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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 2358/87

of 31 July 1987

opening, allocating and providing for the administration of a Community tariff quota for herring, fresh or chilled, falling within subheading ex 03.01 B I a) 2 aa) of the Common Customs Tariff, originating in Sweden

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to the proposal from the Commission,

Whereas an agreement between the European Economic Community and the Kingdom of Sweden was concluded on 22 July 1972; whereas, following the accession of Spain and Portugal, an Agreement in the form of Exchange of Letters was concluded between the European Economic Community and the Kingdom of Sweden on the Agricultural and Fisheries sector; whereas this Agreement was adopted by Decision 86/558/EEC (1);

Whereas this Agreement provides for the opening, over a period to be determined by common accord, of a 20 000 tonnes duty free Community tariff quota for herring, fresh or chilled, whole, headless or in pieces, originating in Sweden; whereas, therefore, the tariff quota in question should be opened for the period 15 September 1987 to 14 February 1987 and allocated among the Member States;

Whereas equal and continuous access to the quota should be ensured for all Community importers and the rate of levy for the tariff quota should be applied consistently to all imports until the quota is used up; whereas, in the light of the principles outlined above, a Community tariff arrangement based on an allocation between the Member States would seem to preserve the Community nature of the quota; whereas, to represent as closely as possible the actual development of the market in the said goods, the allocation should follow proportionately the requirements calculated both from statistics of imports from Sweden during a representative reference period and according to the economic outlook for the tariff year in question;

Whereas, during the last three years for which statistics are available, imports of this type of fish, originating in Sweden, into each of the Member States were as follows (in tonnes):

(tonnes)

Member State	1984	1985	1986
Benelux	1 093	310	58
Denmark	37 900	30 783	25 045
Germany	2 822	1 563	1 460
Spain	0	0	0
Greece	0	0	0
France	3	0	0
Ireland	16	0	0
Italy	0	0	0
Portugal	0	0	0
United Kingdom	0	0	0
	41 834	32 656	26 563

Whereas, during the last years under consideration, the products in question were imported only by certain Member States and not at all by the other Member States; whereas, under these circumstances, initial shares should be allocated to the importing Member States and the other Member States should be guaranteed access to the benefit of the tariff quota upon imports into those States of the products concerned being notified; whereas these arrangements for allocation will equally ensure the uniform application of the Common Customs Tariff;

Whereas, taking into account these factors and the forecasts made by certain Member States, the initial percentage shares in the quota volume can be set approximately as follows:

Member State	
Benelux	1,45
Denmark	92,75
Germany	5,78
France	0,02

(1) OJ No L 328, 22. 11. 1986, p. 89.

Whereas, in order to take into account import trends for the products concerned in the various Member States, the quota volume should be divided into two instalments, the first being shared among certain Member States and the second constituting a reserve to cover the subsequent requirements of these Member States where they have used up their initial share and any additional requirements which might arise in the other Member States; whereas, in order to give importers in each Member State a certain degree of security, it is appropriate to fix the first instalment of the Community quota at a level which, in the circumstances, could be 67 % of the quota volume;

Whereas initial shares may be used up at different rates; whereas, to avoid disruption of supplies on this account, it should be provided that any Member State which has almost used up its initial share should draw an additional share from the reserve; whereas, each time its additional share is almost used up, a Member State should draw a further share and so on as many times as the reserve allows; whereas the initial and additional shares should be valid until the end of the quota period; whereas this form of administration requires close collaboration between the Member States and the Commission, and the latter must be in a position to keep account of the extent to which the quotas have been used up and to inform the Member States accordingly;

Whereas if, at a given date in the quota period, a considerable quantity of a Member State's initial share remains unused, it is essential that such State should return a significant proportion thereof to the reserve, in order to prevent a part of the Community tariff quota from remaining unused in one Member State while it could be used in others;

Whereas, since the Kingdom of Belgium, the Kingdom of the Netherlands and the Grand Duchy of Luxembourg are united within and jointly represented by the Benelux Economic Union, any operation relating to the administration of the quota shares allocated to that economic union may be carried out by any of its members,

HAS ADOPTED THIS REGULATION:

Article 1

1. From 15 September 1987 to 14 February 1988 the Common Customs Tariff duty on the following products shall be suspended at the level and within the limit of the Community tariff quota as shown herewith:

Order No	CCT heading No	Description	Amount of tariff quota (tonnes)	Rate of duty (%)
09.0616	03.01	Fish, fresh (live or dead), chilled or frozen		
		B. Saltwater fish:		
		I. Whole, headless or in pieces:		
		a) Herring:		
		2. From 16 June to 14 February:		
		aa) Fresh or chilled originating in Sweden	20 000	0 (a)

(a) However, when those products are imported into Portugal the duty applicable shall be 11,3 % in 1987 and 9,4 % in 1988 within the limit of the quota-shares for which this Member State is eligible.

2. Imports of the products in question shall not benefit from the tariff quotas referred to in paragraph 1 unless the free-at-frontier prices, which are determined by the Member States according to Article 21 of Council Regulation (EEC) No 3796/81 of 29 December 1981 on the common organization of the market in fishery products [1], as last amended by Regulation (EEC) No 3655/84 [2], are at least equal to the reference prices if such prices have been fixed or are to be fixed by the Community for the product under consideration or the categories of the products concerned. For the calculation of the reference price the following coefficients shall be applicable:

— whole herring: 1,

— flaps of herring: 2,32,

— pieces of herring: 1,96.

3. The protocol on the definition of the concept of originating products and on methods of administrative cooperation, annexed to the Agreement between the European Economic Community and Sweden, shall be applicable.

Article 2

1. The tariff quota laid down in Article 1 (1) shall be divided into two instalments.

[1] OJ No L 379, 31. 12. 1981, p. 1.
[2] OJ No L 340, 28. 12. 1984, p. 1.

2. A first instalment of this quota, amounting to 13 400 tonnes, shall be shared among certain Member States ; the respective shares, which, subject to Article 5, shall be valid until 14 February 1988, shall be as follows :

Member States	*(in tonnes)*
Benelux	194
Denmark	12 428
Germany	775
France	3

3. The second instalment of the quota, being 6 600 tonnes, shall constitute the reserve.

4. If an importer notifies the imminent import of the products in question into a Member State that does not participate in the initial allocation and requests the benefit of the quota, the Member State concerned shall inform the Commission and draw an amount corresponding to these requirements to the extent that the available balance of the reserve so permits.

Article 3

1. If a Member State has used 90 % or more of its initial share as fixed in Article 2 (2), or of that share minus any portion returned to the reserve pursuant to Article 5, it shall forthwith, by notifying the Commission, draw a second share, to the extent that the reserve so permits, equal to 10 % of its initial share, rounded up as necessary to the next whole number.

2. If a Member State, after exhausting its initial share, has used 90 % or more of the second share drawn by it, that Member State shall forthwith, in the manner and to the extent provided in paragraph 1, draw a third share equal to 5 % of its initial share, rounded up as necessary to the whole number.

3. If a Member State, after exhausting its second share, has used 90 % or more of the third share drawn by it, that Member State shall, in the manner and to the extent provided in paragraph 1, draw a fourth share equal to the third.

This process shall apply until the reserve is used up.

4. By way of derogation from paragraphs 1, 2 and 3, a Member State may draw shares lower than those specified in those paragraphs if there are grounds for believing that those specified may not be used in full. Any Member State applying this paragraph shall inform the Commission of its grounds for so doing.

Article 4

Additional shares drawn pursuant to Article 3 shall be valid until 14 February 1988.

Article 5

Member State shall, not later than 15 January 1988, return to the reserve the unused portion of their initial share which, on 1 January 1988 is in excess of 20 % of the initial volume. They may return a greater portion if there are grounds for believing that it may not be used in full.

Member States shall, not later than 15 January 1988, notify the Commission of the total quantities of the product in question imported up to and including 1 January 1988 and charged against the Community quota and of any portion of their initial shares returned to the reserve.

Article 6

The Commission shall keep an account of the shares opened by the Member States pursuant to Articles 2 and 3 and shall, as soon as the information reaches it, inform each State of the extent to which the reserve has been used up.

It shall, not later than 20 January 1988, inform the Member States of the amount still in reserve, following any return of shares pursuant to Article 5.

It shall ensure that the drawing which exhausts the reserve does not exceed the balance available, and to this end shall notify the amount of that balance to the Member State making the last drawing.

Article 7

1. The Member States shall take all appropriate measures to ensure that additional shares drawn pursuant to Article 3 are opened in such a way that importations may be charged without interruption against their accumulated shares of the Community quota.

2. The Member States shall ensure that importers of the product in question have free access to the shares allocated to them.

3. The Member States shall charge imports of the product in question against their shares as and when the product is entered with the customs authorities for free circulation.

4. The extent to which a Member State has used up its share shall be determined on the basis of the imports charged in accordance with paragraph 3.

Article 8

At the request of the Commission, the Member States shall inform it of imports actually charged against their shares.

Article 9

The Member States and the Commission shall cooperate closely to ensure that this Regulation is complied with.

Article 10

This Regulation shall enter into force on 15 September 1987.

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

Done at Brussels, 31 July 1987.

For the Council

The President

K.E. TYGESEN