

COMMISSION REGULATION (EEC) No 120/89

of 19 January 1989

laying down common detailed rules for the application of export levies and charges on agricultural products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Regulation No 136/66/EEC of the Council of 22 September 1966 on the establishment of a common organization of the market in oils and fats ⁽¹⁾, as last amended by Regulation (EEC) No 2210/88 ⁽²⁾, and in particular Articles 19 (3) and 20 (3) thereof,

Having regard to Regulation (EEC) No 804/68 of the Council of 28 June 1968 on the common organization of the market in milk and milk products ⁽³⁾, as last amended by Regulation (EEC) No 1109/88 ⁽⁴⁾, and in particular Article 13 (3) thereof,

Having regard to Regulation (EEC) No 2180/71 of the Council of 12 October 1971 on the general rules to be applied to the market in milk and milk products in the event of supply difficulties ⁽⁵⁾, and in particular Article 2 (1) thereof,

Having regard to Regulation (EEC) No 1603/74 of the Council of 25 June 1974 on the imposition of an export charge on certain cereal, rice and milk-based products containing added sugar in the event of sugar supply difficulties ⁽⁶⁾, and in particular Article 1 (3) thereof,

Having regard to Regulation (EEC) No 2727/75 of the Council of 29 October 1975 on the common organization of the market in cereals ⁽⁷⁾, as last amended by Regulation (EEC) No 2221/88 ⁽⁸⁾, and in particular Article 12 (2) thereof,

Having regard to Regulation (EEC) No 2742/75 of the Council of 29 October 1975 on production refunds in the cereals and rice sectors ⁽⁹⁾, as last amended by Regulation (EEC) No 1009/86 ⁽¹⁰⁾, and in particular Article 8 (a) thereof,

Having regard to Regulation (EEC) No 2747/75 of the Council of 29 October 1975 laying down general rules to be applied in the event of the cereals market being

disturbed ⁽¹¹⁾, as amended by Regulation (EEC) No 2560/77 ⁽¹²⁾, and in particular Article 4 (1) thereof,

Having regard to Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice ⁽¹³⁾, as last amended by Regulation (EEC) No 2229/88 ⁽¹⁴⁾, and in particular Article 10 (2) thereof,

Having regard to Council Regulation (EEC) No 1432/76 of 21 June 1976 laying down general rules to be applied in the event of the market in rice being disturbed ⁽¹⁵⁾, and in particular Article 4 (1) thereof,

Having regard to Council Regulation (EEC) No 426/86 of 24 February 1986 on the common organization of the market in products processed from fruit and vegetables ⁽¹⁶⁾, as last amended by Regulation (EEC) No 2247/88 ⁽¹⁷⁾,

Having regard to Council Regulation (EEC) No 520/77 of 14 March 1977 on the imposition of an export charge on certain products processed from fruit and vegetables and containing added sugar, in the event of sugar supply difficulties ⁽¹⁸⁾, and in particular Article 1 (4) thereof,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector ⁽¹⁹⁾, as last amended by Regulation (EEC) No 2306/88 ⁽²⁰⁾, and in particular Articles 13 (2) and 18 (4) and (5) thereof,

Having regard to Council Regulation (EEC) No 1650/86 of 20 May 1986 on export refunds and levies on olive oil ⁽²¹⁾, and in particular Article 6 thereof,

Whereas Regulation (EEC) No 645/75 of the Commission ⁽²²⁾, as last amended by Regulation (EEC) No 3677/86 ⁽²³⁾, lays down common detailed rules for the application of the export levies and charges on agricultural products; whereas experience has shown that new provisions should be introduced into that Regulation; whereas, for the sake of clarity and administrative efficiency, the rules applying to the subject should accordingly be recast;

⁽¹⁾ OJ No 172, 30. 9. 1966, p. 3025/66.

⁽²⁾ OJ No L 197, 26. 7. 1988, p. 1.

⁽³⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽⁴⁾ OJ No L 110, 29. 4. 1988, p. 27.

⁽⁵⁾ OJ No L 231, 14. 10. 1971, p. 1.

⁽⁶⁾ OJ No L 172, 27. 6. 1974, p. 9.

⁽⁷⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽⁸⁾ OJ No L 197, 26. 7. 1988, p. 16.

⁽⁹⁾ OJ No L 281, 1. 11. 1975, p. 57.

⁽¹⁰⁾ OJ No L 94, 9. 4. 1986, p. 6.

⁽¹¹⁾ OJ No L 281, 1. 11. 1975, p. 82.

⁽¹²⁾ OJ No L 303, 28. 11. 1977, p. 1.

⁽¹³⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽¹⁴⁾ OJ No L 197, 26. 7. 1988, p. 27.

⁽¹⁵⁾ OJ No L 166, 25. 6. 1976, p. 39.

⁽¹⁶⁾ OJ No L 49, 27. 2. 1986, p. 1.

⁽¹⁷⁾ OJ No L 198, 26. 7. 1988, p. 21.

⁽¹⁸⁾ OJ No L 73, 21. 3. 1977, p. 26.

⁽¹⁹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁰⁾ OJ No L 201, 27. 7. 1988, p. 65.

⁽²¹⁾ OJ No L 145, 30. 5. 1986, p. 8.

⁽²²⁾ OJ No L 67, 14. 3. 1975, p. 16.

⁽²³⁾ OJ No L 351, 12. 12. 1986, p. 1.

Whereas the export levies and charges form part of the export duties, as defined in particular in Article 1 (2) (e) of Council Regulation (EEC) No 2144/87 of 13 July 1987 on customs debt ⁽¹⁾, as amended by Regulation (EEC) No 4108/88 ⁽²⁾;

Whereas export levies should not be applied to exports under a licence where the refund is fixed in advance or determined by tender;

Whereas certain transactions are of no economic significance or concern very small quantities; whereas such transactions may be exempted from the export levy;

Whereas it is necessary to specify the date to be taken into consideration for purposes of determining the rate of the export levy and also the Member State which is to collect the export levy;

Whereas, in order to avoid speculative transactions, measures should be taken to ensure that products for which the export declaration has been accepted leave the customs territory of the Community within a reasonable time; whereas the 60-day period laid down for exports qualifying for refunds may also be applied where an export levy is collected; whereas, where that period is exceeded, special provisions must be laid down, in the particular case of export levies, to determine the rates thereof;

Whereas the task of customs authorities is made easier if products to which an export levy has been applied move under a procedure which is different from that used for products to which an export levy is not applied; whereas, to that end, it should be provided that products to which an export levy has been applied move under the external Community transit procedure;

Whereas, where the products concerned leave the Community territory during carriage from one point to another of the latter, appropriate provisions should be laid down to recover the export levy in question where products are not re-introduced into the Community; whereas to that end Commission Regulation (EEC) No 1062/87 of 27 March 1987 on provisions for the implementation of the Community transit procedure and for certain simplifications of that procedure ⁽³⁾, as last amended by Regulation (EEC) No 1469/88 ⁽⁴⁾, should be applied;

Whereas export licences without advance fixing of the refund may have been applied for or issued before the date of application of the export levy; whereas, apart from

cases of advance fixing, the export of agricultural products should not be required where an export levy is applied; whereas, consequently, it should be provided that such applications for licences may be withdrawn or such licences may be cancelled at the request of the party concerned, with the security lodged being released;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the relevant management committees,

HAS ADOPTED THIS REGULATION:

Article 1

Without prejudice to the derogations provided for in the specific Community rules relating to certain agricultural products, this Regulation lays down common detailed rules for the application of the export levies and charges (hereinafter referred to as 'export levies') on agricultural products provided for in:

- the second indent of Article 20 (1) of Regulation No 136/66/EEC,
- Article 2 (1) of Regulation (EEC) No 2180/71,
- Article 1 (1) of Regulation (EEC) No 1603/74,
- Article 6 (2) of Regulation (EEC) No 2742/75,
- the first indent of Article 2 (1) of Regulation (EEC) No 2747/75,
- the first indent of Article 2 (1) of Regulation (EEC) No 1432/76,
- Article 1 (1) of Regulation (EEC) No 520/77,
- Article 18 (1) and (4) of Regulation (EEC) No 1785/81.

Article 2

Save as otherwise provided in this Regulation, export levies shall apply to all exports, permanent or temporary, to a destination outside the customs territory of the Community of:

- (a) products which come under Article 9 (2) of the Treaty, whether or not their packaging comes under that provision;
- (b) products which do not come under Article 9 (2) of the Treaty, where they contain components subject to export levies which came wholly or in part under the said provision before being used in the manufacture of the exported products.

Article 3

1. No export levies shall be chargeable on exports in respect of which a refund has been fixed in advance or determined by a tendering procedure.

⁽¹⁾ OJ No L 201, 22. 7. 1987, p. 15.

⁽²⁾ OJ No L 361, 29. 12. 1988, p. 2.

⁽³⁾ OJ No L 107, 22. 4. 1987, p. 1.

⁽⁴⁾ OJ No L 132, 28. 5. 1988, p. 67.

Where in the case of a compound product a refund is fixed in advance in respect of one or more of its components, within the meaning of Article 8 (3) of Commission Regulation (EEC) No 3665/87⁽¹⁾, exemption from export levies shall apply only in respect of such component or components.

2. In addition to the cases referred to in Chapter II of Council Regulation (EEC) No 918/83⁽²⁾, no export levies shall be chargeable on :

- (a) products which are loaded within the Community for victualling purposes on board sea-going vessels or aircraft serving international routes, provided that the quantity involved does not exceed that normally required for consumption on board such vessels or aircraft ;
- (b) products for the armed forces of a Member State which are stationed outside the customs territory of the Community ;
- (c) small consignments of a non-commercial nature, where the weight of the leviable content does not exceed three kilograms per consignment ; the other conditions of application of this allowance, with the exception of those relating to the value of the products, shall be the same as those laid down in Articles 29 to 31 of Regulation (EEC) No 918/83 ;
- (d) goods contained in the personal luggage of travellers where the weight of the leviable content does not exceed three kilograms per traveller ; the other conditions of application of this allowance, with the exception of those relating to the value of the products, shall be the same as those laid down in Articles 45 to 49 of Regulation (EEC) No 918/83 ;
- (e) products under one of the procedures provided for in Articles 4 and 5 of Council Regulation (EEC) No 565/80⁽³⁾ ;
- (f) the catering supplies referred to in Article 42 (1) of Regulation (EEC) No 3665/87, the conditions laid down in paragraphs 2, second subparagraph, 3, 4, 5, 6 and 7 of the said Article applying *mutatis mutandis*.

3. The application of paragraph 2 (b) shall be subject to the production to the competent authorities of the Member State in which the export declaration has been accepted, of a certificate issued by the armed forces concerned confirming the destination of the products in respect of which the export declaration is lodged, and to the condition that the arrival at their destination of the products concerned is guaranteed.

Article 4

1. Except where the export levy is fixed in advance or determined under a tendering procedure, the levy rate applicable shall be that in force on the date on which the customs authority accepts the export declaration relating

to the products on which export levies are chargeable. From the time of such acceptance the products shall remain under customs control until they leave the customs territory of the Community.

However, save in case of *force majeure* :

- where the products concerned leave the customs territory of the Community after the 60th day from the day on which the export declaration was accepted, or
- in cases where proof of exit from the customs territory of the Community is not furnished within a period of 12 months from the date on which the export declaration was accepted,

the export levy rate chargeable shall be the highest of the rates in force during the period from the date of acceptance of the export declaration to the date on which the products leave the customs territory of the Community ; where a rate fixed in advance higher than the highest rate was applicable that rate shall be chargeable.

For the purposes of the foregoing subparagraph, no account shall be taken of any export refund fixed during the said period.

Proof of exit from the customs territory of the Community shall be furnished in accordance with the same procedure as that applying to refunds. Where such proof is not furnished within a period of 12 months from the date on which the export declaration was accepted, the date of exit from the Community's customs territory shall be regarded as being the last day of that period.

2. The date on which the export declaration is accepted shall be the operative date for determining the quantity, nature and characteristics of the product to be exported.

3. For the purposes of this Article, the highest rate of export levy shall be the amount of the export levy :

- expressed in ecus,
- which is the highest for the product and destination concerned for the period over which the rates are compared.

4. An export levy determined under a tendering procedure shall be a levy fixed in advance.

Article 5

1. The export levy shall be collected by the Member State to which the customs office which accepts the export declaration belongs.

2. Where the export levy varies according to destination :

- (a) the levy in force for the destination indicated in the export declaration referred to in Article 4 (1) shall be charged and any difference between the amount of such levy and that of the highest levy in force on the date of acceptance of the export declaration shall be covered by a security ;

⁽¹⁾ OJ No L 351, 14. 12. 1987, p. 1.

⁽²⁾ OJ No L 105, 23. 4. 1983, p. 1.

⁽³⁾ OJ No L 62, 7. 3. 1980, p. 5.

- (b) where such security is given, the exporter must, save in case of *force majeure*, furnish proof, within 12 months from the date of acceptance, that the product has been imported; such proof shall be furnished in the manner provided for in Article 18 of Regulation (EEC) No 3665/87;
- (c) where the proof referred to in (b) is not furnished within the prescribed period the products shall be regarded, save in case of *force majeure*, as having reached the destination in respect of which the highest levy rate is chargeable, and the security shall be forfeited and treated as an export levy;
- (d) where the proof referred to in (b) is furnished within the prescribed period, the security shall be released according to the destination which the product has reached and in proportion to the quantities in respect of which such proof is furnished; any amount of the security not released shall be forfeited and treated as an export levy;
- (e) where the exporter furnishes proof within the period specified in (b) that the product has reached a destination in respect of which the levy is lower than that charged the amount due shall be adjusted and any security given shall be released;
- (f) the security shall consist either of a cash deposit or of a guarantee issued by an institution satisfying the criteria laid down by the Member State in which the export declaration is accepted.
3. Where the period referred to in 2 (b), (c) and (e) has not been complied with although the exporter has endeavoured to obtain the proof in time, that period may, at the exporter's request, be extended for such term as the competent authority of the exporting Member State considers necessary in view of the circumstances invoked.

Article 6

Where the proof referred to in the fourth subparagraph of Article 4 (1) and/or the proof referred to in Article 5 (2) (b) are furnished within six months of the expiry of the period laid down in those Articles, the amount due by way of levy shall be:

- (a) the levy which would have been collected if the said period had been complied with;
- (b) plus 15 % of the difference between the levy collected and the amount referred to at (a).

Article 7

Once the export declaration lodged in respect of products as referred to in Article 2 (a) has been accepted, the latter shall be deemed no longer to be covered by Article 9 (2) of the Treaty and shall accordingly move in accordance with Article 1 (2) of Council Regulation (EEC) No 222/77⁽¹⁾ on Community transit.

⁽¹⁾ OJ No L 38, 9. 2. 1977, p. 1.

Article 8

1. Products subject to an export levy shall move between two Member States in accordance with Title III of Regulation (EEC) No 1062/87.
2. The office of departure within the meaning of Regulation (EEC) No 222/77 shall take the necessary steps to ensure that the export levy referred to at (c) is collected:
 - (a) where an internal Community transit document giving an office belonging to a Member State as the office of destination does not contain the entry referred to in Article 21 of Regulation (EEC) No 1062/87 (second entry) because the product concerned was not subject to an export levy when the internal Community transit declaration was authenticated; and
 - (b) where, under the Agreement between the European Economic Community and the EFTA countries on common transit arrangements that product is presented at an office in an EFTA country; and
 - (c) where an export levy introduced after the date on which the internal Community transit declaration was authenticated was in force on the date on which the product was presented at the office of destination.
3. If the exporter shows to the satisfaction of the competent authority that the goods left the customs territory of the Community on a date when no export levy or a levy lower than that mentioned in paragraph 2 was applicable, no levy or, where appropriate, the lower levy shall be collected.
4. For the purposes of this Regulation the EFTA countries are Austria, Finland, Iceland, Norway, Sweden and Switzerland.

Article 9

1. A security shall be lodged in accordance with Article 24 (2) of Regulation (EEC) No 1062/77 in respect of products moving as provided for in Articles 24 and 25 of that Regulation to ensure that the export levy payable is charged if such products do not re-enter the customs territory of the Community.
2. As soon as proof is furnished in the Member State of departure that the products have re-entered the customs territory of the Community, the security shall be released in proportion to the quantities in respect of which such proof is furnished.

Article 10

Where a product is placed under one of the simplified procedures provided for in Title IV, Chapter I of Regulation (EEC) No 1062/87 for carriage to a station of destination or for delivery to a recipient on the customs

territory of the Community, the office of departure may not authorize any variation of the contract of carriage which would enable carriage to end outside the said customs territory unless it has taken the necessary steps to ensure that the export levy payable is charged. In such cases, the export levy rate applicable shall be that in force on the date on which the declaration of export to third countries is accepted by the office of departure.

Article 11

1. Where an export levy is in force and products are re-exported under the second subparagraph of Article 6 (2) or the second subparagraph of Article 11 (3) of Council Regulation (EEC) No 1430/79 ⁽¹⁾, a security equal to the export levy shall be lodged.

2. The security referred to in paragraph 1 :

- (a) shall be released where the decision concerning a request for reimbursement or remission of import levies is positive ;
- (b) shall be forfeited and treated as an export levy where :
 - the decision referred to at (a) is negative, and
 - the export levy is not paid within 30 days of that on which the payment notice is issued.

Article 12

During periods when the levy rate applying to a given product is higher than zero, export licences for that product may be cancelled and applications for such

licences withdrawn, at the request of the interested party, except in the following cases :

- (a) the licence specifies a refund amount fixed in advance or determined by means of a tendering procedure ;
- (b) the licence was issued in response to an application lodged on a day on which a levy was applicable, the day on which the application was lodged being determined in accordance with Article 15 of Commission Regulation (EEC) No 3719/88 ⁽²⁾ ;
- (c) the application was for a licence covered by (a) or (b).

In such cases, the security relating to the licence shall be released immediately.

Article 13

- 1. Regulation (EEC) No 645/75 is hereby repealed.
- 2. References to the Regulation repealed under paragraph 1 shall be construed as references to this Regulation.

References to the Articles of the repealed Regulation should be read in accordance with the correlation table in the Annex.

Article 14

This Regulation shall enter into force on 1 April 1989.

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

Done at Brussels, 19 January 1989.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 175, 12. 7. 1979, p. 1.

⁽²⁾ OJ No L 331, 2. 12. 1988, p. 1.

ANNEX

Correlation table

Regulation (EEC) No 645/75	This Regulation
Article 1	Article 1
Article 2 (1)	Article 2
Article 2 (2)	
Article 2a	Article 11
Article 3	Article 3
Article 4	Article 4
Article 5	Article 5
—	Article 6
—	Article 7
Article 6	Article 8 (1)
Article 7	Article 9
Article 8	Article 10
Article 9	—
Article 10	Article 12
Article 11	Article 13
Article 12	Article 14