COMMISSION REGULATION (EEC) No 1922/92

of 13 July 1992

amending Regulation (EEC) No 1633/84 laying down detailed rules for applying the variable slaughter premium for sheep and repealing Regulation (EEC) No 2661/80 and determining the conditions for the reimbursement of the clawback following the Judgment of the Court of Justice in Joined Cases C-38/90 and C-151/90

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3013/89 of 25 September 1989 on the common organization of the market in sheepmeat and goatmeat [1], as last amended by Regulation (EEC) No 1741/91 [2], and in particular Article 24 (5) thereof,

Whereas the Judgment of the Court of Justice in Joined Cases C-38/90 and C-151/90 declared invalid Article 4 (1) and (2) of Commission Regulation (EEC) No 1633/84 [3], as last amended by Regulation (EEC) No 1075/89 [4], inasmuch as, by providing for the chagring, by way of the clawback, of an amount which in most cases is not exactly equal to that of the slaughter premium actually granted, the Commission exceeded the powers conferred on it by Article 9 (3) of Council Regulation (EEC) No 1837/80 of 27 June 1980 on the common organization of the market in sheepmeat and goatmeat [5], as amended by Regulation (EEC) No 871/84 [6];

Whereas pursuant to Article 176 of the EEC Treaty the Commission has to take the necesssary measures to comply with the Judgment; whereas it is therefore necessary to ensure, for each product the exact correspondence of the amount of the clawback and that of the premium;

Whereas it is appropriate in the light of the Judgment, to provide in certain cases for the reimbursement of each amount collected in the form of clawback for each product surpassing the level of the premium paid;

Whereas, to this end, it is incumbent on the operators concerned to present the necessary proof;

Whereas the difficulties they may encounter in this regard make appropriate the application, at their request, of a calculation based on the average of the premiums fixed for the week of export and the three previous weeks;

Whereas a sanction has to be provided for if an operator does not make the choice between the two options or does not present the necessary proof;

Whereas it is appropriate to affirm that the competent United Kingdom authorities may retain the security lodged before the coming into force of this Regulation as long as the amount of the clawback has not been determined and paid;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sheep and Goats,

HAS ADOPTED THIS REGULATION:

Article 1

Article 4 of Regulation (EEC) No 1633/84 is amended as follows:

1. Paragraph 1 is replaced by the follwoing text:

1. For the United Kingdom, the amount of the clawback to be charged on departure of the products referred to in Article 1 (a) and (c) of Regulation (EEC) No 3013/89 from region 1, in accordance with Article 24 (5) of that Regulation, shall be equal to the amount of the premiums fixed in accordance with Article 3 (1) and actually granted for the same products subject to the said clawback.

At the request of the operator the amount of the clawback shall be fixed equal to the average amount of the premium fixed for the week of departure of the products and the three previous weeks.

Operators shall indicate within 28 days of notification by the competent United Kingdom authorities on which of the abovementioned options they intend to proceed. The option chosen shall apply to all clawback for which the operator is liable.

In the case of the first option chosen, the operator shall, at the same time, provide satisfactory to the competent United Kingdom authorities, of the amount of premium actually granted for the products subject to the said clawback. The period for providing proof may be extended by those authorities by a further 60 days.

[1] OJ No L 289, 7. 10. 1989, p. 1.
[2] OJ No L 163, 26. 6. 1991, p. 41.
[3] OJ No L 154, 9. 6. 1984, p. 27.
[4] OJ No L 114, 27. 4. 1989, p. 13.
[5] OJ No L 183, 16. 7. 1980, p. 1.
[6] OJ No L 90, 1. 4. 1984, p. 35.

In the case of the second option chosen, the competent United Kingdom authorities shall notify the operators of the amount of clawback calculated in accordance with the second subparagraph.

'In case of failure to indicate the chosen option within 28 days or failure to provide, in the case of the first option chosen, the said proof within a further period of 60 days the security shall be forfeited in full.';

2. in paragraph 2:

— the 'Regulation (EEC) No 1837/80' is replaced by the 'Regulation (EEC) No 3013/89',

— the 'region 5' is replaced by the 'region 1',

— the following subparagraph shall be added:

'Pending determination and payment of the amount due pursuant to paragraph 1, the competent United Kingdom authorities may retain any securities already lodged. Such securities may be forfeited in the circumstances already lodged. Such securities may be forfeited in the circumstances described in the sixth subparagraph of paragraph 1.'

Article 2

1. Operators or those entitled through them who, prior to the Judgment of the Court of Justice of 10 March 1992 in Joined Cases C-38/90 and C-151/90, initiated proceedings or made an equivalent complaint under the applicable national law in relation to the method of calculation of the amount of the clawback under Article 4 (1) of Regulation (EEC) No 1633/84, are entitled to reimbursement, within the time limits and according to the procedure laid down in the relevant national law, of the difference between the clawback they paid and the amount of the premium, fixed in accordance with Article 3 (1) of the aformentioned Regulation actually granted for the same products.

Alternatively, at the request of the operator, reimbursement can be made of the difference between the clawback actually paid and the average amount of the premiums fixed for the week of departure of the products and the three previous weeks.

2. Before the 30 November 1992, the persons referred to in paragraph 1 shall give the competent United Kingdom authorities a specification of:

— the date at which their claim commences,

— the amount of the clawback paid from this date until 10 March 1992,

— and, unless they have made a request under the second subparagraph of paragraph 1, the premium actually granted for the same products subject to the clawback,

and proof satisfactory to the competent United Kingdom authorities as far as the above elements are concerned.

3. The competent United Kingdom authorities shall, before 31 December 1992, inform the Commission of the number of claims for reimbursement made pursuant to paragraph 1 with a specification of the period to which the claim refers and the amount of reimbursement claimed.

Article 3

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

It shall apply to all situations where, on 10 March 1992, the clawback has not yet been paid or proceedings have been initiated or an equivalent complaint has been made under the applicable national law as referred ot in Article 2.

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

Done at Brussels, 13 July 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission