

COMMISSION REGULATION (EC) No 259/98**of 30 January 1998****laying down detailed rules for the export of products supplied as Community food aid**

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 organisation of the market in cereals⁽¹⁾, as last amended by Commission Regulation (EC) No 923/96⁽²⁾, and in particular Articles 9(2) and 13(11) thereof, and to the corresponding provisions of the other Regulations on the common organisation of the markets in agricultural products,

Whereas, for the purposes of applying Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food security⁽³⁾, new general rules for the mobilisation of products to be supplied as Community food aid have been laid down by Commission Regulation (EC) No 2519/97⁽⁴⁾;

Whereas the aforementioned new rules imply the application of export refunds in the case of mobilisation in the Community; whereas, however, by way of derogation from 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⁽⁵⁾, as last amended by Regulation (EC) No 2114/97⁽⁶⁾, special rules should be laid down as regards certain aspects; whereas, in particular in order to ensure that the conditions of competition that applied in respect of the supply operation at the time of submission of tenders are not changed subsequent to the award of contracts as the result of the application of certain techniques for adjusting the export refunds according to the date of export, provision should be made to waive certain provisions applicable to trade in agricultural products and to grant an export refund that is fixed and published prior to the deadline for submission of tenders and that remains unaltered irrespective of the actual date of export;

Whereas Commission Regulation (EEC) No 1068/93 of 30 April 1993 on detailed rules for determining and applying the agricultural conversion rates⁽⁷⁾, as last amended by Regulation (EC) No 1482/96⁽⁸⁾, establishes the operative events for the agricultural conversion rates, in particular that applicable to the refunds;

Whereas, in order to ensure that the abovementioned rules are applied correctly, administrative provisions relating to export licences should be laid down by way of derogation from Commission Regulation (EEC) No 3719/88 of 16 November 1988 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products⁽⁹⁾, as last amended by Regulation (EC) No 1404/97⁽¹⁰⁾; whereas, for this purpose, the delivery guarantee lodged by the successful tenderer for the food aid operation to ensure he meets his obligations as regards the supply in accordance with Article 10 of Regulation (EC) No 2519/97 should be considered sufficient to also ensure compliance with the obligations resulting from the licences;

Whereas the supply operations carried out pursuant to Regulation (EC) No 2519/97 are considered as food aid within the meaning of Article 10(4) of the Agreement on Agriculture in the framework of the Uruguay Round; whereas these operations should be closely monitored by the Commission;

Whereas export refunds for Community food aid shall only be paid for quantities exported in accordance with Regulation (EEC) No 3665/87 and taken over in accordance with Regulation (EC) No 2519/97;

Whereas Commission Regulation (EEC) No 2330/87⁽¹¹⁾, as last amended by Regulation (EEC) No 2226/89⁽¹²⁾, lays down detailed rules for the export of products supplied as Community food aid; whereas in order to make the necessary changes and for reasons of clarity and administrative efficiency Regulation (EEC) No 2330/87 should be replaced;

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

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 166, 5. 7. 1996, p. 1.

⁽⁴⁾ OJ L 346, 17. 12. 1997, p. 23.

⁽⁵⁾ OJ L 351, 14. 12. 1987, p. 1.

⁽⁶⁾ OJ L 295, 29. 10. 1997, p. 2.

⁽⁷⁾ OJ L 108, 1. 5. 1993, p. 106.

⁽⁸⁾ OJ L 188, 27. 7. 1996, p. 22.

⁽⁹⁾ OJ L 331, 2. 12. 1988, p. 1.

⁽¹⁰⁾ OJ L 194, 23. 7. 1997, p. 5.

⁽¹¹⁾ OJ L 210, 1. 8. 1987, p. 56.

⁽¹²⁾ OJ L 214, 25. 7. 1989, p. 10.

HAS ADOPTED THIS REGULATION:

Article 1

Without prejudice to exceptional provisions adopted by the Commission for special operations, this Regulation shall apply to exports of products covered by the regulations on the common organisation of the markets listed in Article 1 of Regulations (EEC) No 3719/88 and (EEC) No 3665/87 where they are supplied as Community food aid pursuant to Regulation (EC) No 1292/96 and mobilised in the Community in accordance with the general rules of Regulation (EC) No 2519/97.

Article 2

1. By way of derogation from Article 3(2) of Regulation (EEC) No 3665/87, the export refund to be paid shall be that applicable on the date specified in the tender notice issued by the Commission and laying down the special conditions under which the food-aid operation is to be carried out, hereinafter referred to as 'tender notice'.

2. In the case of supply ex works or free carrier and free at port of shipment, the time limit within which the products have to leave the customs territory of the Community, laid down in Articles 4(1) and 32(1) of Regulation (EEC) No 3665/87, shall not apply.

3. By way of derogation from the provisions laying down a readjustment of amounts fixed in advance, the refund referred to in paragraph 1 shall not be subject to any adjustment or correction.

4. The refund shall be converted into national currency by applying the agricultural conversion rate on the day of acceptance of the export declaration. The conversion rate valid on the day of application for the licence may be fixed in advance in accordance with the provisions of Articles 13 to 17 of Regulation (EEC) No 1068/93.

Article 3

1. By way of derogation from Article 2a(1) of Regulation (EEC) No 3665/87, the payment of the refund shall be conditional upon the presentation of an export licence, comprising advance fixing of the refund referred to in Article 2(1), applied for to carry out the food-aid operation concerned.

The licence shall be valid only in respect of the export to be carried out in this context.

By way of derogation from Article 36 of Regulation (EEC) No 3719/88, the period of validity of the licence may be extended by the competent authority at the written and

justified request of the successful tenderer (hereinafter referred to as 'the supplier').

2. Applications for licences shall be accompanied by proof that the applicant is the supplier of the Community food aid. Such proof shall be provided by a copy of the communication sent to him by the Commission informing him that he is the supplier of the food aid in question and, if required by the issuing agency, a copy of the tender notice.

Licences shall only be issued if proof is provided that the delivery guarantee referred to in Article 10 of Regulation (EC) No 2519/97 has been lodged. The lodging of that guarantee shall be deemed to constitute the lodging of the licence security. By way of derogation from Title III Section 4 of Regulation (EEC) No 3719/88, it shall be released under the conditions laid down in Article 22 of Regulation (EC) No 2519/97.

3. In the document used for the application for refund as referred to in Article 3(5) of Regulation (EEC) No 3665/87 and, in addition to the requirements of Article 14a of Regulation (EEC) No 3719/88, in section 20 of the application for licences and the export licence itself, one of the following entries shall be included:

- Ayuda alimentaria comunitaria — Acción n° .../..
- Fællesskabets fødevarehjælp — aktion nr. .../..
- Gemeinschaftliche Nahrungsmittelhilfe — Maßnahme Nr. .../..
- Κοινοτική επισιτιστική βοήθεια — Δράση αριθ. .../..
- Community food aid — Action No .../..
- Aide alimentaire communautaire — Action n° .../..
- Aiuto alimentare comunitario — Azione n. .../..
- Communautaire voedselhulp — Actie nr. .../..
- Ajuda alimentar comunitária — Acção n° .../..
- Yhteisön elintarvikeapu — Toimi N:o .../..
- Livsmedelsbistånd från gemenskapen — Aktion nr .../..

The action number to be indicated is that specified in the tender notice.

Article 4

1. Without prejudice to the provisions of Article 2, payment of the export refund in connection with Community food aid shall be made in accordance with the provisions of Regulation (EEC) No 3665/87 and, by way of derogation from Article 16 of that Regulation, on production of a copy of the taking-over certificate or the delivery certificate referred to in Article 17(3) and (4) of Regulation (EC) No 2519/97, certified as a true copy by the Commission office to which the tenders are sent in accordance with the tender notice.

To that end, the supplier shall send a photocopy of the duty attributed export licence to the Commission office referred to in the first subparagraph.

2. The provisions of Article 11(1) of Regulation (EEC) No 3665/87 shall not apply where the refund requested is higher than the refund due for the relevant exportation as a result of circumstances or events beyond the control of the supplier which occur after the completion of the supply operation in accordance with Article 12(4), 13(6), 14(10) or 15(4) of Regulation (EC) No 2519/97.

Where the country of destination is changed by the recipient the reduction referred to in the second indent of

Article 20(3)(b) of Regulation (EEC) No 3665/87 shall not apply.

Article 5

Regulation (EEC) No 2330/87 is hereby repealed. However, it shall continue to apply to Community food aid supplies for which the tender notice refers thereto.

Article 6

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

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

Done at Brussels, 30 January 1998.

For the Commission

Franz FISCHLER

Member of the Commission
