COMMISSION REGULATION (EEC) No 1392/78

of 23 June 1978

amending Regulation (EEC) No 1380/75 laying down detailed rules for the application of monetary compensatory amounts

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3330/74 of 19 December 1974 on the common organization of the market in sugar (1), as last amended by Regulation (EEC) No 705/78 (2), and in particular Articles 12 (2), 19 (4) and 34 thereof,

Having regard to Council Regulation (EEC) No 974/71 of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States (3), as last amended by Regulation (EEC) No 557/76 (4), and in particular Article 6 thereof,

Whereas Article 4 (3) (b) of Commission Regulation (EEC) No 1380/75 of 29 May 1975 laying down detailed rules for the application of monetary compensatory amounts (5), as last amended by Regulation (EEC) No 2505/77 (6), provides that, in the application of monetary compensatory amounts in the trade with third countries, import charges as well as export refunds and levies, fixed in units of account and applicable to the products concerned, shall be modified by a coefficient derived from the percentage used for the calculation of the monetary compensatory amount and fixed by the Commission together with that amount;

Whereas in Case 108/77 the Court of Justice of the European Communities has declared that, in its present version, Article 4 (3) of Regulation (EEC) No 1380/75 together with Regulation (EEC) No 2101/75 (7) shall be interpreted in such a way that the export refund on sugar fixed in a national currency on the basis of an invitation to tender shall not be modified by the monetary coefficient fixed by the Commission and derived from the percentage used for the calculation of the monetary compensation;

Whereas, in order that the system of monetary compensatory amounts can be satisfactorily applied from the economic point of view it is essential that the monetary coefficient be applied equally in the case where, under an invitation to tender concerning trade with third countries, the amounts indicated in the statement of award in respect of a given successful tenderer are fixed in national currency;

Whereas for this reason an addition must be made to Article 4 of Regulation (EEC) No 1380/75 in order to make this rule clear; whereas, by Commission Regulation (EEC) No 1182/78 of 31 May 1978 supplementing Regulations (EEC) No 1634/77 and (EEC) No 1790/77 on standing invitations to tender to determine export refunds on sugar (8), an identical provision has already been adopted for sugar and entered into force on 1 June 1978;

Whereas these new provisions apply in any case to operations for which the customs formalities were completed on or after 1 June in the case of the sugar sector and on or after the date of entry into force of this Regulation in the case of other sectors; whereas, for offers accepted after the judgment of the Court and before the said dates, statements of award have not been made in the sectors concerned;

Whereas this Regulation is without prejudice to any solution to be adopted in respect of operations carried out before 1 June 1978 and before the entry into force of this Regulation;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the management committees concerned,

HAS ADOPTED THIS REGULATION:

Article 1

The following paragraph hereby is added to Article 4 of Regulation (EEC) No 1380/75:

'5. The coefficient referred to in paragraph 3 shall also be applied to refunds and levies, the amount of which has been set in a national currency in the statement of award following an invitation to tender.'

(1) OJ No L 359, 31. 12. 1974, p. 1.
(2) OJ No L 94, 8. 4. 1978, p. 1.
(3) OJ No L 106, 12. 5. 1971, p. 1.
(4) OJ No L 67, 15. 3. 1976, p. 1.
(5) OJ No L 139, 30. 5. 1975, p. 37.
(6) OJ No L 291, 15. 11. 1977, p. 15.
(7) OJ No L 214, 12. 8. 1975, p. 5.
(8) OJ No L 145, 1. 6. 1978, p. 46.

Article 2

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

2. Article 4 (5) of Regulation (EEC) No 1380/75 shall apply, subject to the existing provisions in the sugar sector and to the provisions to be adopted before 1 August 1978, to operations for which the customs formalities have been completed on or after the date of entry into force of this Regulation.

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

Done at Brussels, 23 June 1978.

For the Commission

Finn GUNDELACH

Vice-President