COMMISSION REGULATION (EEC) No 2223/85

of 31 July 1985

laying down detailed rules for the application of temporary measures for production aid to processed tomato products

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 746/85 (2), and in particular Article 3 (3) and 18 thereof,

Having regard to Council Regulation (EEC) No 1320/85 of 23 May 1985 on temporary measures for production aid to processed tomato products (3), and in particular Article 4 thereof,

Whereas Article 1 of Regulation (EEC) No 1320/85 provides that the quantity of fresh tomatoes intended for the manufcature of processed tomato products attracting production aid shall be allocated among processing enterprises based on their production during either the marketing year 1982/83 or 1984/85 depending on their production periods; whereas enterprises wishing to benefit from production aid during the marketing year 1985/86 must have complied with the provisions of Article 2 of Commission Regulation (EEC) No 1599/84 of 5 June 1984 laying down detailed rules for the application of the system of production aid for products processed from fruit and vegetables (4), as amended by Regulation (EEC) No 1455/85 (5); whereas enterprises having produced during the marketing year 1982/83 or 1984/85 may have changed ownership or have undergone other changes; whereas the enterprises should communicate their production figures to the competent authorities; whereas enterprises commencing their activities during the marketing year 1985/83 should communicate to the competent authorities information on their production capacity;

Whereas the competent authorities shall allocate to each processing enterprise the quantity of fresh tomatoes which may be used for processing of finished products attracting production aid; whereas the allocation should be based on the particulars communicated by the enterprises and the aid application submitted during the relevant marketing year; whereas in cases where doubt exists as to the accuracy of the particulars, the competent authorities should be authorized to defer the allocation until such doubt is resolved;

Whereas the result of allocations of specific quantities to each enterprise will be that the payment of production aid will be limited to the target quantity; whereas that aim would also be achieved in cases where a quantity allocated to an enterprise could be transferred to another enterprise; whereas such a possibility would constitute a certain flexibility for the enterprises; whereas the competent authorities should be authorized to allow transfer of the right deriving from an allocation when that can be done without unfavourable consequences for the production aid system;

Whereas for tomato concentrate only one rate of aid is applicable; whereas for preserved whole peeled tomatoes and for other tomato-based products, two or more rates are applicable; whereas in cases where an enterprise uses more fresh tomatoes for the manufacture of the latter products than those allocated, the reduction of production aid should be made for all products in proportion to the extent by which the quantity allocated is exceeded;

Whereas Article 2 of Regulation (EEC) No 1320/85 lays down that the measures provided for in Article 1 (1) of the Regulation shall be suspended where, in a Member State, production is limited by an interprofessional agreement or a national measure to specific quantities; whereas to ensure uniform application, it should be stipulated that a national measure should contain provisions which would ensure that allocation of quantities, as far as possible, is made on the same criteria as in other Member States; whereas with the same aim, other provisions of an interprofessional agreement or a national measure should also as far as possible, be identical with the provisions applicable in other Member States;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Products Processed from Fruit and Vegetables,

(1) OJ No L 73, 21. 3. 1977, p. 1.
(2) OJ No L 81, 23. 3. 1985, p. 10.
(3) OJ No L 137, 27. 5. 1985, p. 41.
(4) OJ No L 152, 8. 6. 1984, p. 16.
(5) OJ No L 144, 1. 6. 1985, p. 69.

HAS ADOPTED THIS REGULATION :

Article 1

This Regulation lays down detailed rules for the application of the temporary measures for production aid to processed tomato products as provided for in Regulation (EEC) No 1320/85.

TITLE I

Processing enterprises covered by Article 1 of Regulation (EEC) No 1320/85

Article 2

1. The provisions of this Title shall apply to processing enterprises wishing to benefit from production aid under Article 1 of Regulation (EEC) No 1320/85.

2. The allocation referred to in Article 1 (2) and (3) of Regulation (EEC) No 1320/85 shall be made among processing enterprises :

(a) having complied with the provisions of Article 2 of Regulation (EEC) No 1599/84, and

(b) having submitted applications for production aid for either the marketing year 1982/83 or 1984/85, or

(c) commencing their activities during the marketing year 1985/86.

Any change of ownership during the period between the relevant year of production as referred to under (b) and the allocation shall not be taken into consideration.

Article 3

1. Each processing enterprise having processed tomatoes during the marketing year 1982/83 shall communicate to the competent authorities :

(a) the quantity of fresh tomatoes used during that marketing year, and

(b) the quantity of processed products which have been obtained from the quantity referred to in (a) and for which production aid has been granted.

The processed products shall be broken down into :

— tomato concentrate, converted into concentrate with a dry weight content of 28 % or more but less than 30 % ;

— preserved whole peeled tomatoes ; and

— other tomato based products.

The quantity of fresh tomatoes used shall be broken down by reference to each group of processed products obtained.

2. Each processing enterprise, other than those referred to in paragraph 1, having processed tomatoes during the marketing year 1984/85 shall communicate to the competent authorities :

(a) the quantity of fresh tomatoes used during that marketing year ; and

(b) the quantity of processed products which have been obtained from the quantity referred to in (a) and for which production aid has been granted.

The processed products shall be broken down as provided for in paragraph 1.

3. Processing enterprises commencing their activities during the marketing year 1985/86 shall communicate to the competent authorities particulars as to their production capacity showing the quantity of fresh products which can be processed and the quantity of processed products they have planned to produce. The products shall be broken down as provided for in paragraph 1.

4. Where the competent authorities of a Member State are already in possession of all particulars needed for the allocation provided for in Article 1 (2) and (3) of Regulation (EEC) No 1320/85, in particular information on changes of ownership, they may decide that the particulars provided for in paragraph 1 and 2 shall not be communicated.

5. Member States may require further particulars to be shown in the communications covered by this Article when such particulars are desirable to ensure that the quantitities referred to in Article 1 of Regulation (EEC) No 1320/85 are fairly allocated among the processing undertakings.

Article 4

1. The communications referred to in Article 3 shall reach the comptetent authorities not later than 1 September 1985.

2. Member States may, in exceptional cases and where there is good reason for doing so, accept communications after the time limit provided for in paragraph 1 if that can be done without leading to the result that the quantities fixed in Articles 1 of Regulation (EEC) No 1320/85 are exceeded.

Article 5

1. Based on the communications provided for in Article 3 and the applications for production aid for the marketing year 1982/83 and 1984/85, the competent authorities shall allocate a specific quantity of fresh tomatoes to each processing enterprise. This quantity shall be broken down into tomatoes intended for processing of

— tomato concentrate ;

— preserved whole peeled tomatoes ; and

— other tomato based products.

2. In cases of suspected irregularities and where administrative inquiries have been commenced concerning entitlement to aid, the competent authorities may refuse to allocate the quantity in dispute until the dispute has been solved.

3. Member States may when it can be done without unfavourable consequences for the production aid system authorize transfer of the rights deriving from the allocation referred to in paragraph 1 among processing enterprises having their activities in the same Member State, in particular in cases of merger. Such transfer shall be authorized only when it is requested before the production aid for the quality to be transferred is paid.

4. Where a Member State has established that the total quantity allocated to its processing enterprises has not been used for processing during a given marketing year, that Member State my decide to allocate the quantity so released among processing enterprises having used a quantity of fresh tomatoes exceeding that allocated to them. Such allocations shall have effect only for the marketing year involved and shall for each processing enterprise be made in proportion to the extent by which its use of fresh tomatoes for each group of products referred to in paragraph 1 has exceeded the quantity allocated to the enterprise. For this purpose 'use of fresh tomatoes' means the use of fresh tomatoes for the manufacture of finished products which could have attracted production aid if no quantitative limitations were applicable.

Article 6

In cases where a processing enterprise has used greater quantities of fresh tomatoes than those allocated to it for processing of either :

— preserved whole peeled tomatoes, or

— other tomato based products referred to in Article 5 (1)

the production aid shall be reduced within each group in proportion to the extent by which the total use of fresh tomatoes has exceeded the quantity allocated for processing of products falling within the group.

Article 7

Processing enterprises wishing to use fresh tomatoes allocated for processing of preserved whole peeled tomatoes, for processing of tomato concentrate or other tomato based products shall so request not later than when the aid application referred to in Article 11 (4) of Regulation (EEC) No 1599/84 is submitted.

Article 8

1. Processing enterprises, shall in so to the later information requested under Article 4 (e) of Regulation (EEC) No 1599/84 and before the date stipulated in that provision, communicate to the agency designated :

(a) the quantity of fresh tomatoes purchased or expected to be purchased during the current marketing year and which are used or intended to be used for processing of finished products for which no aid is or will be claimed. The products shall be broken down by reference to the finished product to be obtained ;

(b) the quantity of finished products obtained or estimated to be obtained from the quantity referred to in (a). The products shall be broken down as laid down in the last subparagraph of Article 4 (e) of Regulation (EEC) No 1599/84.

2. The aid application shall, in addition to the documents provided for in Article 12 (2) of Regulation (EEC) No 1599/84, be accompanied by a declaration in which the processing enterprise indicates :

(a) the net weight of the finished products produced during the current marketing year for which no aid is applicable. The products shall be broken down in the same way as products attracting aid ;

(b) the net weight of the raw material used for the processing of each of the finished products referred to in (a).

TITLE II

Processing enterprises covered by Article 2 of Regulation (EEC) No 1320/85

Article 9

The provisions of this Title shall apply in Member States where the measures provided for in Article 1 (1) of Regulation (EEC) No 1320/85 are suspended.

Article 10

1. An interprofessional agreement or national measures referred to in Article 2 (1) of Regulation (EEC) No 1320/85 shall stipulate that

(a) a specific quantity of fresh tomatoes shall be reserved for allocation among processing enterprises which commenced their activities during the 1983/84 or 1984/85 marketing years or will commence such activities during the 1985/86 marketing year ;

(b) within a limit of 20 %, the total quantiy of fresh tomatoes allocated for processing of preserved whole peeled tomatoes may be transferred to the quantity of fresh tomatoes allocated for processing of tomato concentrate or other tomato based products ;

(c) processing enterprises commencing their activities during the marketing years 1986/87 and 1987/88 shall not benefit from production aid ;

2. An interprofessional agreement shall be also stipulate the allocation of quantities among the processing enterprises and the criteria according to which the quantities are to be allocated.

3. A national measure shall also stipulate that :

(a) allocations of quantities among processing enterprises shall be made in accordance with the provisions laid down in Article 1 (2) of Regulation (EEC) No 1320/85 in respect of enterprises having produced during the marketing year 1982/83 ;

(b) the competent authorities may when it can be done without unfavourable consequences for the production aid system authorize transfer of the rights deriving from the allocation referred to in paragraph 1 among processing enterprises having their activities in the same Member State, in particular in cases of merger. Such transfer shall be authorized only when it is requested before the production aid for the quantity to be transferred is paid.

4. The quantity of fresh tomatoes allocated under this Article shall be broken down into products intended for processing of

— tomato concentrate ;

— preserved whole peeled tomatoes, and

— other tomato based products.

5. An interprofessional agreement as referred to in paragraph 1 shall cover one or more whole marketing years and shall before taking effect be approved by the Member State concerned.

6. Member States having approved an interprofessional agreement or having adopted national measures as referred to in this Article shall so inform the Commission indicating the period of application.

Article 11

In cases where a processing enerprise has used a quantity of fresh tomatoes exceeding that allocated to it under Article 10, that enterprise shall, without prejudice to any sanctions provided for by the Member States, not benefit from production aid in respect of the quantity of finished products obtained from the quantity of fresh tomatoes exceeding the quantity allocated.

For the purposes of this Article, the provisions laid down in Article 6 shall apply.

Article 12

1. When determining the reduction of the production aid pursuant to Article 2 (4) of Regulation (EEC) No 1320/85, the finished products shall be broken down into :

— tomato concentrate ;

— preserved whole peeled tomatoes, and

— other tomato based products,

and the reduction to be made for each group of product shall be determined for all processing enterprises of a Member State in proportion to the quantity of fresh tomatoes by which the total quantity allocated by each Member State has been increased pursuant to Article 2 (1) of Regulation (EEC) No 1320/85.

2. Where a Member State has established that the total quantity allocated to its processing enterprises has not been used for processing of products attracting aid during the current marketing year, the reduction of the production aid referred to in paragraph 1 shall be adjusted by that Member State by taking into consideration the quantity of fresh tomatoes actually processed instead of the quantity referred to in paragraph 1.

TITLE III

Communication to the Commission

Articles 13

In addition to the information referred to in Article 19 of Regulation (EEC) No 1599/84 each Member State shall notify the Commission,

(a) not later than 1 April each year of :

(i) the total quantity, expressed as net weight, of finished products as referred to in Article 8 (2) (a). The products shall be broken down in the same way as provided for in Article 19 (a) of Regulation (EEC) No 1599/84 ;

(ii) the total quantity of raw material used in the processing of each group of finished products referred to in (i) ;

(iii) the quantity of fresh and finished products which might have been used or produced contrary to the provisions of Title II,

(b) not later than 16 November each year of:

(i) the total quantity of fresh products referred to in Article 8 (1) (a) used or intended to be used for processing. The products shall be broken down by reference to the finished products to be obtained;

(ii) the estimated production of finished products, expressed as net weight, to be obtained from the quantity referred to in (i). The products shall be broken down as provided for in Article 19 (f) (ii) of Regulation (EEC) No 1599/84.

TITLE IV

Final provisions

Article 14

This Regulation shall enter into force on the day following 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, 31 July 1985.

For the Commission

Frans ANDRIESSEN

Vice-President