

COMMISSION REGULATION (EEC) No 3615/92

of 15 December 1992

on the determination of the quantities of agricultural products to be taken into account for the calculation of refunds payable in the case of the export of goods referred to in Council Regulation (EEC) No 3035/80

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EEC) No 2071/92 ⁽²⁾, and in particular Article 17 (4) thereof, and to the corresponding provisions of the other Regulations on the common organization of agricultural markets referred to in Article 1 of Council Regulation (EEC) No 3035/80 of 11 November 1980 laying down for certain agricultural products exported in the form of goods not covered by Annex II to the Treaty, general rules concerning the granting of refunds and the criteria for fixing their amount ⁽³⁾, as last amended by Regulation (EEC) No 3381/90 ⁽⁴⁾,

Whereas Council Regulation (EEC) No 3035/80 provides for refunds to be granted on exports of certain agricultural products used in the manufacture of certain goods not covered by Annex II to the Treaty; whereas in respect of exports of goods listed in Annex B to that Regulation, Article 3 thereof provides that the refund may be granted in respect of the quantity of the agricultural product used in the manufacture of the exported goods;

Whereas Regulation (EEC) No 3035/80 was adopted in application of certain Council Regulations on the common organization of agricultural markets, including Regulation (EEC) No 804/68; whereas Article 17 (1) of Regulation (EEC) No 804/68 and the corresponding Articles of the other basic Regulations provide that the difference between prices within the Community and prices on the world market for the agricultural products in question can be covered by a refund to the extent necessary to enable the products to be exported in the form of certain goods not covered by Annex II of the Treaty;

Whereas, in consequence, to qualify for a refund the agricultural products used and in particular the goods manufactured from such products must therefore be exported; whereas any exception to this rule must be given a restrictive meaning;

Whereas, however, during the process of manufacturing the said goods, producers inevitably incur losses of raw materials for which Community prices have nevertheless been paid while the losses incurred by producers established outside the Community are limited to world market prices;

Whereas the concept of products actually used in the process of manufacture of exported goods has received different interpretations in different Member States; whereas the Court of Auditors in its Annual Report ⁽⁵⁾ made observations concerning the consistent management of losses;

Whereas it is necessary to lay down common rules for determining the concept of the quantity of agricultural products actually used in the process of manufacturing the exported goods;

Whereas during the process of manufacturing certain goods by-products are obtained which differ markedly in value from the principal products; whereas many of these by-products can be used only as animal feed;

Whereas the measures laid down in this Regulation are in accordance with the opinions of all the management committees concerned,

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of implementing Article 8 (1) of Regulation (EEC) No 3035/80:

1. the quantities of agricultural products actually used within the meaning of Article 3 (2) of Regulation (EEC) No 3035/80 may be declared by reference to a list deposited with the competent authorities of the Member State of manufacture or of export;
2. for the purposes of this Regulation:
 - (a) 'losses' means the quantities of products or goods resulting from the process of manufacture under consideration, from the stage at which agricultural product are used unprocessed in the manufacture, other than the quantities of goods which are actu-

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 215, 30. 7. 1992, p. 64.

⁽³⁾ OJ No L 323, 29. 11. 1980, p. 27.

⁽⁴⁾ OJ No L 327, 27. 11. 1990, p. 4.

⁽⁵⁾ OJ No C 324, 13. 12. 1991, p. 1.

ally exported, other than the residues referred to under (b) and the by-products referred to under (c), and which cannot be commercialized,

- (b) 'residues' means the products of the manufacturing process under consideration, of compositions distinctly different from the goods actually exported and which cannot be commercialized,
- (c) 'by-products' means the products or goods obtained in the course of the manufacturing process under consideration, of compositions or characteristics distinct from the goods actually exported and which are capable of being marketed;

3. however for the purposes of this Regulation :

- (a) the products obtained in the course of the manufacturing process under consideration, of composition distinct from the goods actually exported, sold against a payment representing exclusively the costs incurred for their disposal, shall not be considered as being marketed,
- (b) the products or goods resulting from the manufacturing process under consideration, and which can be disposed of, whether or not against payment, only as animal feeds, shall be assimilated to losses as provided for by point 2 under (a);

4. for the purposes of determining the quantities of agricultural products actually used, the following rules are to be applied :

- (a) all agricultural products used within the meaning of Article 3 (2) of Regulation (EEC) No 3035/80 and which confer a right to a refund but which disappear during the normal course of the manufacturing process (for example as steam or smoke, or by conversion into non-recoverable powder or ash) are eligible for that refund in respect of all of the quantities used,
- (b) any quantity of goods which is not actually exported is not eligible for refunds in respect of the quantities of agricultural products actually used, without prejudice of the provisions under (c).

If such goods have the same composition as those actually exported, a *pro-rata* reduction in quantities of agricultural products actually used in the manufacture of the latter may be applied,

- (c) by way of derogation from point (b), losses of 2 % or less by weight inherent in the production of the goods may be taken into account. The threshold of

2 % is calculated as the proportion of the weight of the dry matter of all raw materials used, after deduction of the quantities referred to under (a), in relation to the weight of the dry matter of the actually exported goods, or any other method of calculation appropriate to the conditions of manufacture of the goods. The threshold of 2 % may be replaced by a higher one under the conditions of 5,

- (d) where the losses inherent in manufacture exceed 2 % or the specific threshold established in accordance with 5, the excess loss is not eligible for refunds in respect of the quantities of agricultural products actually used.

The competent authority of the Member States may, however, accept justified higher losses. The Member States shall communicate to the Commission the cases to which this is applied,

- (e) the actually used quantities of agricultural products incorporated in the residues defined as in 2 (b) shall be taken into account for the granting of refunds,
- (f) in the case where by-products are obtained, the quantities of agricultural products actually used shall be attributed respectively to the good exported and to the by-products,
- (g) if it is not possible to attribute the agricultural products actually used, respectively, to the goods exported and to the by-products (where appropriate by means of analysis), the case shall be referred to the Commission for its opinion. The Commission shall inform all the Member States of its opinion for harmonized application purposes;

- 5. the Commission shall progressively establish in accordance with the procedure laid down in Article 30 of Regulation (EEC) No 804/68 and in the corresponding provisions of the other Regulations on the common organization of agricultural markets referred to in Article 1 of Regulation (EEC) No 3035/80, higher specific thresholds for certain goods on the basis of communications from the Member States and of studies conducted on the usual losses under similar manufacturing conditions for goods intended for the Community market.

Article 2

- 1. This Regulation shall apply to all export for which, from 1 April 1993, a declaration of agricultural products actually used is submitted, in application of Article 8 (1)

of Regulation (EEC) No 3035/80. It shall also apply to prior declaration, whether new or renewed, submitted from 1 April 1993.

Any export declaration introduced as from 1 April 1994 referring to a prior declaration of the agricultural products actually used is acceptable, for the application of this Regulation, only if the prior declaration has been introduced, renewed or confirmed as from 1 April 1993.

2. The Member States shall inform the Commission by 1 April 1993 of the measures adopted for the application of this Regulation.

Article 3

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, 15 December 1992.

For the Commission

Martin BANGEMANN

Vice-President
