COMMISSION REGULATION (EC) No 1369/2002

of 26 July 2002

derogating from Article 31(10) of Council Regulation (EC) No 1255/1999 as regards proof of arrival at destination in the case of differentiated refunds and laying down detailed rules for the application of the lowest export refund rate for certain milk products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products [1], as last amended by Commission Regulation (EC) No 509/2002 [2], and in particular the third indent of Article 31(10) and Article 31(14) thereof,

Whereas:

(1) The third indent of Article 31(10) of Regulation (EC) No 1255/1999 stipulates that in the case of differentiated refunds the refund is to be paid on presentation of proof that the products have reached the destination indicated on the licence or another destination for which a refund was fixed. Exceptions to that rule are possible provided that conditions are laid down offering equivalent guarantees.

(2) In the event that export refunds are differentiated according to destination, Article 18(1) and (2) of Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products [3], as last amended by Regulation (EC) No 1253/2002 [4], stipulates that part of the refund, calculated using the lowest rate for the refund, is to be paid on application by the exporter once proof is furnished that the product has left the customs territory of the Community.

(3) Under special arrangements with certain third countries, the refund rate applicable to the export of certain milk products to those countries may be lower, in some cases by a large amount, than the refund normally applied. It is also possible that a refund may not be fixed so the lowest rate of the refund is also the result of the lack of fixing of a refund.

(4) Council Regulation (EC) No 1151/2002 of 27 June 2002 establishing certain concessions in the form of Community tariff quotas for certain agricultural products and providing for an adjustment, as an autonomous and transitional measure, of certain agricultural concessions provided for in the Europe Agreement with Estonia [5] establishes concessions in the form of reciprocal tariff quotas involving the abolition of Community refunds on certain milk products. Similar concessions have been agreed with Latvia and Lithuania. Refunds for the products concerned from the three Baltic states have therefore been abolished with effect from 4 July 2002.

(5) The abolition of refunds entails a differentiation of refunds for certain milk products. So as to avoid requiring exporters to furnish proof of arrival at destination in order to qualify for a refund in accordance with Regulation (EC) No 1255/1999, the authorities of the countries to whom concessions have been granted have undertaken to ensure that only consignments of Community products which have not received refunds will be accepted for import into those countries. To that end, the provisions applicable to Poland by virtue of Article 20(b) of Commission Regulation (EC) No 174/1999 [6], as last amended by Regulation (EC) No 1368/2002 [7], have been extended to the countries and products concerned. A derogation should therefore be made from Article 31(10) of Regulation (EC) No 1255/1999.

(6) Article 20(b) of Commission Regulation (EC) No 174/1999 obliges operators to present a certified copy of the export licence and the corresponding export declaration to the competent authorities when the products referred to in Annex VIII to Regulation (EC) No 174/1999 are imported to the destinations referred to in that Annex. The export licence must bear special indications guaranteeing that the products concerned have not received an export refund. The authorities of the third countries concerned are to verify compliance with the provisions of Article 20b of Regulation (EC) No 174/1999.

(7) Account should be taken of these special arrangements when applying Regulations (EC) No 1255/1999 and (EC) No 800/1999 so as to avoid imposing on exporters unnecessary financial charges during their trade with third countries. To that end, when the lowest refund rate is determined the rates fixed on the conditions and for the particular destination concerned should not be taken into account.

[1] OJ L 160, 26.6.1999, p. 48.
[2] OJ L 79, 22.3.2002, p. 15.
[3] OJ L 102, 17.4.1999, p. 11.
[4] OJ L 183, 12.7.2002, p. 12.
[5] OJ L 170, 29.6.2002, p. 15.
[6] OJ L 20, 27.1.1999, p. 8.
[7] See page 33 of this Official Journal.

(8) For the sake of clarity, Commission Regulation (EC) No 2886/2000 of 27 December 2000 derogating from Article 31(10) of Council Regulation (EC) No 1255/1999 as regards proof of arrival at destination in the case of differentiated refunds and laying down detailed rules for the application of the lowest export refund rate for certain milk products [1], which lays down similar provisions for the export of certain products to Poland, should be repealed. The provisions of that Regulation should be incorporated into this Regulation.

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

HAS ADOPTED THIS REGULATION:

Article 1

By derogation from the third indent of Article 31(10) of Regulation (EC) No 1255/1999, proof of arrival at destination shall not be required for the products referred to in Annex VIII to Regulation (EC) No 174/1999.

Article 2

The fact that no refund is fixed on the products referred to in Annex VIII to Regulation (EC) No 174/1999 shall not be taken into account in determining the lowest refund rate within the meaning of the first subparagraph of Article 18(2) of Regulation (EC) No 800/1999.

Article 3

Regulation (EC) No 2886/2000 is hereby repealed.

Article 4

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

It shall apply to licences applied for from 4 July 2002.

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

Done at Brussels, 26 July 2002.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 333, 29.12.2000, p. 79.