COMMISSION REGULATION (EEC) No 2381/89

of 2 August 1989

laying down detailed rules for granting compensation for tuna for the canning industry

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to 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 1495/89 (2), and in particular Article 17a (10) thereof;

Whereas Article 17a of Regulation (EEC) No 3796/81 provides for an allowance to be paid to producers' organizations if it is found, in respect of a given quarter, that the prices of given products are lower than a given triggering threshold;

Whereas for the purposes of applying this allowance system the selling price referred to in Article 17a of Regulation (EEC) No 3796/81 should be defined;

Whereas, for the quantities in respect of which entitlement to the allowance has been established, rules should be laid down governing the submission of applications by the parties concerned in order to obtain payment of the compensation;

Whereas certain minimum elements of the control procedure should be laid down, while it should be left to the Member States' control authorities to adopt suitable provisions for effective regular monitoring of the system introduced;

Whereas, this system is open to the risk of specific fraud, in particular as regards the fact that the application and payment of compensation are decided after the expiry of the quarterly periods concerned; whereas, with a view to minimizing these risks, in the case of a false declaration made intentionally or by gross negligence, the beneficiary must pay to the Member State an amount equal to 25 % of the compensation concerned without prejudice to the recovery of the compensation and interest in question;

Whereas, steps should be taken to see that an infringement with limited implications to the tuna compensation scheme does not involve the total withdrawal of the right to compensation but only a standard reduction thereof;

Whereas, to ensure the correct functioning of the system in question certain rules should be laid down regarding the notifications to be made by the Member States;

Whereas Commission Regulation (EEC) No 2469/86 of 31 July 1986 laying down detailed rules for the granting of compensation to producers of tuna for the canning industry (3) should be repealed;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Fishery Products,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down detailed rules of application for the granting of the allowance referred to in Article 17a of Regulation (EEC) No 3796/81, hereinafter referred to as the 'basic Regulation'.

Article 2

1. The grant of the allowance and its maximum amount shall be determined by means of a Regulation adopted in accordance with the procedure laid down in Article 33 of the basic Regulation, where it has been ascertained that the conditions laid down in Article 17a (1) of the basic Regulation are met for the quarter in question.

2. The allowance shall be granted to producers' organizations, subject to the limits laid down in Article 17a (4) of the basic Regulation, in respect of the products listed in Annex III to the said Regulation, caught by its members and sold and delivered to canning industries located within the customs territory of the Community with a view to their complete and definitive processing into products falling within CN code 1604.

Article 3

The average selling price recorded on the Community market referred to in the first indent of Article 17a (1) of the basic Regulaion shall be determined by the Commission each month on the basis of the monthly average prices notified by the Member States pursuant to Article 17 (4) of the basic Regulation.

Calculation of these monthly average prices by Member States shall be based on selling prices as invoiced by the producers' organizations or their members, at the stage of the first-hand sale in the Community.

(1) OJ No L 379, 31. 12. 1981, p. 1.
(2) OJ No L 148, 1. 6. 1989, p. 1.
(3) OJ No L 211, 1. 8. 1986, p. 19.

This selling price shall be determined:

— in the case of products sold at landing, for merchandise on board, alongside quay,

— in the case of products sold following storage by the producers' organization or its members, at warehouse.

Article 4

Within the limits of the volumes as laid down in Article 17a (4) of the basic Regulation, the competent authorities of the Member State concerned shall grant the allowance to producers' organizations in accordance with Article 17a (6) of the said Regulation.

Article 5

1. An application for payment of the allowance accompanied by the supporting documents referred to in paragraph 2 shall be submitted by the producers' organization concerned, for all the quantities delivered during the period in question, to the competent authorities of the Member State in which the producers' organization is established not later than 30 days after the entry into force of the Regulation provided for in Article 2 (1).

2. The supporting documents shall be as follows:

(a) the invoices for the sale of the products, showing at least the names and addresses of the buyer and seller, as referred to in Article 2 (2) and, for each consignment of a given category of product:

— the quantity sold,

— the selling price actually charged,

— the date of delivery,

— the place of delivery;

(b) proof of landing in the customs territory of the Community, certified by the competent authorities of the Member State in which the landing took place;

(c) proof of delivery of the products in question in the customs territory of the Community;

(d) proof of payment of the goods at the price referred to in the second indent of point (a);

(e) proof of the Community origin of the products;

(f) a declaration by the processor that the quantity purchased is intended for processing, in accordance with Article 2 (2).

3. In the case of products other than those caught and landed by a member of a producers' organization in its Member State, the T 2 M document shall be presented in accordance with Commission Regulation (EEC) No 137/79 [1] as proof of Community origin.

4. The allowance shall be paid to the producers' organization by the Member State concerned within two months of receipt of the complete file as referred to in this Article, except in the case of an administrative enquiry as to the right to the allowance.

Article 6

1. The Member States concerned shall set up a control system for checking that the products in respect of which the allowance is claimed qualify for it and that all other relevant Community rules are observed.

2. Detailed rules governing the control system must provide at least for the following:

— provisions concerning verifications of the Community origin of the products, particularly on the basis of ship's papers,

— identification in the producers' organizations' sales records of the quantities of each product landed and sold under these arrangements and, for each quantity in question, the date of sale, the buyer of the products as well as the price at which the said quantity was sold,

— random inspections at the place of sale and at producers' organizations in order to verify that the data as mentioned in Article 5 (2) and (3) correspond to the real situation.

— direct inspections of the processing industries, in particular with the aim of verifying administratively or in person that products purchased under these arrangements have in fact been sent for processing in accordance with Article 2 (2).

Inspections shall be covered by a detailed report on the execution of the engagements by the recipient of the allowance as well as on the audit carried out.

Article 7

1. In the event of a false declaration being made intentionally or as a result of serious negligence, the recipient of the allowance shall pay to the Member State concerned an amount equivalent to 25 % of the allowance granted to him during the period of three months covered by the application, irrespective of his obligation to repay the compensation in accordance with the conditions set out in Article 8 of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy [2], plus interest to be fixed by the Member State effective from the date of payment of the compensation until its recovery.

2. Where an infringement of the allowance scheme, with limited implications, has been committed by a recipient of the allowance and where it is shown by the said recipient, to the satisfaction of the Member State concerned, that such infringement was not committed with intention to defraud or as the result of serious negligence, the Member State shall withhold an amount equal to 10 % of the allowance applicable to the quantities concerned by the infringement and in respect of which the allowance was or was to be granted.

[1] OJ No L 20, 27. 1. 1979, p. 1.

[2] OJ No L 94, 28. 4. 1970, p. 13.

3. Member States shall notify the Commission each month of the cases to which this Article applies.

Article 8

1. The Member States concerned shall notify the Commission not later than one month after the date of entry into force of this Regulation of the control measures set up pursuant to Article 6 (1).

2. The Member States shall also notify the Commission, before the end of the quarter following the period for which the allowance has been paid, of payments made under Article 5 (4), the quantities delivered and relating thereto and the outcome of the inspections referred to in Article 6 (2).

Article 9

The conversion rate applicable to the allowance shall be the representative rate in force on the date of sale of the product.

Article 10

Regulation (EEC) No 2469/86 is hereby repealed.

Article 11

This Regulation shall enter into force on the third 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, 2 August 1989.

For the Commission

Manuel MARÍN

Vice-President