COMMISSION REGULATION (EC) No 389/2005

of 8 March 2005

laying down derogations from Council Regulation (EC) No 2201/96 and Regulation (EC) No 800/1999 as regards certain sugars used in certain products processed from fruit and vegetables exported to third countries other than Switzerland and Liechtenstein

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organisation of the markets in processed fruit and vegetable products [1], and in particular Article 18(7) thereof,

Whereas:

(1) Articles 16 and 18 of Regulation (EC) No 2201/96 and 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 [2] apply as regards exports of certain sugars used in certain products processed from fruit and vegetables.

(2) Article 18(6) of Regulation (EC) No 2201/96 provides that, in the case of a differentiated refund, the refund shall be paid upon proof that the products have reached the destination indicated on the licence or another destination for which the refund was fixed. It provides also that exceptions may be made to this rule, provided conditions are laid down which offer equivalent guarantees.

(3) Article 3 of Regulation (EC) No 800/1999 provides that entitlement to the export refund is acquired on importation into a specific third country when a differentiated refund applies for that third country. Articles 14, 15 and 16 of that Regulation lay down the conditions for the payment of the differentiated refund, in particular the documents to be supplied as proof of the arrival of the good at destination.

(4) In the case of a differentiated refund, Article 18(1) and (2) of Regulation (EC) No 800/1999 provides that part of the refund, calculated using the lowest refund rate, is paid on application by the exporter once proof is furnished that the product has left the customs territory of the Community.

(5) The Agreement between the European Community and the Swiss Confederation amending the Agreement between the European Economic Community and the Swiss Confederation of 22 July 1972 as regards the provisions applicable to processed agricultural products [3], which was signed in October 2004, is provisionally applicable from 1 February 2005 by virtue of Council Decision 2005/45/EC [4] concerning the conclusion and the provisional application of that Agreement.

(6) Pursuant to Decision 2005/45/EC, sugar (HS headings 1701, 1702 and 1703) used in the manufacture of certain processed agricultural goods exported to Switzerland and Liechtenstein is, from 1 February 2005, no longer eligible for export refunds.

(7) The Agreement approved by Decision 2005/45/EC introduces special provisions on administrative cooperation aimed at combating irregularities and fraud in customs and export refund related matters.

(8) In the light of those provisions and in order to avoid the imposition of unnecessary costs on operators in their commercial trade with other third countries, it is appropriate to derogate from Regulation (EC) No 2201/96 and Regulation (EC) No 800/1999 in so far as it requires proof of import in the case of differentiated refunds. It is also appropriate, where no export refunds have been fixed for the particular countries of destination in question, not to take account of that fact when the lowest rate of refund is determined.

[1] OJ L 297, 21.11.1996, p. 29. Regulation as last amended by Commission Regulation (EC) No 386/2004 (OJ L 64, 2.3.2004, p. 25)

[2] OJ L 102, 17.4.1999, p. 11. Regulation as last amended by Regulation (EC) No 671/2004 (OJ L 105, 14.4.2004, p. 5).

[3] OJ L 23, 26.1.2005, p. 19.

[4] OJ L 23, 26.1.2005, p. 17.

(9) Since the measures laid down in the Agreement between the European Community and the Swiss Confederation, approved by Decision 2005/45/EC, will apply from 1 February 2005, this Regulation should apply from the same date.

(10) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Products Processed from Fruit and Vegetables,

HAS ADOPTED THIS REGULATION:

Article 1

By way of derogation from Article 18(6) of Regulation (EC) No 2201/96 and Article 16 of Regulation (EC) No 800/1999, where the differentiation of the refund is the result solely of a refund not having been fixed for Switzerland or Liechtenstein, proof that the customs import formalities have been completed shall not be a condition for payment of the refund in respect of certain sugars used in certain products processed from fruit and vegetables, covered by Regulation (EC) No 2201/96, and listed in Tables I and II to Protocol 2 to the Agreement between the European Community and the Swiss Confederation of 22 July 1972.

Article 2

The fact that no export refund has been fixed in respect of the export to Switzerland or Liechtenstein of certain sugars used in certain products processed from fruit and vegetables, covered by Regulation (EC) No 2201/96, and listed in Tables I and II to Protocol 2 to the Agreement between the European Community and the Swiss Confederation of 22 July 1972, shall not be taken into account in determining the lowest rate of refund within the meaning of Article 18(2) of Regulation (EC) No 800/1999.

Article 3

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

It shall apply from 1 February 2005.

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

Done at Brussels, 8 March 2005.

For the Commission
Mariann FISCHER BOEL
Member of the Commission