



# Trade mechanisms

- Horizontal regulations covering all products and sectors as regards
  - licences
  - export/ export refunds
  - intervention
  - securities
  - Customs tariff and Nomenclature



# **IMPORT AND EXPORT LICENCES FOR AGRICULTURAL PRODUCTS**

## **A MANAGEMENT TOOL FOR THE AGRICULTURAL MARKETS**

# Licences and certificates



## General:

- basic regulations (CMO) provide for licences for import and export
  - obligatory licences
  - optional licences
- horizontal implementing regulation (1291/2000)
- implementing regulations concerning specific market sectors

# Licences and certificates



The functions of the licences :

- ❖ Management tool for the agricultural markets
  - provide data for forward analysis of imports and exports
  - management of tariff quotas for imports
  - management of GATT commitments for exports

# Regulation 1291/2000

## principal mechanisms:



- ❖ import /export licences:
  - authorization and obligation
    - to import/export under the licence
    - specified quantity
    - products concerned
    - during period of validity
  - export licence with advance fixing of the refunds
    - additional function : confer entitlement to the export refund

# Regulation 1291/2000

## principal mechanisms:

### Application for licences

- **The application has to be submitted to the issuing body.**  
Issuing body is the competent authority of member state, responsible for receiving applications and issuing licences
- **Application form (art. 13)**
  - Paper application form
  - Written telecommunication (telex, fax) or electronic message
- **Application accompanied by the lodging of the security (art. 15 §2)**
  - Aim of the security : ensure the commitment taken by the operator and the reliability of the monitoring and management system
- **Applicant for licence**
  - any interested party established in the Community

# Regulation 1291/2000

## principal mechanisms:



### Issue of licences

Licences are issued by specific agencies

Issue without delay (art. 23 §1)

reflection period of some days before issuing the licence

### Form

- paper
- electronic

Period of validity : sector rules

# Regulation 1291/2000

## principal mechanisms:



### ❖ Use of licences

- Principle : the licence can be used anywhere in the Community
- Submitted to customs office with
  - import declaration
  - export declaration
- or option for MS to set up an information system so that licences and certificates are held by the issuing body or the authority responsible for paying the refund



# Regulation 1291/2000

## principal mechanisms:



- The licence can be split up into extracts
  - extracts from licences have the same legal effects as the licence from which they are extracted, within the limits of the quantity in respect of which such extracts are issued.
  - flexibility in the use of the licences
  - reduce the risks of loss of the licence
- A licence can be transferred (art. 9)
  - the transfer of licence covers only the rights deriving from the licence but not the obligations
  - the obligations (security) remain the responsibility of the initial titular holder of the licence
  - the licence can only be transferred once, and may be transferred back to the original titular holder

# Regulation 1291/2000

## principal mechanisms:



Release of the licence security (art. 31-35)

- ❖ Proof of the use of the licence must be produced, unless force majeure
  - Proof of the use of import licence
    - visa and endorsement of the licence from the competent authority
  - Proof of the use of export licence
    - visa and endorsement of the licence from the competent authority
    - proof of exit from customs territory of the community within 60 days following expiry of licence

# Regulation 1291/2000

## principal mechanisms:



Force majeure (art. 40-43)

- If a licence has not been used within its period of validity for reasons of force majeure :
  - its validity can be extended
  - or the licence can be cancelled and the licence security released
  - Force majeure in this context is a notion of Community law. The concept of force majeure has been interpreted by the Court of Justice in its jurisprudence



# Securities

- ❖ Principle fixed in common market organizations
- ❖ Commission Regulation 2220/85 laying down common detailed rules of the application of the system of securities for agricultural products

# Commission Regulation 2220/85



## ❖ Objectives

- creation of equal competitive conditions for traders by defining basic uniformed requirements for securities to be given under regulations on the common organizations of markets for certain agricultural products (form of securities, rules for the release and forfeiture)

# Commission Regulation 2220/85



## ❖ Principal mechanisms:

- description of the forms in which a security may be lodged
- in the case where a security has to be forfeited, application of the principle of proportionality by distinction between breaches of fundamental, secondary or subordinate obligations and their financial consequences

# Export refunds

## General remarks

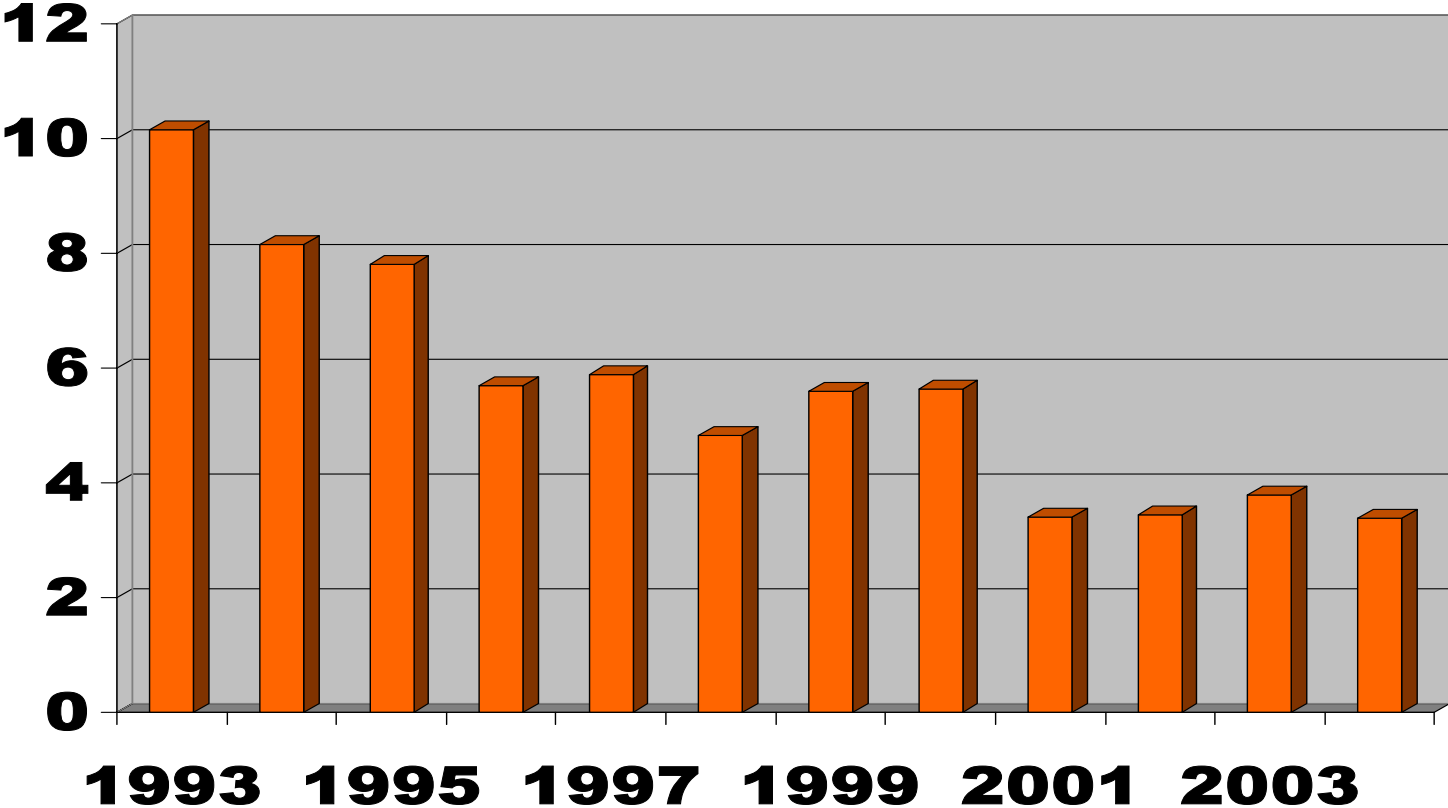


### ❖ Objective

- compensate the difference between prices on the world market and prices in the Community
  - enable export on the basis of world market prices
- ❖ fixed by management committee procedure

# Evolution of exports refunds expenditure: 1993-2004

Billion Euro





# Breakdown by sector of export refund expenditure in 2004

<u>Sector</u>	<u>Amount (mio EUR)</u>	<u>Percent</u>
➤ Milk and milk products	1 494	44.2%
➤ Sugar and isoglucose	988	29.2%
➤ Processed agricultural products	380	11.2%
➤ Beef / Veal	250	7.4%
➤ Cereals and rice	72	2.1%
➤ Others	200	5.9%
➤ -----		-----
➤ Total	3 384	100%

# Export refunds: Regulatory aspects



- ❖ Commission Regulation 800/1999
  - common detailed rules on the application
  - objective:
    - describe a common administrative procedure as regards the entitlement of export refunds for all sectors

# Regulation 800/99

## principal mechanisms:



- When export declaration is lodged the exporter has to indicate that export refunds will be claimed
- document presented must include all information necessary for calculation of the refund
- goods must leave Customs territory of the Community in unaltered state within 60 days of acceptance of export declaration

# Regulation 800/1999

## principal mechanisms:



- ❖ Products must be
  - in free circulation
  - furthermore, if required, of Community origin

# Regulation 800/99

## principal mechanisms



- ❖ Non-Differentiated refund paid if
  - principle: proof that products have left Community within 60 days
  - in specific cases Article 20: proof of import (or substantial processing) within 12 months, when
    - serious doubts as to the true destination
    - risk of re-import into the Community
      - ✓ export refund higher than import duties
      - ✓ (reduced or 0 import duties apply)

# Regulation 800/99

## principal mechanisms



### ❖ Differentiated refund paid if:

- proof that products have left Community within 60 days and
- proof of import in unaltered state in third country for which refund applies within 12 months following date of acceptance of export declaration

# Regulation 800/99

## principal mechanisms



- ❖ Sound and fair marketable quality (Article 21)
  - no refund on products which are not of sound and fair marketable quality
  - in accordance with standards and practices in force in Community or
  - specific , obligatory conditions in country of destination

# Advance payment of export refunds



- ❖ Advance on refunds for direct exports
  - advance in full or in part can be paid
  - once the export declaration has been accepted
  - security equal to advance 10% must be lodged



# Regulation 800/99

## principal mechanisms:



- ❖ Destinations treated as exports, Art.36,44
  - supplies within the Community for victualling
    - seagoing vessels, or
    - aircraft
  - supplies to international organizations established in the Community
  - supplies to armed forces
  - catering supplies to drilling/extraction rigs

# Regulation 800/99

## principal mechanisms



### ❖ Sanctions Art. 51

- when exporter has requested refund in excess of that applicable :
  - half the difference between the refund applied for and that applicable to the actual export
  - twice the difference between the refund applied for and that applicable if the exporter intentionally provides for false information
- enumeration of cases where sanctions do not apply e.g. force majeure

# **Physical checks**

**a key element  
of the  
control system for  
export refund products**



# Monitoring system for export refund goods



- ❖ **Physical checks** of goods at the time of export and physical checks on substitution (Art. 2 point a and b of Regulation 386/90)
- ❖ scrutiny of the application files by paying agency (Art. 2 point c and Art. 4 of Regulation 386/90)
- ❖ Furthermore: ex-post audits in the undertakings benefiting from refunds (Regulation 4045/89)



# Controls at the time of export

## ❖ objectives:

- Member States must take measures to make sure that export transactions of goods qualifying for export refunds are actually carried out and executed correctly
- harmonized measures in all Member States

# Physical checks of goods at the time of export



- Definition (Art 5 (1) of Regulation 2090/02):  
verification that export declaration and goods correspond as regards
  - quantity
  - nature and characteristics

# Physical checks of goods at the time of export



- when export formalities are completed and before authorization to export is given
- based on export declaration and supporting documents
- spot-checks, frequently, without express or tacit prior warning
- taking of representative samples if refund rate depends on the level of a specific component

# Physical checks of goods at the time of export



- ❖ relate at least to a representative selection of 5% of the export declarations (export-refund)
  - 5% apply
    - per customs office
    - calendar year
    - per product sector



# Physical checks of goods at the time of export



- ❖ selection system based on risk analysis
  - 5% per product sector may be replaced by 5% covering all sectors with a minimum of 2% per product sector
  - minimum rate of 0,5 % for non-Annex I goods
  - criteria for risk analysis: Regulation 3122/94
  - aim: more flexibility so checks can be targeted on more sensitive products

# Physical checks of goods at the time of export



## Sealing of refund products

- aim: to ensure identity of the goods passing through customs office of export to customs office of exit or office to which T5 is sent when leaving EC territory
- exemptions:
- means of transport or packaging shall be **sealed** (Art. 7 Regulation. 2090/02/Art. 357 Regulation 2454/93)
- limited cases - goods not suitable for sealing and identification possible by other means, e.g. live cattle, small quantities

# Physical checks of goods at the time of export



## substitution checks

- where export declaration has been accepted by the customs office of export which is different
- performed by the customs office of exit from the Community
  - to the customs office of exit or
  - the office to which the T5 copy is sent
- if the customs office of export has not sealed the means of transport

# Physical checks of goods at the time of export



## substitution checks

- risk analysis wherever possible
- visual check whether goods tally with accompanying documents
- sample for testing if visual check/information on packaging/documentation not sufficient for verification
- number of checks per year not less than number of days export refund products left EC through customs office of exit

# Physical checks of goods at the time of export



annual evaluation report of Member States on

- implementation
- effectiveness of checks carried out
- procedures for selection of goods

# Export levies and charges



- ❖ general provision in some Common Organizations of the Market or specific sector Regulations e.g.:
  - Art. 20(1) of regulation 136/66 (olive oil)
  - Art. 20(1) of regulation 1785/81(sugar)
  - Art. 16 of Regulation 1766/92, Art. 15. 1501/95 (cereals)
- ❖ Commission Regulation 120/89: common detailed rules for the application

# Regulation 120/89

## Export levies and charges



### ❖ main points:

- export of products in free circulation in EU
- Exceptions of levies: Art.3
- in principle levy rate determined by the day of acceptance of the export declaration
- higher rate applicable, Art. 4
  - if the products don't leave EU within 60 days
  - if there is no proof of exit within 12 months
- customs debt, Art. 4a

# Intervention



- ❖ Storage and movement of intervention products
  - Council Regulation 1055/77
  - Commission Regulation 3515/92
- ❖ Verification of use and destination of products from intervention
  - Commission Regulation 3002/92



# Storage and movement of intervention products



## Regulation 1055/77

### ❖ objectives:

- enable intervention agencies to store products in other Member States or a third country
- institute a suitable machinery to ensure that transport and marketing operations proceed in a simple manner and in accordance with market requirements

# Storage and movement of intervention products



## Regulation 1055/77

❖ principal mechanisms:

- prior authorization
- fixing conditions for the authorization

# Storage and movement of intervention products



## Regulation 3515/92:

### ❖ objectives:

lay down common detailed rules for the application of Regulation 1055/77

### ❖ principal mechanisms:

- formalities to be fulfilled and documents to be used
  - export declaration + specific document. No export or import licences (storage in third country)
  - T5 procedure (storage in Member State)

# **Intervention**

## **Verification of use and destination**



Commission Regulation 3002/92 laying down Common detailed rules for verifying the use and/or destination of products

# Commission Regulation 3002/92



## ❖ objectives:

- set up of a common system of supervision to ensure that products removed from intervention and subject to a specific use and/or destination are not diverted from their use and /or destination
- Set out under which conditions products shall be considered as having complied with with the prescribed destination and proof to be furnished

# Common Customs tariff and Nomenclature



- ❖ Common customs tariff
  - Harmonized system
  - Combined nomenclature (Regulation 2658/87)
- ❖ Specific Regulations concerning agricultural products
  - Council Regulation 3324/80
  - Council Regulation 234/79
  - Commission Regulation 3846/87

# Common Customs tariff and Nomenclature



## Council Regulation 3324/80

on the determination of import duties on mixtures and sets containing agricultural products

❖ objective:

- create the possibility to fix specific import duties for mixtures
- now part of the Customs tariff

# Council Regulation 3324/80



- ❖ Applies to mixtures of Chapters 2 and 11 of the common Customs Tariff
- ❖ import duty rate
  - of component with at least 90% or
  - component with highest rate



# Council Regulation 234/79



- ❖ Procedure for adjusting the Common Customs Tariff for agricultural products
  - delegation of competence from the Council to Commission
  - description of products and references to headings and subheadings in Council Regulations may be adjusted by the Commission

# Export refund Nomenclature Regulation 3846/87



- ⌘ Introduction of a agricultural product nomenclature
- ⌘ based on the combined nomenclature
- ⌘ includes additional subdivisions (description)
- ⌘ includes specific code numbers
- ⌘ must be used on the documents e.g. for export refund purposes