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(Acts whose publication is obligatory)

REGULATION (EEC) No 648/73 OF THE COMMISSION

of 1 March 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 widening of the margins of fluctuation for the currencies of certain Member States, as last amended by Regulation (EEC) No 509/73 [2], and in particular Article 6 thereof;

Having regard to the Opinion of the Monetary Committee;

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 rate of its currency to fluctuate by a margin wider than the one permitted by the international rules in force on 12 May 1971,

(a) the Member State whose currency has appreciated by more than the margin of fluctuation should levy compensatory amounts on imports and grant compensatory amounts on exports,

(b) the Member State whose currency has depreciated by more than the margin of fluctuation should levy compensatory amounts on exports and grant compensatory amounts on imports

of agricultural products and products obtained from agricultural products in trade with Member States and third countries; whereas (a) now applies to Germany and the Benelux countries while (b) applies to France and Italy;

Whereas, pursuant to Article 1 (1a) of the same Regulation, if an exchange rate other than that corresponding to the parity of the currency of a Member State is used for the purpose of conversions between units of account and that currency, Article 1 (1) applies by analogy where, for the currency in question, the average spot market rate during a period to be determined differs by at least 1 % from the exchange rate used; whereas this applies at present to the English pound and the Irish pound;

Whereas, however, pursuant to Article 2a of that Regulation, the compensatory amounts thus calculated for each Member State are subtracted from each other or added to each other as the case may be; whereas they are levied on imports or granted on exports by that Member State of the two Member States concerned whose currency has appreciated most or depreciated least in relation to the percentage differences used to calculate compensatory amounts;

Whereas it should be stressed that compensatory amounts are essentially quite different from levies and refunds;

Whereas, for the purpose of applying Article 1 (1a) and Article 2 (1) of that Regulation, it is necessary to specify the period during which the spot market rates which will ultimately be averaged for the purpose of calculating compensatory amounts should be recorded; whereas the period chosen must be sufficiently representative of the movement of exchange rates and at the same time allow these rates to be followed as closely as possible when

[1] OJ No L 106, 12. 5. 1971, p. 1.
[2] OJ No L 50, 23. 2. 1973, p. 1.

compensatory amounts are fixed; whereas in principle a period of 7 days chosen in the light of administrative considerations would serve;

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

Whereas calculation of compensatory amounts should be based on single prices; whereas this solution does however pose problems in trade in agricultural products with the new Member States where price levels are, generally speaking, lower than the single prices ruling in the original Member States; whereas this difference is compensated by the compensatory amounts introduced by Article 55 of the Act [1] annexed to the Treaty [2] concerning the Accession of new Member States to the European Economic Community and the European Atomic Energy Community, signed at Brussels on 22 January 1972, or, where the levy is less than these compensatory amounts, by an amount applicable by way of compensatory amount (both of these amounts are referred to hereinafter as ' "accession" compensatory amounts'); whereas allowance must be made for this situation by increasing or reducing the 'accession' compensatory amount in the light of the monetary situation of the Member States in question;

Whereas the situation as regards trade with third countries is somewhat analogous to that of trade with the new Member States; whereas the same method of calculation should therefore be used;

Whereas Article 4a (2) of Regulation (EEC) No 974/71 limits the 'monetary' compensatory amount applicable as a result of the depreciation of a currency to the level of charges levied on imports from third countries; whereas, to ensure that this provision is complied with, provision must be made for the fixing at regular intervals by the Commission of the amount by which the 'monetary' compensatory amount should, where appropriate, be reduced;

Whereas Belgo-Luxembourg Economic Union and the Netherlands have agreed to maintain between their currencies the margins of fluctuation valid before 9 May 1971; whereas, therefore, for these Member States the widening of the margins of fluctuation only effects trade with other Member States and third countries, intra-BLEU trade and trade between BLEU and the Netherlands being unaffected; whereas the Member States in question have for this reason declared their unwillingness to apply compensatory amounts in trade with each other; whereas, as far as trade is concerned, this arrangement made within the framework of the economic union between Belgium, Luxembourg and the Netherlands cannot operate properly unless the compensatory amounts applicable in these three Member States are identical; whereas an arrangement should therefore be made, pursuant to Article 233 of the Treaty, whereby uniform compensatory amounts could be fixed for these three Member States; whereas they should be considered as a single Member State;

Whereas, in the interests of harmonization, the day of importation for the purpose of applying compensatory amounts should be the day of importation used for the purpose of determining customs duties and levies and the day of exportation should be the day of exportation used for the purpose of determining export refunds;

Whereas, before the compensatory amount can be paid in respect of a product exported to another Member State, proof must be given that the product has left the geographical territory of the Member State in which customs export formalities were completed;

Whereas the system provided for by this Regulation can only apply to products which are in free circulation within the Community; whereas products in respect of which a compensatory amount is granted on export must be of a quality which permits of their being marketed under normal conditions;

Whereas, if the compensatory amount to be applied is to vary according to Member State, provenance and destination, it will be necessary to verify which compensatory amount has been applied to a given product; whereas, to this end, it is essential that special particulars be entered on the movement documents;

Whereas, for administrative reasons, applications for payment of compensatory amounts must be lodged within a reasonable period of time;

Whereas the import charge on certain agricultural products subject to the compensatory amounts system is increased if a lower price limit is not respected on importation;

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[1] OJ No L 73, 27. 3. 1972, p. 14.
[2] OJ No L 73, 27. 3. 1972, p. 5.

Whereas, in view of the obligation to apply the parities declared to the International Monetary Fund, this means that when a currency appreciates the price of these products is increased; whereas the price in question expressed in the currency of Member States which have taken the monetary measures in question is increased in relation to that price expressed in the currency of third countries and whereas, in addition, a compensatory amount is levied on importation; whereas when a currency depreciates on the other hand, there is a danger that the lower price limit will not be respected;

Whereas this difficulty could be overcome by the introduction of an arrangement whereby this lower price limit would be regarded as having been respected where the offer price of a product supplied, plus a sum reflecting the incidence of the monetary situation on the limit in question, does not fall below that limit;

Whereas Article 14 of Council Regulation (EEC) No 805/68 [1] of 27 June 1968 on the common organization of the market in beef and veal, as last amended by Regulation (EEC) No 187/73 [2], provides for the total suspension of the levy on imports of frozen meat intended for the manufacture of certain preserves to ensure that the Community processing industry can procure satisfactory supplies;

Whereas, largely because there are no compensatory amounts for products manufactured from this meat, the Community processing industry has been placed at a disadvantage *vis-à-vis* processing industries in third countries; whereas this situation should be corrected by suspending the levying of compensatory amounts on this meat;

Whereas this suspension should be subject to the introduction of arrangements to ensure that the meat is in fact processed; whereas the arrangements provided for in Council Regulation (EEC) No 888/68 of 28 June 1968 [3] laying down general rules on special import terms for certain frozen meats intended for processing, as last amended by Regulation (EEC) No 2725/71 [4], could be used for this purpose, provision being made for the lodging of a deposit equal to the compensatory amount;

Whereas Commission Regulation (EEC) No 1013/71 [5] of 17 May 1971 laying down detailed rules for the application of Regulation (EEC) No 974/71 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, as last amended by Regulation (EEC) No 449/73 [6], which has been amended on numerous occasions, should be replaced by a consolidated text which would retain only those provisions which still apply;

Whereas the measures provided for in this Regulation are in accordance with the Opinions of the Management Committees for Fruit and Vegetables, for Wine, for Oils and Fats, for Cereals, for Pigmeat, for Poultrymeat and Eggs, for Sugar, for Milk and Milk Products, for Beef and Veal, for Products Processed from Fruit and Vegetables, for Tobacco, for Flax and Hemp, and for Fishery Products;

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 (1a) and the second indent of Article 2 (1) of Regulation (EEC) No 974/71 shall run from a Thursday to the following Wednesday. The first period to be taken into consideration shall be 15 to 21 February 1973.

Article 3

The following spot market rates against the US dollar shall be used for the purpose of fixing compensatory amounts:

(a) for the Belgian franc and the Luxembourg franc: the average official rate fixed each working day during official dealing hours on the Brussels foreign exchange market;

(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 110, 18. 5. 1971, p. 8.
(6) OJ No L 52, 25. 2. 1973, p. 1.

(b) for the German mark: the average official rate fixed each working day during official dealing hours on the Frankfurt foreign exchange market;

(c) for the French franc: the average official rate fixed each working day during official dealing hours on the Paris foreign exchange market;

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

(e) for the Dutch guilder: the average official rate fixed each working day during official dealing hours on the Amsterdam foreign exchange market;

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

Article 4

1. For the purpose of calculating the compensatory amounts applicable in BLEU and the Netherlands, the percentage referred to in Article 2 (1) of Regulation (EEC) No 974/71 shall be established on the basis of the arithmetic mean of the difference referred to in that paragraph for the Belgian franc and the same difference for the Dutch guilder during the period in question.

2. Compensatory amounts shall not apply in intra-BLEU trade or in trade between BLEU and the Netherlands.

Article 5

1. A basic compensatory amount shall be fixed for each Member State for which the conditions set out in Article 1 of Regulation (EEC) No 974/71 are fulfilled.

2. This basic amount shall apply in trade between the Member States and in trade with third countries.

3. However,

(a) in intra-Community trade:

— if the conditions set out in Article 1 of Regulation (EEC) No 974/71 are fulfilled in respect of two Member States, the basic amount shall be multiplied by a coefficient based on the actual ratio between the two currencies in question;

— if an 'accession' compensatory amount applies, this shall be multiplied by a coefficient based on the 'accession' compensatory amounts applicable in trade with the Community as originally constituted and the actual ratio between the two currencies in question; by way of derogation from this provision, however, the 'accession' compensatory amount shall be increased or reduced as the case may be in trade between new Member States by an amount based on the 'accession' compensatory amount applicable in trade with the Community as originally constituted and the actual ratio between the two currencies in question;

(b) in trade with third countries, import charges and refunds fixed in units of account shall be multiplied by a coefficient which reflects the monetary situation of the Member State in question. This coefficient shall not be fixed in advance.

Article 6

1. For the purposes of applying Article 4a (2) of Regulation (EEC) No 974/71 the Commission shall fix the amounts by which the 'monetary' compensatory amounts are to be 'adjusted'.

2. The amounts fixed pursuant to paragraph 1 shall be altered at regular intervals if this is rendered necessary by changes in the charge on imports from third countries.

Article 7

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.

2. In trade between Member States, Articles 3 to 9 shall apply.

Article 8

1. The compensatory amount to be granted shall be the amount applicable on the day of exportation.

The compensatory amount to be levied shall be the amount applicable on the day of importation.

2. For the purposes of determining the compensatory amount to be granted, the day of ex-

portation shall be the day on which the customs authorities accept the exporter's declaration of his intention, conditional upon receipt of a compensatory amount, to export a Community product to another Member State. Following 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 purposes of this Regulation, be regarded as having been completed when the declaration referred to above has been accepted.

The relevant 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 compensatory amount to be levied, the date of importation shall be the date used for determining customs duties and levies.

Article 9

1. Payment of a compensatory amount shall be conditional upon proof that the product in respect of which customs export formalities have been completed has left the geographical territory of the Member State in which the formalities were completed.

2. However, where the compensatory amount to be granted on exports to another Member State is higher than the compensatory amount, plus refund, to be granted on exports to third countries, payment shall furthermore be conditional on proof that import formalities have been completed and that duties and charges having equivalent effect due have been charged in the Member State of destination.

The proof referred to in the preceding paragraph shall be furnished by production of a customs document drawn up in the country of destination or of a copy or photocopy of such document, certified to be a true copy by the competent authorities.

Article 10

1. Compensatory amounts shall be levied and granted only in respect of 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 components thereof, the compensatory amount shall apply to that of those components where such components satisfy the condition laid down in the preceding sentence.

2. No compensatory amount shall be granted for products which are not of sound and fair 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 11

1. In trade in products in respect of which a compensatory amount is payable, section 32 of the relevant Community transit document shall include one of the following entries:

— montant compensatoire 'monétaire' (État membre de départ/État membre de destination)

— monetaert udligningsbeløb (Afsendelsesmedlemsstat/Bestemmelsesmedlemsstat)

— 'Währungsausgleichsbetrag' (Abgangsmitgliedstaat/Bestimmungsmitgliedstaat)

— 'monetary' compensatory amount (Member State of departure/Member State of destination)

— importo compensative 'monetario' (Stato membro di partenza/Stato membro de destinazione)

— compenserend bedrag 'monetair' (Lid-Staat van vertrek/Lid-Staat van bestemming).

Where a movement certificate DD3 is used, one of the above entries must be made on page 2 of the certificate.

2. Where Commission Regulation (EEC) No 304/71 applies to carriage of the products in question, the entry required under paragraph 1 above shall be made in the 'Description of goods' section of the International Consignment Note (CIM) or on the International Express Parcels Consignment Note (TI Ex) as appropriate. This entry shall be authenticated by the stamp of the customs office of departure.

3. Where, in the case of products in respect of which a compensatory amount is payable, the relevant Community transit document, International Consignment Note (CIM) or International Express Parcels Consignment Note (TI Ex) has been replaced by a new document, the entry made on the old document shall appear in the same place on the new document.

4. Products introduced into a Member State other than that indicated as the Member State of destination on the transit documents specified in paragraphs 1 and 2 shall be considered:

— as coming from the Member State of departure if the entries made pursuant to paragraph 1 show that the compensatory amount should be levied by the Member State indicated as the Member State of destination;

— as coming from the Member State of destination if the entries made pursuant to paragraph 1 show

that the compensatory amount should have been granted by the Member State of departure.

However, where Article 9 (2) is applied, the products shall be considered as coming from the Member State of departure.

Article 12

Payment of 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 13

The application for payment of a compensatory amount must be submitted, save in cases of *force majeure*, within the six months following the date of completion of customs formalities, failing which it cannot be accepted.

Article 14

1. As regards imports from third countries:

(a) sluice-gate prices for pigmeat, eggs, poultry-meat and albumins;

(b) free-at-frontier values for milk and milk products falling within subheadings Nos 04.04 E I (b) 2, 04.04 E I (b) and 04.04 E I (b) 4 of the Common Customs Tariff, and

(c) reference prices for wine,

shall be regarded as having been respected if the offer price for the product in question, increased where the currency of the importing Member State has appreciated and reduced where that currency has depreciated by:

— the amount referred to in paragraph 2,

and increased

— in the case of wine, by customs duties,

is not lower than the relevant sluice-gate price, free-at-frontier value or reference price.

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

Article 15

1. The compensatory amount levied on imports from third countries is hereby suspended for products falling within subheadings Nos 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 the first subparagraph of Article 14 (2) of Regulation (EEC) No 805/68.

2. The provisions of Article 1 of Regulation (EEC) No 888/68 shall apply to the suspension provided for in paragraph 1.

However, the amount of the deposit associated with the compensatory amount shall equal the compensatory amount in force on the day of importation.

Article 16

Regulation (EEC) No 1013/71 is hereby repealed.

Article 17

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

However, the amounts resulting from its application shall apply from 26 February 1973.

By way of derogation from the preceding paragraph these amounts shall, at the request of the party concerned, apply from 13 February 1973 if application of this Regulation leads to

(a) the granting of:

— compensatory amounts which are higher than those applicable until this Regulation enters into force;

or

— newly-introduced compensatory amounts;

(b) the levying of import charges which are lower than the 'monetary' compensatory amounts applicable until this Regulation enters into force.

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

Done at Brussels, 1 March 1973.

For the Commission

The President

François-Xavier ORTOLI