COMMISSION REGULATION (EC) No 396/2001

of 27 February 2001

providing for the continued application of safeguard measures for imports from the overseas countries and territories of sugar sector products with EC/OCT cumulation of origin for the period 1 March to 30 June 2001

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community [1], as last amended by Decision 2000/169/EC [2], hereafter referred to as the 'OCT Decision', and in particular Article 109 thereof,

Following consultation with the Committee set up under Article 1(2) of Annex IV to that Decision,

Whereas:

(1) The Commission has noted that imports of sugar (CN code 1701) and of mixtures of sugar and cocoa falling within CN codes 1806 10 30 and 1806 10 90 originating in the overseas countries and territories (the OCT) increased greatly between 1997 and 1999, particularly those imports with EC-OCT cumulation of origin, which increased from zero in 1996 to more than 53 000 tonnes in 1999. Such products are imported into the Community free of import duties and are admitted without quantity limits in accordance with Article 101(1) of the OCT Decision.

(2) By Decision of 25 February 2000 extending Decision 91/482/EEC on the association of the overseas countries and territories with the European Economic Community, the Council extended the period of application of the OCT Decision until 28 February 2001. The Commission has proposed that the Council extend this Decision for the four-month period ending on 30 June 2001.

(3) Commission Regulation (EC) No 2081/2000 of 29 September 2000 providing for the continued application of safeguard measures for imports from the overseas countries and territories of sugar sector products with EC/OCT cumulation of origin [3], as amended by Regulation (EC) No 2496/2000 [4], limits EC/OCT cumulation of origin for the products referred to in recital 1 to a maximum of 4 848 tonnes of sugar for the period 1 October 2000 to 28 February 2001.

(4) In the past few years difficulties have arisen on the Community sugar market, a market in surplus. Sugar consumption is constant at some 12,7 million tonnes per year, while production under quota is around 14,3 million tonnes per year. Any imports of sugar into the Community therefore involve a corresponding quantity of Community sugar which cannot be sold on that market having to be exported. Refunds for that sugar — within the limit of certain quotas — are charged to the Community budget (currently at around EUR 435/tonne). However, exports with refund are limited in volume by the Agreement on Agriculture concluded as part of the Uruguay Round [5] and have been reduced from 1 555 600 tonnes for the 1995/96 marketing year to 1 273 500 tonnes for the 2000/2001 marketing year.

(5) The operation of the COM in sugar may be greatly destabilised by these difficulties. For the 2000/2001 marketing year, the Commission reduced Community producers' quotas by 498 800 tonnes [6]. Any further import of sugar or products with a high sugar content from the OCT will mean a greater reduction in the quota for Community producers and a greater loss of income for them.

(6) As a result of these continuing difficulties, there is a risk that a sector of Community activity will deteriorate. The Commission therefore decided on 13 February 2001 to continue to apply the safeguard clause provided for in Article 109 of the OCT Decision in respect of imports of sugar sector products from the OCT with EC-OCT cumulation of origin.

(7) Article 100 of the OCT Decision states that its object is to promote trade between the overseas countries and territories and the Community, taking account of their respective levels of development. In accordance with Article 109(2) of the OCT Decision, priority must be given to such measures as would least disturb the functioning of the association and the Community. Moreover, those measures must not exceed the limits of what is strictly necessary to remedy the difficulties that have arisen.

[1] OJ L 263, 19.9.1991, p. 1.
[2] OJ L 55, 29.2.2000, p. 67.
[3] OJ L 246, 30.9.2000, p. 64.
[4] OJ L 288, 15.11.2000, p. 13.
[5] OJ L 336, 23.12.1994, p. 22.
[6] Commission Regulation (EC) No 2073/2000 of 29 September 2000 reducing, for the 2000/2001 marketing year, the guaranteed quantity under the production quotas scheme for the sugar sector and the presumed maximum supply needs of sugar refineries under the preferential import arrangements (OJ L 246, 30.9.2000, p. 38).

(8) To that end, EC/OCT cumulation of origin for products falling within CN codes 1701, 1806 10 30 and 1806 10 90 should be restricted to a maximum of 3 878 tonnes of sugar for the period 1 March to 30 June 2001, that figure representing the sum of the highest annual volumes of imports of the products in question recorded in the three years preceding 1999, the year in which imports recorded a sharp rise. In determining the quantities of sugar to be taken into consideration, the Commission takes note of the position adopted by the President of the Court of First Instance in his rulings of 12 July and 8 August 2000 in cases T-94/00R, T-110/00R and T-159/00R [1], without, however, recognising it as justified. Consequently, in order to avoid unnecessary procedures and solely for the purposes of adopting these safeguard measures, the Commission, for sugar falling within CN code 1701 and for 1997, bases itself on the figure of 10 372,2 tonnes, the total imports of sugar from the OCT with EC-OCT and ACP/OCT cumulation of origin recorded by Eurostat.

(9) Safeguard measures should also be introduced for products falling within CN codes 1806 10 30 and 1806 10 90 in view of their high sugar content and the similar prejudicial effects on the COM in sugar as with unprocessed sugar. Those measures should ensure that the quantities of sugar-based products imported from the OCT do not exceed a volume that could disturb the COM in sugar, while at the same time guaranteeing them a commercial outlet.

(10) It should be recalled that the Commission proposed to the Council, as part of a review of the OCT Decision, that the rules allowing cumulation in the sugar sector be abolished.

(11) The specific checks on imported goods covered by the measures laid down by this Regulation and the checks applicable in trade with third countries established under the Community rules on release for free circulation and customs value laid down by Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [2], as last amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council [3], should ensure compliance with the provisions laid down by this Regulation.

(12) In order to guarantee proper management, avoid speculation and permit effective controls on products falling within CN codes 1701, 1806 10 30 and 1806 10 90, the rules for the lodging of licence applications should be specified. They must include, for products with EC-OCT cumulation of origin, proof that the applicant normally carries on business in the sugar sector, a declaration that no other applications have been lodged by that person and proof that a special security has been lodged to ensure performance of the undertakings arising from the licences.

(13) In view of the impact of the imports, the safeguard measures should be made to apply with immediate effect,

HAS ADOPTED THIS REGULATION:

Article 1

For products falling within tariff headings CN 1701, 1806 10 30 and 1806 10 90, EC/OCT cumulation of origin as referred to in Article 6 of Annex II to Decision 91/482/EEC shall be permitted for a quantity of 3 878 tonnes of sugar during the period of validity of this Regulation.

For products other than unprocessed sugar, the sugar content of the imported product shall be taken into account for the purposes of complying with that limit.

Article 2

1. Import of the products referred to in Article 1 shall be subject to the issue of an import licence in accordance with Commission Regulation (EC) No 1291/2000 of 9 June 2000 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products [4].

2. Articles 2 to 6 of Commission Regulation (EC) No 2553/97 of 17 December 1997 on rules for issuing import licences for certain products covered by CN codes 1701, 1702, 1703 and 1704 and qualify as ACP/OCT originating products [5] shall apply *mutatis mutandis*.

However:

— licences shall bear the serial number 53.0001,

— licence applications may be for a maximum of 3 878 tonnes,

— Article 4(3) of Regulation (EC) No 2553/97 shall not apply,

— applications shall be lodged with the competent authorities during the first five working days of each month, with the exception of March 2001, when applications may be lodged by 15 March 2001 at the latest,

— the single reducing coefficient shall be applied and the lodging of new applications suspended where the quantity covered by applications for import licences exceeds 3 878 tonnes during the period of application of this Regulation,

— import licences shall expire on the final day of the third month following issue.

[1] Not yet published in the Official Journal.
[2] OJ L 302, 19.10.1992, p. 1.
[3] OJ L 311, 12.12.2000, p. 17.
[4] OJ L 152, 24.6.2000, p. 1.
[5] OJ L 349, 19.12.1997, p. 26.

3. For the products referred to in Article 1 with EC/OCT cumulation of origin, on completion of the formalities for release for free circulation in the customs territory of the Community, operators shall give the customs authorities in the Member States a copy of the export licence, issued in accordance with Article 13 of Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector [1], for the sugar used in those products.

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 from 1 March 2001 to 30 June 2001.

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

Done at Brussels, 27 February 2001.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 252, 25.9.1999, p. 1.