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(Acts whose publication is obligatory)

REGULATION (EEC) No 1463/73 OF THE COMMISSION
of 30 May 1973
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 974/71 (1) of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporaty widening of the margins of fluctuation for the currencies of certain Member States, as last amended by Regulation (EEC) No 1225/73 (2), and in particular Article 6 thereof ;

Whereas since Regulation (EEC) No 974/71 has been substantially amended, new detailed rules should be adopted for the application of that Regulation ;

Whereas Article 1 (1) of Regulation (EEC) No 974/71 provides that if, for the purposes of commercial transactions, a Member State allows the exchange rates for its currency to fluctuate by a wider margin, up or down than that permitted by the international rules in force on 12 May 1971, then in trade with other Member States and with third countries,

(a) that Member State whose currency appreciates above the margin of fluctuation is to charge on imports and grant on exports, and

(b) the Member State whose currency depreciates below the margin of fluctuation is to charge on exports and grant on imports,

monetary compensatory amounts for the products referred to in paragraph 2 of that Article ; whereas Germany and the Benelux countries are at present experiencing the situation envisaged in (a), and Italy the situation envisaged in (b) ;

Whereas, by virtue of paragraph 1 of that Article, where a rate of exchange other than that corresponding to the parity of the currency in question is used for conversions between the unit of account and the currency of a Member State, paragraph 1 aforesaid applies by analogy where the mean of the spot market rates of this currency during a period to be determined, varies by at least 1 % from the conversion rate used for purposes of calculation ; whereas this is at present the case for the pound sterling and the Irish pound ;

Whereas for Denmark and France the new method of calculating the monetary compensatory amounts has the consequence that amounts are not to be fixed in respect of those countries ;

Whereas it is necessary, in order to apply Articles 1 (1) a) and 2 (1) (b) of Regulation (EEC) No 974/71, to determine the period during which are to be recorded the spot market rates whose arithmetic mean will be used for calculating compensatory amounts ;

Whereas the period must be sufficiently representative to show trends in rates and yet allow those rates to be reflected as quickly as possible in fixing the compensatory amounts ;

Whereas a period of seven days should therefore be used, fixed by reference to technical administrative requirements ;

Whereas the most representative spot market rates should be used for the purpose of calculation ;

Whereas it is desirable to use the period referred to above also for the application of Article 2a of that Regulation ;

Whereas the common price level should be used as a basis for the calculation of monetary compensa-

(1) OJ No L 106, 12. 5. 1971, p. 1.
(2) OJ No L 125, 11. 5. 1973, p. 49.

tory amounts, bearing in mind the fact that the new Member State do not yet apply the common price in the case of certain products and that the difference between the two price levels is expressed by the accession compensatory amount ;

Whereas, in pursuance to Article 4b of Regulation (EEC) No 974/71 and the Article 2 of the Council Regulation (EEC) No 1189/73 (3) of 8 May 1973 fixing the aid for skimmed milk and skimmed-milk powder for use as animal feed for the 1973/74 milk year, the compensatory amounts thus obtained should be reduced by the amounts provided for in those measures ;

Whereas accession compensatory amounts, charges on imports, refunds and all other amounts charged or granted in units of account in respect of trade with third countries are, as are also the prices in the Member States concerned, converted into the currencies of those Member States by applying the exchange rates provided for under the common agricultural policy ; whereas, in calculating the monetary compensatory amount, only the difference between the price level and the amount in question expressed in units of account need be taken into consideration ;

Whereas, in order to simplify the system so that the same single compensatory amount may be applied in respect of the trade of a given Member State with every other Member State and third countries, accession compensatory amounts, charges on imports, refunds and all other amounts charged or granted in respect of trade with third countries should be corrected by a coefficient expressing the position of the currency of the Member State which is to apply the monetary compensatory amount ;

Whereas Article 4 (a) (2) of Regulation (EEC) No 974/71 provided that the monetary compensatory amount applicable due to the decrease in value of the currency concerned may not be higher than the charge on products imported from third countries ;

Whereas it is advisable to provide that its observance of this measure normally concerns the importing Member States ; whereas, however, since in the case of beef and veal, the charge on imports includes a customs duty, that charge should be determined at a flat rate on the basis of the world market prices established by the Commission within the common organization of the market in beef and veal ;

Whereas the Belgo-Luxembourg Economic Union and the Netherlands have decided to maintain the fluctuation margins between currencies which obtained before 9 May 1971 and have not altered the effective parity relationships of their currencies among themselves ; whereas, widening fluctuation margins will, in the case of those Member States, only affect other Member States and third countries, trade within the BLEU and between the BLEU and the Netherlands being unaffected ; whereas, for this reason, those Member States have declared under Article 233 of the Treaty that they do not desire to apply compensatory amounts between themselves ; whereas, for the purpose of applying the system of compensatory amounts, those countries should be regarded as a single Member State ;

Whereas there is a fixed rate of exchange between the pound sterling and the Irish pound ; whereas a monetary compensatory amount need not therefore be applied in trade between those two Member States ;

Whereas certain Member States may still experience technical difficulties in granting amounts on imports ; whereas it is necessary to make provision, in case of recourse to the provisions of Article 2a of Regulation (EEC) No 974/71, for common rules for applying and opting not to apply those provisions and for methods for ensuring that any payments by exporting Member States are made in full knowledge of the relevent facts ;

Whereas, with a view to harmonization, the date, selected for the purpose of applying compensatory amounts as the date of importation, should be the date used for the purpose of customs duties and levies — and the date of exportation, the date used for the purpose of export refunds ;

Whereas before payment of a compensatory amount for a product exported to another Member State is made, proof must be supplied that the product has left the geographical territory of the Member State in which the customs export formalities were completed ;

Whereas the system provided for by this Regulation can relate only to products moving freely within the Community ; whereas moreover, it seems desirable that products exported under benefit of a compensatory amount should be of such a kind that they can be marketed under normal conditions ;

Whereas, for the sake of proper administrative management it seems desirable to require that application for payment of the compensatory amount be made within a reasonable period ;

Whereas non-observance of a lower price level at the time of import of certain agricultural products

(3) OJ No L 122, 9. 5. 1973, p. 3.

subject to the application of monetary compensatory amounts entails an increase in the import tax ;

Whereas this system leads to increased prices for the products concerned whenever the currency is revalued, having regard to the compulsory application of parities announced by the International Monetary Fund ; whereas, in fact, the value of the price in question, as expressed in terms of the currency of Member States which have taken the currency measures under consideration, is increased in relation to the value expressed in terms of the currency of non-member countries ; whereas, in addition, the compensatory amount is imposed at a time of import ; whereas on the other hand, in the event of a depreciation of the currency, there is a risk that the lower level will not be observed ;

Whereas this difficulty can be overcome by a system which results in the said level being considered as having already been observed, provided the offer price of the product supplied, after being increased by an amount reflecting the effect of the currency situation on the level in question, is not below that level ;

Whereas Article 14 of Council Regulation (EEC) No 805/68 (1) of 27 June 1968 on common organisation of the market in beef and veal as last amended by Regulation (EEC) No 187/73 (2) provides for total suspension of the levy on imports of frozen meat intended for the manufacture of certain preserved foods ; in order to allow the Community's processing industry to be supplied in a satisfactory manner ;

Whereas since compensatory amounts are not applied for products derived from such meat, the Community processing industry is at a disadvantage compared to the processing industries of third countries ; whereas it is therefore necessary to remedy this situation by providing for suspension of the charging of the compensatory amounts applicable to the meat in question ;

Whereas such suspension should be conditional upon controls ensuring that processing is carried out ; whereas the system provided for in Council Regulation (EEC) No 888/68 (3) of 28 June 1968 laying down general rules on special import tems for certain frozen meats intended for processing, as last amended by Regulation (EEC) No 2725/71 (4) may be used for this purpose if provision is also made for the lodging of a deposit equal to the compensatory amount ;

Whereas the change from the present system to that introduced by Council Regulation (EEC) No 1112/73 (5) will mean that the monetary compensatory amounts which were prevously levied or granted in one sum, will in future be apportioned between the importer and the exporter ; whereas if, following this change, difficulties should appear in relation to contracts entered into under the previous system, they shall be resolved in the way which is most appropriate having regard to the provisions and general rules of law governing the commercial relations between the traders ;

Whereas the measures provided for this Regulation are in accordance with the Opinions of all the Management Committees for the common organization of agricultural markets ;

HAS ADOPTED THIS REGULATION :

Article 1

This Regulation lays down detailed rules for the application of the system of compensatory amounts hereinafter called 'monetary compensatory amounts' introduced by Article 1 of Regulation (EEC) No 974/71.

Article 2

The period referred to in the second subparagraph of Article (1) (a), in the second indent of Article 2 (1) (b) and in Article 2a of Regulation (EEC) No 974/71 shall run from a Wednesday to the following Tuesday. The first period to be taken into consideration shall be 14 to 18 May 1973.

Article 3

The spot market rates against each of the currencies of the Member States who keep their exchange rates at any given moment within a band of 2·25 % shall be :

(a) for the Italian lira : the mean of the official rates fixed each working day during official dealings on the Rome and Milan foreign exchange markets ;

(b) for the English pound and the Irish pound : the average rates recorded at noon on the foreign exchange markets of the two Member States concerned.

Article 4

1. A 'monetary' compensatory amount shall be fixed for each product and for each Member State for which the conditions for the application of 'monetary' compensatory amounts are fulfilled.

(1) OJ No L 148, 28. 6. 1968, p. 24.
(2) OJ No L 25, 30. 1. 1973, p. 23.
(3) OJ No L 156, 4. 7. 1968, p. 7.
(4) OJ No L 282, 23. 12. 1971, p. 5.
(5) OJ No L 114, 30. 4. 1973, p. 4.

The 'monetary' compensatory amount shall be calculated on the basis of the common price reduced where appropriate in accordance with the provisions of the Act of Accession.

The corrective factor provided for in Article 4b of Regulation (EEC) No 974/71 or one of the amounts listed in the Annex to Regulation (EEC) No 1267/73 shall be deducted.

2. The amount fixed in accordance with the preceding paragraph shall apply in trade between the Member States and in trade with third countries.

3. However, in trade with the new Member States the 'accession' compensatory amounts and in trade with third countries the import charges expressed in units of account and the refund applicable to the products referred to in paragraph 1 shall be multiplied by a coefficient. For Member States who keep their exchange rates at any given moment within a band of 2·25 %, the coefficient shall be :

Belgium — Luxembourg — Netherlands : 0·973;

Germany : 0·928.

For the other Member States, the coefficient shall be derived from the percentage used to calculate the 'monetary' compensatory amount and fixed by the Commission at the same time as this amount.

4. Where the levy or refund is to be increased or reduced, as the case may be, by the 'accession' and 'monetary' compensatory amounts and also multiplied by a coefficient, the calculation shall be made as follows :

(a) the levy or refund shall be reduced or increased, as the case may be, by the 'accession' compensatory amount ;

(b) the resulting amount shall be multiplied by the coefficient ; and

(c) the amount obtained after multiplication shall, after conversion into national currency, be reduced or increased, as the case may be, by the 'monetary' compensatory amount.

Article 5

1. The Member States shall take the measures necessary to assure that the provisions of Article 4 (a) (2) of Regulation (EEC) No 974/71 are observed.

2. In the case of application of Article 4 (a) (2) of Regulation (EEC) No 974/71 to beef and veal, Member States shall always reduce the 'monetary' compensatory amounts by amounts to be established on the basis of the import price calculated in accordance with Article 10 (1) of Regulation (EEC) No 805/68, and for frozen beef and veal on the basis of the world market price established in accordance with Article 13 (1) (b) of that Regulation which shall be communicated to them for this purpose. Furthermore, for products mentioned in the Annex to Regulation (EEC) No 805/68, the coefficients employed for the calculation of monetary compensatory amounts shall be used.

Article 6

1. In trade with third countries provisions concerning the granting of export refunds and the charging of customs duties and levies shall apply to 'monetary' compensatory amounts. If the 'monetary' compensatory amount to be levied on exportation is higher than the refund or if no refund has been fixed, that part of the 'monetary' compensatory amount which exceeds the refund, or the entire 'monetary' compensatory amount as the case may be, shall fall due on completion of customs export formalities.

2. In trade between Member States, Articles 7 to 15 shall apply.

Article 7

1. The 'monetary' compensatory amount to be granted or levied shall be the amount applicable on the day of exportation or on the day of importation.

2. For the purposes of determining the 'monetary' compensatory amount to be granted or levied on exportation, the day of exportation shall be the day on which the customs authorities accept the exporter's declaration of his intention to export to another Member State a Community product to which a 'monetary' compensatory amount is applicable. Upon such acceptance, the products shall be placed under customs control until they leave the territory of the exporting Member State.

Customs export formalities, shall for the purpose of this Regulation, be regarded as having been completed when the declaration referred to above has been accepted. The effective date for establishing the quantity, nature and characteristics of the product exported shall be the date on which customs export formalities are completed.

3. For the purpose of determining the 'monetary' compensatory amount to be levied or granted on importation, the day of importation shall be the date used for determining customs duties and levies.

Article 8

1. No 'monetary' compensatory amount shall be granted or levied in trade between the BLEU and the Netherlands.

However, if a Community document proving that a product is eligible for treatment as a Community product is used in such trade, the preceding subparagraph shall apply only if the document includes one of the following entries, authenticated by the stamp of the customs office of departure :

— 'Montant compensatoire monétaire non applicable au Benelux'

— 'Währungsausgleichsbetrag im Benelux nicht anwendbar'

— 'Monetair compenserend bedrag niet van toepassing in de Benelux'.

2. For the purposes of this Regulation, the BLEU and the Netherlands are considered as a single Member State.

3. No 'monetary' compensatory amount shall be granted or levied in trade between Ireland and the United Kingdom.

These two Member States will each take the steps necessary to ensure that the 'monetary' compensatory amount is levied in arrears where the product is not for home use in the other Member State.

Article 9

1. The 'monetary' compensatory amount granted on exportation shall only be paid upon production of proof that the product in respect of which customs export formalities were completed has left the geographical territory of the Member State in which the formalities were completed.

2. The 'monetary' compensatory amount granted on importation shall only be paid on production of proof that import formalities have been completed and that the duties and the Member State in question have been paid.

Article 10

1. Where a Member State wishes to exercise the option referred to in Article 2a of Regulation (EEC) No 974/71, it shall inform the Commission of its intentions after it has obtained the agreement of the importing Member State. The Commission in turn shall inform the other Member States.

2. Payment of the 'monetary' compensatory amount by the exporting Member State, which should be granted by the importing Member State, shall be conditional upon proof that customs import formalities have been completed and that the duties and charges having equivalent effect, payable in the importing Member State have been charged.

The proof referred to in the preceding subparagraph shall be furnished by production of a control copy as provided for in Article 1 of Regulation (EEC)No 2315/69. In the special remarks section, the following shall be completed :

(1) Section 101 and 103 ;

(2) Section 104 by deleting what does not apply and adding one of the following :

'Intended for entry for home use in (importing Member State) ;'

'Destiné à être mis à la consommation en (État membre importateur)'

'Bestemt til overgang til forbrug i (den importerende medlemsstat)'

'Zum freien Verkehr in (einführender Mitgliedstaat) bestimmt'

'Destinato ad essere immesso in consumo in (Stato membro importatore)'

'Bestemd om in het vrije verkeer te worden gebracht in (invoerende lid-staat)'.

The supetent customs office in the importing Member State shall complete the space —

'control of use and/or destination' and add one of the following :

'Montant compensatoire monétaire applicable le (date de mise à la consommation) non octroyé en (État membre importateur)'

'Monetært udligningsbeløb, finder anvendelse fra den (datoen for overgang til forbrug) ikke ydet i den importerende medlemsstat)'

'Währungsausgleichsbetrag, gültig am (Tag der Überführung in den freien Verkehr) in (einführender Mitgliedstaat) nicht gewährt'

'Monetary' compensatory amount applicable on (date of entry for home use) not granted in (importing member State)'

'Importo compensativo monetario applicabile il (data d'immissione al consumo) non concesso in (Stato membro importatore)'

'Monetair compenserend bedrag van toepassing op (datum van invoer tot verbruik) niet toegekend in (invoerende lid-staat)'.

3. Where Article 3 of Regulation (EEC) No 974/71 applies, the Commission shall alter the exchange rate to be used for the purpose of applying Article 2a of that same Regulation.

4. If after having had recourse to the provisions of Article 2a of Regulation (EEC) No 974/71 an exporting or importing Member State wishes to abandon its application, it first informs the other Member State concerned and the Commission, which informs the remaining Member States.

Article 11

1. The compensatory amount shall be levied or granted only on products which are in free circulation within the Community. Where the products involved are composite products or are goods for which a compensatory amount is fixed, by reference to one or more of their components, the compensatory amount shall be applicable to such components if they satisfy the conditions laid down in the preceding sentence.

2. No compensatory amount shall be granted on products which are not of sound, fair and marketable quality or for products which are intended for human consumption whose characteristics or state render them wholly or practically unsuitable for that purpose.

Article 12

Where a 'monetary' compensatory amount is levied on exportation, it shall fall due on completion of customs export formalities.

Article 13

Payment of 'monetary' compensatory amounts to be granted shall be made only on receipt of a written application from the person concerned. Member States may draw up a special form for this purpose.

Article 14

The application for payment of a 'monetary' compensatory amount must be submitted, save in cases of *force majeure,* within the six months following the date of completion of customs formalities ; otherwise it shall be rejected.

Article 15

1. Products for which the customs export formalities were completed before the date of entry into force of this Regulation and which are entered for home use in another Member State after that date shall remain subject to Regulation (EEC) No 648/73 and 649/73.

Where, under those Regulations, a 'monetary' compensatory amount is to be levied in the Member State in which the product is entered for home use, the applicable amount shall be that in force on 3 June 1973.

2. Where the products referred to in paragraph 1 are not entered for home use immediately upon arrival at the office of destination, that office shall take the necessary measures to ensure that when the product is entered for home use paragraph 1 of this Article, and in particular, the provisions of Article 11 (3) of Regulation (EEC) No 648/73, are applied.

Article 16

1. With respect to :

(a) pigmeat, eggs, poultrymeat and albumines ;

the sluice-gate prices ;

(b) milk and milk products : the value free-at-frontier of products falling within subheadings 04.04 E I b) 2, 04.04 E I b) 3 and 04.04 E I b) 4 ;

(c) wine : the reference prices, are considered to have been observed at the time of importation from third countries if, for the product in question, the offer price in the case of appreciation of the currency of the importing Member State ;

increased, or in the case of depreciation of that currency reduced

— by the amount referred to in paragraph 2 and increased

— in the case of wine, by the customs duties is not less than the sluice-gate price, the reference price on the value free-at-frontier in question.

2. The amount referred to in the first indent of paragraph 1 is obtained by multiplying the sluice-gate price, the value free-at-frontier as the reference price in question by a coefficient corresponding to the percentage of appreciation or depreciation of the currency of the importing Member State.

Article 17

1. The compensatory amount charged on imports from third countries is suspended for the products falling within subheadings 02.01 A II a) 2 bb) and 02.01 A II a) 2 dd) 22 of the Common Customs Tariff, intended for the manufacture of the preserves referred to in paragraph 2, first sentence, at the end of Article 14 of Regulation (EEC) No 805/68.

2. The provisions of Article 1 of Regulation (EEC) No 888/68 are applicable to the suspension provided for in the preceding paragraph. However, the amount of the security in relation to the compensatory amount is equal to the suspensatory amount in force on the day of importation.

Article 18

Regulation (EEC) No 638/73 is repeated with the exception of the provisions of Article 15 thereof.

Article 19

This Regulation shall enter into force on 4 June 1973.

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

Done at Brussels, 30 May 1973.

For the Commission

The President

François-Xavier ORTOLI