COMMISSION REGULATION (EC) No 40/2004

of 9 January 2004

on proof of completion of customs formalities for the import of sugar into third countries as provided for in Article 16 of Regulation (EC) No 800/1999

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector [1], and in particular the second sentence of the second indent of the first subparagraph of Article 27(11) thereof,

Whereas:

(1) Article 27(5) of Regulation (EC) No 1260/2001 provides that export refunds in the sugar sector may vary according to destination, where the world market situation or the specific requirements of certain markets make this necessary.

(2) Article 1 of Commission Regulation (EC) No 1290/2003 of 18 July 2003 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar for the 2003/04 marketing year [2] provides for that differentiation by excluding certain destinations. Moreover, the bi-monthly or monthly setting, as the case may be, of export refunds for white sugar, raw sugar without further processing, syrups and other sugar sector products as provided for in Articles 28 and 30 of Regulation (EC) No 1260/2001 excludes those destinations.

(3) The first subparagraph of Article 27(11) of Regulation (EC) No 1260/2001 provides that the refund is to be paid upon proof that the products have been exported from the Community and, in the case of a differentiated refund, the products have reached the destination indicated on the licence or another destination for which a refund has been fixed.

(4) Article 16 of 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 [3] lists the various documents that may constitute proof of the completion of customs formalities in a third country where the refund rate is differentiated according to destination. Under that Article the Commission may decide, in certain specific cases to be determined, that the proof referred to in that Article may be deemed to be furnished by a specific document or in any other way.

(5) In the sugar sector export operations are normally governed by contracts defined as fob on the London futures market. As a result, purchasers accept at that fob stage all the contractual obligations, including proof of completion of customs formalities, without being the direct beneficiaries of the refund to which that proof confers the right. Obtaining that proof for all quantities exported may entail considerable administrative difficulties in certain countries, and this may substantially delay or prevent payment of the refund for all the quantities actually exported.

(6) In view of the impact on the market equilibrium which those administrative difficulties may cause, alternative proofs of destination offering the necessary guarantees should be established.

(7) This being a derogation, its period of application should be restricted.

(8) The difficulties encountered have arisen as a result of the suspension of refunds for exports to western Balkan countries as from 8 March 2003. Under those circumstances, in order to respect the principle of non-discrimination between Community operators and to protect the principle of equal treatment, this Regulation should apply to all the situations which have arisen since 8 March 2003.

(9) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

1. In the case of exports effected in accordance with Article 27 of Regulation (EC) No 1260/2001 for which the exporter is unable to provide the proof referred to in Article 16(1) and (2) of Regulation (EC) No 800/1999, products shall, by derogation from that Article, be deemed to have been imported into a third country on presentation of the following three documents:

(a) a copy of the transport document;

[1] OJ L 178, 30.6.2001, p. 1. Regulation as amended by Commission Regulation (EC) No 2196/2003 (OJ L 328, 17.12.2003, p. 17).
[2] OJ L 181, 19.7.2003, p. 7. Regulation as amended by Regulation (EC) No 2126/2003 (OJ L 319, 4.12.2003, p. 4).
[3] OJ L 102, 17.4.1999, p. 11. Regulation as last amended by Regulation (EC) No 2083/2003 (OJ L 313, 28.11.2003, p. 23).