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REGULATION (EEC) No 1558/71 OF THE COMMISSION

of 20 July 1971

laying down protective measures applicable to imports of tomato concentrates

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation (EEC) No 865/68[1] of 28 June 1968 on the common organisation of the market in products processed from fruit and vegetables, as last amended by Regulation (EEC) No 1425/71[2];

Having regard to Council Regulation (EEC) No 1427/71[3] of 2 July 1971 introducing protective measures for products processed from fruit and vegetables, and in particular Article 1 (2) thereof;

Whereas imports into the Community of tomato concentrates during the 1970 marketing year amounted to some 74 000 metric tons; whereas this figure is 10 000 metric tons higher than the figure for 1969 and 20 000 metric tons higher than the figure for 1968;

Whereas the offer prices from third countries are 30 to 40% less than the cost price within the Community industry for tomato concentrates; whereas, consequently, the trend of imports from third countries may aggravate the difficulties facing Community producers as regards production and marketing;

Whereas massive imports from third countries at very low prices create a situation on the Community market where products of Community origin lose trade outlets;

Whereas many tomato processing undertakings in the main production areas of the Community have been obliged to close during the last marketing year; whereas because of this much Community processing has suffered irremediable damage; whereas this is basically due to the difference between the offer prices of the product imported into the Community and the cost price within the Community industry, which greatly exceeds the 18% rate of customs duty;

Whereas the halt in production in these factories and increased imports have resulted in fewer potential outlets for fresh tomatoes, and because of this there could be a surplus of at least 200 000 metric tons of the latter in the 1971 marketing year;

Whereas there may be a comparable effect on tomato processing undertakings in the Community following importation at prices and quantities valid during previous marketing years;

Whereas an assessment of the situation on the market, the main points of which are outlined above, leads to the conclusion that imports threaten the Community market with serious disturbances which could lead to prices such as to jeopardise the objectives of Article 39 of the Treaty; whereas, in these circumstances, it is necessary to take protective measures;

Whereas the effect of the protective measures should be to restrict imports so that they can be absorbed by the Community market without worsening the situation thereon;

Whereas for this purpose imports should be restricted by recourse to a system of import licences which will be issued as the situation on the Community market allows; whereas, in order to cope with a difficult situation on the Community markets, the period of validity of these licences should be limited;

Whereas imports from third countries willing to maintain a certain price level should not be included in the system of import licences; whereas, moreover, with regard to the special system governing trade between the Community and Greece it is necessary to make provision for a different system for imports from that country;

[1] OJ No L 153, 1.7.1968, p. 8.
[2] OJ No L 151, 7.7.1971, p. 1.
[3] OJ No L 151, 7.7.1971, p. 5.

Whereas recourse to a system of import licences makes it necessary for Member States to make prior provision for its establishment; whereas consequently this system may not be applied immediately but only with effect from 9 August 1971;

Whereas, in order to take account of existing trade relations and to ensure that the Community importers concerned are fairly treated, the restriction on issuing licences to applicants should be based on factors relating to a reference period; whereas for this purpose use should be made either of the month of 1970 for which applications are lodged or of the average of the corresponding months from 1968 to 1970 if this average exceeds the quantity imported in 1970;

Whereas some of the transactions normally carried out by Community traders relate to transit operations for goods destined either for Member States or European third countries; whereas in order to simplify the detailed rules for determining the reference quantity, account being taken of this type of operation, the quantities of products entering the Community should be taken into consideration;

Whereas the system of import licences must not result in excluding from the trade persons who have not carried out commercial transactions in tomato concentrates during 1968, 1969 and 1970; whereas consequently, it should be possible, within limits, to grant them import licences;

HAS ADOPTED THIS REGULATION:

Article 1

1. From 9 August 1971 all imports into the Community of tomato concentrates (sub-heading No ex 20.02 C of the Common Customs Tariff) from third countries, excluding Greece, shall be subject to the submission of an import licence.

2. Member States shall issue the licence under the conditions laid down in Article 2, on application by the party concerned, irrespective of the place of his establishment within the Community.

The licence shall be issued for imports to be effected during the month for which it was drawn up. It may however, cover the fortnight preceding or the fortnight following the month in question in respect of the quantity for which it was issued. It shall be valid for imports to be effected in the Member State which issued it.

3. When application for a licence is made, the monthly quantities of products to which it relates shall be indicated.

Each application shall be accompanied by the lodging of a deposit of 3 units of account per 100 kilogrammes net weight which secures the obligation to import during the period of validity of the licence and which shall, except in case of *force majeure*, be forfeited in whole or in part if importation is not effected within this period or is only partly effected.

4. The import licence shall not be required for imports from third countries to be specified which are willing and in a position to guarantee that on importation into the Community of products from their territory the price will not be below a certain minimum level and that all deflection of trade will be prevented.

Article 2

1. At the end of each week and for the first time on 30 July 1971 Member States shall notify the Commission by telex of the quantities shown for each month in respect of which import licences have been applied for during the week.

2. On the basis of the notifications provided for in paragraph 1 the Commission shall assess the situation and decide as provided in Article 3 on the quantities of products for which licences shall be issued.

3. The Commission shall reach a decision during the week following that in which the quantities applied for are notified to it. If, however, during the week in question the Commission has not acted on this, the conditions in force before the import licences were issued shall be maintained.

4. Up to the quantity specified in the application, import licences shall be issued for the quantities laid down by the Commission. They shall be issued during the second week following that during which the quantities applied for are notified to the Commission.

Applications for quantities exceeding those specified by the Commission shall for this reason be rejected.

Article 3

The Commission shall lay down the quantities of products for which the licences are issued by fixing a percentage to be applied to the reference quantity laid down each month for each particular applicant.

This reference quantity shall be equal to:

— the quantity of tomato concentrates imported by the Community in 1970 during each month specified in the application; or

— the average quantity of this product imported into the Community during each month specified in the application for 1968, 1969 and 1970 if this average exceeds that specified in the first indent.

Article 4

When applications for licences are made by persons who have not imported the products in question into the Community during the period 1968–70, these applications shall, by way of derogation from the above-mentioned provisions, be granted in respect of not more than 5% of the average quantities of products imported into the Member State and conveyed to the authorities of the latter in each month of 1968, 1969 and 1970 corresponding to those specified in the application.

Import licences corresponding to these applications shall be issued within ten working days following the lodging of the applications and in the chronological order in which they were lodged. One and the same applicant may not be allotted quantities exceeding 1% of the average quantities of products imported into the Member State and mentioned in the preceding subparagraph.

Article 5

1. Each Member State shall lay down the reference quantities:

(a) for the quantities of products which were imported into that Member State during the reference period corresponding to each month specified in the application:

(aa) by reference to the documents supplied by the applicant certifying these operations and,

(bb) by reference to the documents which he has at his disposal and which relate to these operations;

(b) for the quantities of products which have been imported into another Member State during the reference period corresponding to each month specified in the application:

(aa) by reference to the documents supplied by the applicant certifying these operations and giving an undertaking that an application for these quantities has not been and will not be made in a Member State other than that for which the documents are provided, and

(bb) by reference to the documents issued immediately, on application by the party concerned, by the authorities of the importing Member States certifying these operations.

2. Member States which issue the documents mentioned in paragraph 1 (b) (bb) shall ensure that applications for licences have not been made previously to their own authorities for the quantities of products imported during the reference period for which the documents were requested.

They shall take all necessary measures to ensure that the quantities of products which are the subject of these documents are not taken into consideration for laying down the reference quantity used for calculating the quantities for which import licences will be issued by their own authorities.

Article 6

The issue of the import licence shall include:

— the right to import not more than 105%

— the obligation to import not less than 95%

of the specific quantity of the product chosen during the period of validity of the licence.

Article 7

The import licence shall mention:

(a) the name and address of the applicant;

(b) the description of the product, the Common Customs Tariff sub-heading within which it falls and its reference number in the goods nomenclature for foreign trade statistics of the Member State in question;

(c) the country of origin of the product;

(d) the quantity of the product expressed in kilogrammes, net weight;

(e) the month for which it was issued.

Article 8

The obligations arising from the licences are not transferable. The rights arising from the licence are transferable by the licence holder during the period of validity of the licence. Such transfer may only be made in favour of one transferee per licence.

The transfer shall take effect when the agency issuing the licence enters on the licence the name and address of the transferee and the date of this entry, and certifies the entry by affixing its official stamp.

This entry shall be made at the request of the licence holder. The transferee may not transfer his right or transfer it back to the titular licence holder.

Article 9

The deposit referred to in Article 3 (1) may be lodged in cash or in the form of a guarantee given by an establishment complying with the criteria laid down by the Member State from which the issue of the certificate is requested.

Article 10

1. Without prejudice to Article 11:

(a) the deposit shall be forfeited in whole when the obligation to import has not been fulfilled during the period of validity of the licence;

(b) the deposit shall be forfeited in part if the quantity imported is more than 5% less than the quantity indicated in the licence. The amount of the deposit withheld shall be calculated by reference to the difference between the quantity indicated in the licence less 5% and the quantity actually imported;

2. The deposit shall be immediately released:

(a) in respect of applications withdrawn no later than the week following that during which they were lodged;

(b) if Article 2 (2) applies, in proportion to the quantity for which an application has not been granted.

Article 11

On application by the party concerned, the Member State which issued the import licence shall decide that the obligation to import is cancelled and that the deposit shall not be forfeited:

(a) when importation cannot be effected during the period of validity of the licence as a result of circumstances to be considered to constitute a case of *force majeure,* or

(b) for quantities of products which the party concerned has imported or has had imported into the territory of the Community free of customs duties or charges having equivalent effect and which have left the territory of the Community for consumption in a third country.

2. The importer shall, by means of the appropriate documents, furnish proof:

(a) of the circumstances considered to be a case of *force majeure,*

(b) of the period during which the products were brought into Community territory while customs duties or other charges having equivalent effect were suspended, of their departure from Community territory and their free circulation in a third country.

3. Member States shall inform the Commission of circumstances recognised as a case of *force majeure.*

Article 12

For the purposes of this Regulation, 'net weight' means the weight of the product including the immediate packaging.

Article 13

This Regulation shall enter into force on 22 July 1971.

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

Done at Brussels, 20 July 1971.

For the Commission

The President

Franco M. MALFATTI