COMMISSION REGULATION (EEC) No 818/80

of 1 April 1980

laying down protective measures applicable to imports of cultivated mushrooms in brine

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 516/77 of 14 March 1977 on the common organization of the market in products processed from fruit and vegetables (1), as last amended by Regulation (EEC) No 2999/79 (2), and in particular Article 14 (2) thereof,

Whereas Commission Regulations (EEC) No 547/80 (3) and (EEC) No 548/80 (4) lay down protective measures applicable to imports of preserved cultivated mushrooms; whereas Commission Regulation (EEC) No 876/79 (5) lays down protective measures only in respect of imports of cultivated mushrooms in brine originating in Taiwan;

Whereas, for some time past, the Community has been importing large quantities of cultivated mushrooms in brine far in excess of those traditionally imported; whereas these extra imports are used in the Community for the production of preserved mushrooms and thus affect the market for those products;

Whereas in such a situation the Community market, by reason of the imports of cultivated mushrooms in brine, is suffering from serious disturbance liable to jeopardize the objectives of Article 39 of the Treaty; whereas it is necessary in these circumstances to take protective measures against such imports for as long as the conditions on the market in preserved cultivated mushrooms require the restriction of imports of these products;

Whereas the effect of the protective measures should be to restrict imports so that they can be obsorbed 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 each difficult situation on Community markets, the period of validity of those licences should be limited;

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 of the years 1977 and 1978;

Whereas the system of import licences must not result in excluding from trade persons who did not carry out commercial transactions in cultivated mushrooms in brine during 1977 and 1978; whereas consequently it should be possible, within limits, to grant them import licences;

Whereas account should be taken of the special situation of products en route to the Community at the time this Regulation is published; whereas, for this purpose, priority should be given to these products; whereas, however, in order to prevent a worsening of the market situation, it is necessary to provide that such imports be set off against those which may be carried out in respect of each quarter as laid down in this Regulation;

Whereas Regulation (EEC) No 876/79 should be repealed,

HAS ADOPTED THIS REGULATION:

Article 1

1. From 15 April 1980 all imports into the Community of preserved cultivated mushrooms in brine (subheading 07.03 F of the Common Customs Tariff) from non-member countries shall be subject to the production of an import licence.

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

(1) OJ No L 73, 21. 3. 1977, p. 1.
(2) OJ No L 341, 31. 12. 1979, p. 1.
(3) OJ No L 60, 5. 3. 1980, p. 16.
(4) OJ No L 60, 5. 3. 1980, p. 18.
(5) OJ No L 110, 3. 5. 1979, p. 13.

The licence shall be issued for imports to be effected during the quarter in respect of which it was made out. It shall be valid for imports into the Member States which issued it.

3. When application for the licence is made the quantities of products to be imported in the course of each quarter shall be indicated.

Each application shall entail the provision of a security of 2 ECU per 100 kilograms net weight as guarantee of the obligation to import during the period of validity of the licence ; such security shall, except in the 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. For the purpose of this Regulation 'a quarter' shall mean one of the following periods :

— 1 January to 31 March,

— 1 April to 30 June,

— 1 July to 30 September,

— 1 October to 31 December,

of the year in question.

However, on the first occasion, licences shall be issued for the period 15 April to 30 June 1980.

Article 2

1. Applications for import licences for the period 15 April to 30 June 1980 shall be submitted not later than 7 April 1980.

2. With regard to the period referred to in paragraph 1, licences shall be issued to the applicants, in accordance with Article 4, within the quantity indicated in the application and up to 12·5 % of the reference quantity established pursuant to that Article.

3. Licences for import operations to be effected during the period referred to in Article 1 shall be issued before 15 April 1980.

4. Member States shall communicate to the Commission not later than 21 April 1980 the quantities in respect of which licences were applied for and granted.

Article 3

1. With regard to the periods other than that referred to in Article 2, Member States shall notify the Commission by telex :

(a) at the latest on the fifth day of the month preceding each quarter and on the first occasion by 5 June 1980, the quantities indicated for each quarter in the licence applications submitted to them ;

(b) at the latest on the fifth day of the first month of each quarter, the quantities for the quarter in question in respect of which import licences were issued between the 20th day and the end of the previous month.

2. On the basis of the notifications provided for in paragraph 1, the Commission shall assess the situation and decide, as provided in Article 4, on the quantities of products for which licences shall be issued.

3. The Commission shall reach a decision during the week follwing that in which the quantities applied for are notified to it. If, however, the Commission fails to act within that week the conditions previously in force for the issue of import licences shall continue to apply.

4. Import licences shall be issued, within the limits of the amounts applied for, for the quantities determined by the Commission. They shall be issued from the 20th day until the end of the month preceding the quarter in question.

If applications relate to quantities exceeding those specified by the Commission, they shall be refused.

Article 4

Without prejudice to the provisions of Article 2 (2), the Commission shall determine the quantities of products for which licences shall be issued by fixing a percentage to be applied to the reference quantity for each applicant.

The reference quantity shall be equal to the total quantity of preserved cultivated mushrooms in brine imported by the applicant into the Community in 1977 and 1978.

Proof relating to the quantities imported in 1977 and 1978 shall be furnished at the time when the application for the licence is submitted by the production of the customs documents for release into free circulation.

Article 5

Where applications for licences are submitted by persons who have not imported the products in question into the Community during 1977 and 1978, such applications shall, by way of derogation from the abovementioned provisions, be granted for a quantity not exceeding 5 % of the total quantity of products, imported into the Member State with whose authorities such applications are submitted, during such period or periods of 1977 and 1978 as correspond to that or those specified in the application.

Member States shall issue licences in respect of such applications by apportioning equitably among all the applicants the quantity referrred to in the previous paragraph.

Member States shall notify the Commission, in accordance with Articles 2 (4) and 3 (1), as the case may be, of the quantities for which such import licences have been applied for and granted.

Article 6

1. By way of derogation from Articles 2 (2), 3 (4) and 5, import licences shall be issued for the quantities of cultivated mushrooms in brine which are en route to the Community on 2 April 1980, on condition that the party concerned :

— submits an application by 7 April 1980 at the latest, and

— in so doing furnishes proof to the satisfaction of the competent authorities of the Member State concerned that the quantities in question were en route to the Community on the date specified above.

2. These quantities, in respect of which the party concerned obtained import licences under paragraph 1, shall be deducted from those in respect of which the party concerned may obtain import licences under Article 2 (2), 4 or 5 for imports to be effected each quarter.

Article 7

The issue of the import licences shall carry with it :

— the right to import not more than 105 %,

— the obligation to import not less than 95 %,

of the quantity of the product specified in the licence during the period of validity thereof.

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

Article 8

The import licence shall state :

(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 presumed country of origin of the product ;

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

(e) the period for which the licence is valid.

Article 9

The security referred to in Article 1 (3) may be furnished 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 10

1. Without prejudice to Article 11 :

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

(b) the security 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 security 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 security shall be immediately released :

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

(b) if Article 3 (2) applies, in proportion to the quantity for which an application has not been granted.

Article 11

1. Where as a result of *force majeure* importation cannot be effected during the period of validity of the licence, the competent agency of the issuing Member State shall decide, at the request of the licencee, either that the obligation to import is cancelled and that the security is released or that the period of validity of the licence is extended for such a period as may be considered necessary in view of the circumstances invoked. Such extension may be granted after the period of validity of the licence has expired.

The decision to cancel or to extend shall be restricted to that quantity of the product which could not be imported by reason of *force majeure*.

Any extension of licence shall be recorded by means of an endorsement stamped by the issuing agency on the licence and by the appropriate amendment of the licence.

2. The importer shall by means of appropriate documents furnish proof of the circumstances regarded as constituting *force majeure*.

3. Member States shall inform the Commission of the circumstances recognized by them as constituting *force majeure*.

Article 12

Regulation (EEC) No 876/79 is hereby repealed.

Article 13

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

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

Done at Brussels, 1 April 1980.

For the Commission

Finn GUNDELACH

Vice-President