlement to a refund is conditional upon presentation of an export licence comprising advance fixing of the refund; whereas for reasons of proportionality it is appropriate in some sectors to extend the validity of export licences to product groups defined for this purpose; whereas to prevent abuse, whereby products with the highest rates of refund are selected systematically, a system of reductions for changing the product for which the refund has been fixed in advance should be introduced where the actual rate of refund is less than the rate for that product;

Whereas experience gained from the application of the sanctions laid down in Article 11 of Regulation (EEC) No 3665/87 has shown that some provisions should be clarified and amended; whereas, for reasons of clarity, the text of Article 11 should be replaced;

Whereas Commission Regulation (EC) No 1222/96<sup>(5)</sup> introduced a twelve-digit refund nomenclature code;

Whereas, in order to facilitate customs verification, it is appropriate to provide the possibility of indicating on the export licence the product codes belonging to the product group as referred to in Article 2a (2) of Regulation (EEC) No 3665/87;

Whereas Regulation (EEC) No 3665/87 and Commission Regulation (EEC) No 3719/88<sup>(6)</sup>, as last amended by Regulation (EC) No 2402/96<sup>(7)</sup>, should be amended accordingly;

Whereas the measures provided for in this Regulation are in accordance with the opinions of the Management Committees concerned,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EEC) No 3665/87 is hereby amended as follows:

1. In Article 2a, the existing text becomes paragraph 1 and the following paragraphs 2 and 3 are added:

‘2. By way of derogation from paragraph 1, an export licence comprising advance fixing of the refund shall also be valid for the exportation of a product falling under a twelve-digit product code other than that indicated in section 16 of the licence if both products belong:

- (a) to the same category as referred to in the second subparagraph of Article 13a of Commission Regulation (EEC) No 3719/88<sup>(8)</sup>, or
- (b) to the same product group, provided that such product groups have been defined for this purpose in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92 or the corresponding articles of the other Regulations governing the common organizations of the market.

In such cases, the following further conditions apply:

- (a) if the rate of refund corresponding to the actual product is equal to or higher than the rate applicable to the product indicated in section 16 of the licence, the latter rate shall apply;
- (b) if the rate of refund corresponding to the actual product is lower than the rate applicable to the product indicated in section 16 of the licence, the refund to be paid shall be that resulting from the application of the rate corresponding to the actual product, reduced, save in cases of *force majeure*, by 20 % of the difference between the refund corresponding to the product indicated in section 16 of the licence and the refund for the actual product.

<sup>(1)</sup> OJ No L 181, 1. 7. 1992, p. 21.

<sup>(2)</sup> OJ No L 126, 24. 5. 1996, p. 37.

<sup>(3)</sup> OJ No L 351, 14. 12. 1987, p. 1.

<sup>(4)</sup> OJ No L 51, 21. 2. 1997, p. 31.

<sup>(5)</sup> OJ No L 161, 29. 6. 1996, p. 62.

<sup>(6)</sup> OJ No L 331, 2. 12. 1988, p. 1.

<sup>(7)</sup> OJ No L 327, 18. 12. 1996, p. 14.

Where point 6 of the second subparagraph and Article 20 (3) (b) apply, the reduction to be applied to the refund corresponding to the actual product and the actual destination shall be the difference between the refund corresponding to the product and destination indicated on the licence and the refund corresponding to the actual product and destination.

For the purpose of applying this paragraph, the rates of refund to be taken into consideration shall be those valid on the day on which the licence application is lodged. Where necessary those rates shall be adjusted on the day of acceptance of the export declaration or payment declaration.

3. Where paragraphs 1 or 2 and Article 11 apply to the same export operation, the amount resulting from paragraphs 1 or 2 shall be reduced by the amount of the sanction applicable pursuant to Article 11.

(\*) OJ No L 331, 2. 12. 1988, p. 1.

2. Article 11 is replaced by the following:

*Article 11*

1. Where it is found that an exporter, with a view to the grant of an export refund, has requested a refund in excess of that applicable; the refund due for the relevant exportation shall be the refund applicable to the actual exportation reduced by an amount equivalent to:

- (a) half the difference between the refund requested and the refund applicable to the actual exportation;
- (b) twice the difference between the refund requested and the refund applicable, if the exporter has intentionally supplied false information.

The refund requested shall be deemed to be the amount calculated from the information supplied pursuant to Article 3 or Article 25 (2). Where the rate of refund varies according to destination, the differentiated part of the refund requested shall be calculated using the particulars of quantity, weight and destination provided pursuant to Article 47.

The sanction referred to in point (a) of the first subparagraph shall not apply:

- (a) in the case of *force majeure*;
- (b) in exceptional cases where the exporter, on his own initiative, immediately after becoming aware that the refund requested is excessive, notifies the competent authority thereof in writing, unless the competent authority has informed the exporter that it intends to examine the request or the exporter has otherwise become aware of this intention, or the competent authority has already established that the refund requested was incorrect;

(c) in cases of obvious error as to the refund requested, recognized by the competent authority;

(d) in cases where the request for the refund is in accordance with Commission Regulation (EC) No 1222/94 (\*), and in particular Article 3 (2) thereof, and has been calculated on the basis of the average quantities used over a specified period;

(e) in case of adjustment of the weight in so far as the deviation in the weight is due to a difference in the weighing method applied.

Where the reduction referred to under point (a) or (b) of the first subparagraph results in a negative amount, the exporter shall pay that negative amount.

Where the competent authorities establish that the refund requested was incorrect and the exportation has not been effected and consequently the refund cannot be reduced, the exporter shall pay the sanction provided for under point (a) or (b) of the first subparagraph which would apply if the exportation had been effected. Where the rate of refund varies according to destination, except in the case of a compulsory destination, the lowest positive rate or, if higher, the rate resulting from the indication as to the destination pursuant to Article 22 (2) or Article 25 (4) shall be taken into account for the calculation of the refund requested and the refund applicable.

The payment referred to in the fourth and fifth subparagraphs shall be made within 30 days from the day of receipt of the demand for payment. Where this time-limit is not met, the exporter shall pay interest for the period commencing 30 days after the date of receipt of the payment demand and ending on the day preceding the date of payment of the amount demanded at the interest rate referred to in paragraph 3.

The sanctions shall not apply simply where the refund requested is higher than the refund applicable pursuant to the application of Article 2a (2), Article 20 (3), Article 33 (2) and/or Article 48.

The sanctions shall be without prejudice to additional sanctions laid down at national level.

Member States may waive the application of sanctions of ECU 60 or less per export declaration.

Where the product indicated on the export declaration or payment declaration is not covered by the licence, no refund shall be due and the first subparagraph shall not apply.

Where the refund has been fixed in advance, the calculation of the sanction shall be based on the refund rates valid on the day on which the licence application is lodged and without taking into account of the loss of refund pursuant to Article 2a (1) or the reduction of

the refund pursuant to Article 2a (2) or Article 20 (3). Where necessary, those rates shall be adjusted on the day of acceptance of the export declaration or payment declaration.

2. The refund may be withheld if the amount thereof, per export declaration, does not exceed ECU 60.

3. Without prejudice to the obligation to pay any negative amount as referred to in the fourth subparagraph of paragraph 1, where a refund is unduly paid, the beneficiary shall reimburse the amounts unduly received, which includes any sanction applicable pursuant to the first subparagraph of paragraph 1, with interest calculated on the basis of the period between payment and reimbursement. However,

- (a) where reimbursement is covered by a security which has not yet been released, seizure of that security in accordance with Article 23 (1) or Article 33 (1) shall constitute recovery of the amounts due,
- (b) where the security has been released, the beneficiary shall pay the amount of the security which would have been forfeit, with interest calculated on the basis of the period from the date of release to the day preceding the date of payment.

The payment shall be made within 30 days from the day of receipt of the demand for payment.

The interest rate shall be determined in accordance with the provisions of national law but may not be less than the rate applicable for the recovery of national amounts.

If the undue payment was due to an error of the competent authority, no interest, or at the most an amount to be determined by the Member State corresponding to the undue profit, shall be levied.

Where the refund has been paid to an assignee, he and the exporter shall be jointly and severally liable for the reimbursement of the amounts unduly paid, securities unduly released and interest relating to that specific export transaction. The liability of the assignee, however, is limited to the amount paid to him, with interest on that amount.

4. The amounts recovered, the amounts resulting from the fourth and fifth subparagraphs of paragraph 1, and interest collected shall be paid to the paying agencies which shall deduct the amounts concerned from European Agricultural Guidance and Guarantee Fund (EAGGF) expenditure, without prejudice to Article 7 of Council Regulation (EEC) No 595/91 (\*\*).

Where the time-limit for payment is not met, Member States may, instead of requiring reimbursement, decide that amounts unduly paid, securities unduly released

and interest until the date of set-off, shall be deducted from subsequent payments to the exporter concerned.

The provisions of the second subparagraph shall also apply to amounts to be paid pursuant to the fourth and fifth subparagraphs of paragraph 1.

5. Without prejudice to the possibility referred to in the ninth subparagraph of paragraph 1 of waiving sanctions of small amounts, Member States may refrain from demanding reimbursement of amounts unduly paid, securities unduly released, interest and amounts resulting from the fourth subparagraph of paragraph 1, where the total of those amounts per export declaration does not exceed ECU 60, provided that, under national law, such cases are covered by similar rules of non-recovery.

6. For the purposes of the application of paragraphs 1 to 5, where an export declaration contains several distinct refund nomenclature or combined nomenclature codes, the entries relating to each of those codes shall be treated as a separate declaration.

(\*) OJ No L 136, 31. 5. 1994, p. 5.

(\*\*) OJ No L 67, 14. 3. 1991, p. 11.

#### Article 2

Article 13a of Regulation (EEC) No 3719/88 is amended as follows:

1. In the first subparagraph, 'eleven-digit code' is replaced by 'twelve-digit code'.
2. The following subparagraph is added:

'Without prejudice to the first subparagraph, where a product group as referred to in point b of the first subparagraph of Article 2a (2) of Regulation (EEC) No 3665/87 is defined, the product codes belonging to the group may be entered in the application for licences and on the licences themselves in section 22, preceded by the statement: "product group Article 2a (2) Regulation (EEC) No 3665/87".'

#### Article 3

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

It shall apply to exports for which the formalities referred to in Articles 3 or 25 of Regulation (EEC) No 3665/87 are completed on or after the date of entry into force of this Regulation.

On application by the interested party, submitted not later than one year after the entry into force of this Regulation, the provisions of point 1 of Article 1 shall be applied to cases for which those formalities have been completed on or after 1 July 1995.

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

Done at Brussels, 18 March 1997.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

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