COMMISSION REGULATION (EEC) No 2117/90

of 24 July 1990

laying down detailed rules for the application of temporary measues relating to production aid for 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 1203/90 of 7 May 1990 on temporary measures relating to production aid for processed tomato products (1), and in particular Article 4 thereof,

Whereas Article 1 of Regulation (EEC) No 1203/90 provides that the quantity of fresh tomatoes intended for the manufacture of processed tomato products attracting production aid is to be allocated among processing undertakings on the basis of their average production during the 1987/88, 1988/89 and 1989/90 marketing years; whereas processing undertakings which commenced their activities after beginning of the 1988/89 marketing year and which did not receive production aid, but which wish to benefit from the aid scheme from the next marketing year, must satisfy the conditions laid down in 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 (2), as last amended by Regulation (EEC) No 396/90 (3); whereas undertakings commencing their activities during the 1990/91 or 1991/92 marketing year must communicate to the competent authorities information on their production capacity for the different finished products;

Whereas the competent authorities allocate to each processing undertaking the quantities of fresh tomatoes which may be used for the manufacture of finished products attracting aid; whereas the allocation must be based on the particulars communicated by the undertakings, whereas, in cases where doubt exists as to the accuracy of the particulars received, the competent authorities should be authorized to defer the allocation until such doubt is resolved;

Whereas the result of allocating specific quantities to each undertaking is that the payment of production aid is limited to a fixed quantity; whereas the aim of the aid system is respected if a quantity allocated to an undertaking can be transferred to another undertaking; whereas such a possibility confers flexibility on the undertakings; whereas the competent authorities should be authorized to allow transfer of the right deriving from an allocation where this is possible without unfavourable consequences for the production aid system;

Whereas an undertaking may, during the marketing year, apply for only one adjustment to the distribution of its quota among the finished products; whereas a final date for making use of this option should be fixed;

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

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,

HAS ADOPTED THIS REGULATION:

Article 1

1. The allocation referred to in Article 1 (2), (3), (4) and (5) of Regulation (EEC) No 1203/90 for the 1990/91 marketing year shall be made among processing undertakings:

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

(b) having submitted applications for production aid for the 1987/88, 1988/89 and 1989/90 marketing years or for one or two of those years; or

(c) having commenced their activities, during the 1988/89 or 1989/90 marketing years and communicated to the competent authorities the quantites of finished products obtained; or

(d) commencing their activities during the 1990/91 marketing year. At the start of the 1990/91 marketing year the producer Member States shall, if necessary, redistribute the quantity referred to in Article 1 (5) of Regulation (EEC) No 1203/90, taking into account those undertakings which are to commence their activities in the course of that year.

(1) OJ No L 119, 11. 5. 1990, p. 68.
(2) OJ No L 152, 8. 6. 1984, p. 16.
(3) OJ No L 42, 16. 2. 1990, p. 47.

The quantities of fresh tomatoes allocated to the undertakings referred to under (b) and (c) shall be calculated on the basis of the average of the quantities actually processed, as the case may be during the marketing years in question, without prejudice to any transfers as provided for in Article 4 (3). For Portugal, the allocation of quantities for 'other tomato based products' may be made on the basis of requests made by processors and, if necessary, *pro rata* with the quantities available.

2. The allocation referred to in Article 2 (1), (2), (3) and (4) of Regulation (EEC) No 1203/90 for the 1991/92 marketing year shall be made among processing undertakings :

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

(b) having submitted applications for production aid for the 1988/89, 1989/90 and 1990/91 marketing years or for one or two of those years ; or

(c) having commenced their activities, during the 1990/91 marketing year and communicated to the competent authorities all the information enabling them to check the finished products obtained ; or

(d) having commenced their activities, during the 1991/92 marketing year in accordance with Article 2 (4) of Regulation (EEC) No 1203/90.

The quantities of fresh tomatoes to be allocated to the undertakings referred to under (b) and (c) shall be calculated on the basis of the average of the quantities actually processed, as the case may be during the marketing years in question, without prejudice to any transfers as provided for in Article 4 (3).

Article 2

1. The processing undertakings referred to in Article 1 (1) (b) and (2) (b) shall communicate to the competent authorities :

(a) the quantity of fresh tomatoes used during each of those marketing years ;

(b) the quantity of processed products obtained from the quantity referred to in (a) broken down into two groups, according to whether production aid was granted or not.

The processed products shall be broken down into :

— tomato concentrate, expressed as concentrate with a dry weight content of 28 % or more but less than 30 %,

— preserved whole peeled tomatoes,

— other tomato-based products.

The quantity of fresh tomatoes used shall be given for each group of finished products, broken down according to whether production aid was received or not.

2. The processing undertakings referred to in Article 1 (1) (b) and (2) (c) shall communicate to the competent authorities :

(a) the quantity of fresh tomatoes used during each of those marketing years ;

(b) the quantity of processed products obtained from the quantity referred to in (a) broken down according to the three groups of finished products, and which would have been eligible for production aid.

3. Processing undertakings commencing their activities during the 1990/91 or 1991/92 marketing year shall communicate to the competent authorities their production capacity and the quantity of processed products they have planned to produce. The products shall be broken down as provided for in the second subparagraph of paragraph 1.

4. Where the competent authorities of a Member State are already in possession of all the particulars needed in order to make the allocation provided for in Articles 1 and 2 of Regulation (EEC) No 1203/90, they may decide that the particulars referred to in paragraphs 1 and 2 need not be communicated.

Article 3

1. The communications referred to in Article 2 must reach the competent authorities not later than 30 June ; however, for the 1990/91 marketing year, such communications must be received before 1 August 1990.

2. Member States may, in exceptional cases and where there is good reason for doing so, accept communications after the time limit laid down in paragraph 1, provided this does not lead to the quantities fixed in Article 1 of Regulation (EEC) No 1203/90 being exceeded.

Article 4

1. On the basis of the communications provided for in Article 2, competent authorities shall allocate a specific quantity of fresh tomatoes to each processing undertaking.

This quantity shall be broken down into tomatoes intended for the manufacture of:

— tomato concentrate,

— preserved whole peeled tomatoes,

— other tomato-based products.

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

3. Where undertakings change hands, and in particular in cases of merger, Member States may authorize transfer of the rights deriving from the allocation referred to in paragraph 1 among processing undertakings operating in the same Member State, provided that this can be done without unfavourable consequences for the production aid system.

Such transfer shall be authorized only when it is requested before the date laid down for the submission of applications for production aid.

4. Where a Member State establishes that the total quantity allocated to its processing undertakings has not been the subject of preliminary contracts as provided for in Article 4a of Regulation (EEC) No 1599/84, for a given marketing year, that Member State may decide to allocate the unused quantity among processing undertakings that are prepared to conclude additional processing contracts for that quantity. Such additional allocations of fresh tomatoes shall have effect only for the marketing year involved.

Member States may allocate the additional quantities not later than 15 August each year. Notification by the competent authority to the recipient undertaking concerning the decision to proceed to an additional allocation shall release those undertakings from the obligation to conclude the abovementioned preliminary contracts for the quantities redistributed for the purposes of the aid. Such additional processing contracts shall be concluded not later than 31 August.

Article 5

An undertaking may, not later than 30 September, request from the competent authorities of the Member State authorization to carry out the transfer referred to in Article 1 (2) of Regulation (EEC) No 1203/90.

The notification of authorization to the undertaking shall specify the new distribution of the quotas of fresh tomatoes allocated to the three groups of finished products at the level of the undertaking.

Article 6

An undertaking may exceed the quantities of products processed from the total quantity of fresh tomatoes allocated, only when the quantities allocated for processing have been used up.

In cases where the quantities of processed products for which an undertaking requests aid relate in the final analysis to quantities of fresh tomatoes which are greater than the quantities allocated to it for production of the groups of products referred to in Article 4 (1), the production aid shall be reduced within each group in proportion to the extent by which the quantity of fresh tomatoes used has exceeded the quantity allocated for the production of products falling within the group.

Article 7

Member States shall take all necessary steps to ensure that:

— the quantities provided for in Article 1 (1) of Regulation (EEC) No 1203/90 are not exceeded,

— the quantities referred to above are allocated fairly among the undertakings.

Article 8

1. Processing undertakings shall, in addition to the information required under Article 4 (e) of Regulation (EEC) No 1599/84 and before the date stipulated in that Article, communicate to the designated agency:

(a) the quantity of fresh tomatoes purchased or to be purchased during the current marketing year and used or to be used for processing into finished products for which no aid is or will be claimed. The products shall be broken down by category of 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 in accordance with 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 undertaking 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 processing into each of the finished products referred to in (a).

Article 9

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 as provided for in Article 19 (a) of Regulation (EEC) No 1599/84;

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

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

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

Article 10

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, 24 July 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission