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REGULATION (EEC) No 1562/70 OF THE COMMISSION

of 31 July 1970

laying down conditions for the supply to the distilling industries of certain fruit withdrawn from the market

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation No 159/66/EEC[1] of 25 Ocotober 1966 laying down additional provisions on the common organisation of the market in fruit and vegetables, as last amended by Regulation (EEC) No 2515/69,[2] and in particular Article 7 (b) (4) thereof;

Whereas Article 7 (b) of Regulation No 159/66/EEC provides that the supply to the distilling industry of apples, peaches and pears withdrawn from the market should be carried out by a tendering procedure held by the agency appointed by the Member State concerned; whereas, in order that the tendering procedure can be held, criteria must be established to ensure the most favourable conditions for tendering and to ensure equal treatment for all interested parties in the Community;

Whereas standing invitations to tender and public auctions may facilitate marketing of the products and in certain cases represent forms of sale more in keeping with trade practice;

Whereas, in order to allow any industrial undertaking to submit a tender, processors should be given adequate information;

Whereas the invitation to tender or notice of public auction must state the basic conditions of the procedure; whereas, on the other hand, to ensure that the tendering procedure is carried out correctly, provision should be made whereby certain particulars must appear in the tender, in particular as regards the prices and quantities in respect of which the tender is made;

Whereas tenders submitted by interested parties must be assessed on the basis of the price offered; whereas quantities have to be allocated as they become available and in the order in which the tenderers are classified, beginning with those offering the highest prices;

Whereas it is necessary to adopt measures ensuring that the allocated product is actually processed into alcohol; whereas to this end a processing deposit must be lodged the amount of which should be calculated so as to ensure observance of this obligation;

Whereas the measures provided for in this Regulation are in accordance with the Opinion of the Management Committee for Fruit and Vegetables;

HAS ADOPTED THIS REGULATION:

Article 1

The supply to the distilling industry of apples, peaches and pears withdrawn from the market shall be carried out by the agency appointed by the Member State concerned either by a standing invitation to tender or by public auction.

Article 2

The procedures referred to in Article 1 shall be valid for a period not longer than the marketing year for the product in question.

Article 3

1. Each standing invitation to tender may include several series of tenders. Public notice must be given of invitations to tender within the framework of this procedure.

[1] OJ No 192, 27.10.1966, p. 3286/66.
[2] OJ No L 318, 18.12.1969, p. 10.

2. The invitation to tender shall give all relevant information concerning in particular:

(a) the period during which the products are likely to be available;

(b) the nature of the products to be sold;

(c) the areas in which the products are to be stored;

(d) the closing date for each series of tenders;

(e) the agency to which tenders must be submitted.

Article 4

1. Interested parties shall submit their tender by letter delivered directly or by registered post with recorded delivery, by telex or by telegram, to the agency appointed by the Member State concerned.

2. The tender shall specify:

(a) the name and address of the party concerned;

(b) the quantity of product to which the tender refers, expressed in metric tons;

(c) the price offered for the product as it leaves the warehouse, expressed in the currency of the Member State where the tender is to take place;

(d) where appropriate, additional information required under the invitation to tender.

Article 5

1. On the closing date for the first series of tenders, the agency appointed by the Member State concerned shall classify the tenderers on the basis of the price offered.

Where the highest prices are equal, preference shall be given to the tenderer who has requested the largest quantity or to the tenderer chosen by balloting where the quantity of products requested is also equal.

Where a tender does not appear to correspond to current market prices, the agency appointed may exclude the tenderer in question. Products shall be allocated in order of classification as quantities become available.

2. On the closing date for each subsequent series of tenders, that agency shall classify tenderers and allocate quantities of products in accordance with the criteria laid down in paragraph 1.

Article 6

Wherever a tender is not accepted, the tenderer shall forthwith be informed thereof by the agency appointed by the Member State concerned.

At the end of the period for which the invitation to tender is valid, that agency shall notify each processor whose tender has not been fulfilled owing to lack of products.

Article 7

1. Where products are sold by public auction, the agency appointed must, in a notice of sale by auction, give all information concerning:

— the period during which the products are likely to be available;

— the nature of the products to be sold;

— the areas in which the products are stored;

— the date, time and place of each auction.

2. Any other information, in particular concerning the quantities and characteristics of the products for sale, shall forthwith be communicated to any interested party on request.

Article 8

Products sold by public auction shall be allocated to the person or persons offering the most favourable prices.

Article 9

The successful tenderer or the purchaser at auction shall, before the delivery of the product purchased, lodge a processing deposit of an amount to be determined per 100 kg/net of the product which shall be at least equal to the difference between:

— the arithmetical mean of the purchase prices during the period in question for the products of the lowest quality class in accordance with Article 7 of Regulation No 159/66/EEC;

— the sale price to the successful tenderer to the purchaser at auction.

The deposit shall be paid in the form either of a cheque addressed to the agency appointed by the Member State concerned or of a bond complying with the criteria fixed by that Member State.

Article 10

1. Processing of the allocated product into alcohol of a strength of more than 80° shall be supervised on the spot by the competent agency in the Member State where processing takes place, or by any other agency appointed by it for this purpose.

2. Where processing takes place in a Member State other than the Member State which sells the product, proof of processing may be given only by production of the control copy referred to in Article 1 of Commission Regulation (EEC) No 2315/69[3] of 19 November 1969 on the use of Community transit documents for the purpose of applying Community measures for verifying the use and/or destination of goods. Sections 101, 103 and 104 of the control copy shall be completed. Section No 104 shall be completed by deleting the entries not applicable and marking at the second indent one of the following entries:

'destiné à la distillation au titre de l'article 7 *ter* du règlement no 159/66/CEE',

'Zur Distillation gemäß Artikel 7b der Verordnung Nr. 159/66/EWG bestimmt',

'destinato alla distillazione a titolo dell'articolo 7 ter del regolamento n. 159/66/CEE',

'bestemd voor distillatie krachtens artikel 7 ter van Verordening nr. 159/66/EEG,'

(Intended for distilling under Article 7b of Regulation No 159/66/EEC).

Article 11

Save in cases of *force majeure,* the deposit referred to in Article 9 shall be repaid only in respect of the quantity for which the successful tenderer furnishes to the agency appointed by the Member State concerned:

(a) supporting documents establishing that this quantity has been processed, where processing takes place in the Member State which sells the product;

(b) proof of processing, given by the control copy referred to in Article 10, where processing takes place in another Member State.

Article 12

1. Agencies appointed by Member States to supply to the distilling industry apples, peaches and pears withdrawn from the market are listed in the Annex to this Regulation.

2. Where a Member State intends to apply the provisions of this Regulation, the agency appointed shall forthwith communicate to the agencies of the other Member States and to the Commission the invitation to tender provided for in Article 3 or the notice of auction provided for in Article 7.

This communication must be made:

— in respect of an invitation to tender, not less than seven days before the closing date for the first series of tenders;

— in respect of sale by auction, not less than seven days before the date of the first sale.

The agency appointed shall, under the same conditions as those laid down in the first subparagraph, communicate all amendments to the invitation to tender or notice of auction.

These amendments shall take effect only at the end of seven days after the date of their communication.

3. As soon as the communication provided for in the first subparagraph of paragraph 2 has been made, the agency appointed shall publish in the *Official Journal of the European Communities* a notice of its intention to apply the provisions of this Regulation for one or more specified products.

Article 13

The agency appointed by the Member State shall, as soon as each tender or auction has been completed, communicate to the Commission the quantities of products supplied and the prices at which they were supplied.

Article 14

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

It shall apply:

— to apples and pears, from the same date;

— to peaches, from 1 June 1971.

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

Done at Brussels, 31 July 1970.

For the Commission
The President
Franco M. MALFATTI

[3] OJ No L 295, 24.11.1969, p. 14.

ANNEX

List of agencies appointed by the Member States

Belgium:	Officie belge de l'économie et de l'agriculture (OBEA), 22, rue des Comédiens, 1000 Bruxelles.
France:	Fonds d'orientation et de régularisation des marchés agricoles (FORMA), 2, rue Saint-Charles, Paris XVe.
Germany:	Bundesamt für Ernährung und Forstwirtschaft, Abteilung Gartenbauerzeugnisse, Adickesallee 40, 6 Frankfurt am Main.
Italy:	Azienda di Stato per gli interventi nel merçato agricolo (AIMA), Via Palestro 81, Roma.
Luxembourg:	Administration des services techniques agricoles (ASTA), route d'Esch, Luxembourg.
The Netherlands:	Voedselvoorzienings In- en verkoopbureau (VIB), Hooftskade 1, Den Haag.