REGULATION (EEC) No 2107/74 OF THE COMMISSION

of 8 August 1974

laying down protective measures applicable to imports of preserved mushrooms

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 1868 on the common organization of the market in products processed from fruit and vegetables, as last amended by Regulation (EEC) No 2429/72 [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 preserved mushrooms during the 1973 marketing year amounted to some 40 000 metric tons; whereas this figure is considerably higher than the figure for previous years; whereas, furthermore, the figure for the first six months of 1974 is some 50 % higher than the figure for the corresponding period of 1973;

Whereas the offer prices from third countries are 20 to 30 % less than the cost price within the Community industry for preserved mushrooms; 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 during the first half of 1974 stocks of some 20 000 metric tons of preserved mushrooms produced in the Community were in fact found to exist on the Community market; whereas these stocks are considerably larger than those recorded in previous years; whereas, furthermore, by reason of the increased volume of imports stocks are likely to increase in the coming months;

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 jeopardize 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 originating in third countries willing to maintain a certain price level should not be included in the system of import licences;

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 26 August 1974;

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 1973 for which applications are lodged or of the average of the corresponding months from 1971 to 1973 if this average exceeds the quantity imported in 1973;

Whereas the system of import licences must not result in excluding from the trade persons who have not carried out commercial transactions in preserved mushrooms during 1971, 1972 and 1973; whereas, consequently, it should be possible, within limits, to grant them import licences,

(1) OJ No L 153, 1. 7. 1968, p. 8.
(2) OJ No L 264, 23. 11. 1972, p. 1.
(3) OJ No L 151, 7. 7. 1971, p. 5.

HAS ADOPTED THIS REGULATION :

Article 1

1. From 26 August 1974 all imports into the Community of preserved mushrooms (subheading 20.02 A of the Common Customs Tariff) from third countries 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 month preceding or the month 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 quantities of products to which it relates shall be indicated.

Each application shall be accompanied by the lodging of a deposit of 1 unit 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 licences shall not be required for imports originating in third countries to be specified which are willing and in a position to guarantee that on importation into the Community of products originating in 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 Member States shall notify the Commission by telex of :

(a) the quantities, shown for each month, in respect of which import licences have been applied for during the week ;

(b) the quantities, shown for each month, in respect of which import licences have been issued during the week.

The information required under (a) shall be notified for the first time on 16 August 1974.

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 preserved mushrooms imported by the Community in 1973 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 1971, 1972 and 1973 if this average exceeds that specified in the first indent.

Imports originating in third countries fulfilling the conditions of Article 1 (4) shall not be taken into account when the reference quantity is being determined.

Article 4

When applications for licences are made by persons who have not imported the products in question into the Community during the period 1971—1973, these applications shall, by way of derogation from the abovementioned provisions, be granted in respect of not more than 5 % of the average quantities of products imported into the Member State and converted to the authorities of the latter in each month of 1971, 1972, and 1973 corresponding to those specified in the application. Imports originating in countries fulfilling the conditions of Article 1 (4) shall be excluded when these average quantities are being calculated.

Import licences corresponding to these applications shall be issued within 10 working days following the lodging of the applications and in the chronological order in which they were lodged. One and the same applicancy may not be allotted quantities exceeding 2 % 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 document 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.

The rights and obligations arising from the licences shall be transferable.

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 subheading 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 deposit referred to in Article 1 (3) 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 licence is requested.

Article 9

1. Without prejudice to Article 10 :

(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 10

1. 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 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 recognized as a case of *force majeure.*

Article 11

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

Article 12

This Regulation shall enter into force on 9 August 1974.

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

Done at Brussels, 8 August 1974.

For the Commission

P. J. LARDINOIS

Member of the Commission