COMMISSION REGULATION (EEC) No 131/92

of 21 January 1992

laying down common detailed rules for implementation of the specific measures for the supply of certain agricultural products to the French overseas departments

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3763/91 of 16 December 1991 introducing specific measures in respect of certain agricultural products for the benefit of the French overseas departments (1), and in particular Articles 2 (6), 3 (5) and 4 (5) thereof,

Whereas the measures intended to offset, as regards the supply of certain agricultural products, the geographical situation of the French overseas departments are implemented through benefits involving exemption from import duties (customs duties and agricultural levies) and the grant of aid to encourage the delivery of agricultural products from the Community;

Whereas agricultural products exempted from import duties are already subject to the issue of an import licence; whereas, in the interests of administrative simplification, the import licence should be used as the basis for the system of exemption from import duties; whereas the double purpose of the import licence requires detailed rules for the issue of the document which are exceptions to the detailed rules normally applicable to import licences;

Whereas Commission Regulation (EEC) No 3719/88 (2), as last amended by Regulation (EEC) No 1599/90 (3), laid down in particular the detailed implementing rules for import licences;

Whereas the scheme of aid granted in respect of Community products can be administered on the basis of the import licence form, called the 'aid certificate';

Whereas the administering authorities should have at their disposal the necessary instruments to ensure that the supply scheme is used for its proper purpose, namely the regular supply of users and the passing on of the benefits to the local consumer; whereas, to that end, in order to deal with excessive applications which bear no relation to justifiable requirements and which could jeopardize the objectives and smooth operation of the supply arrangements, the competent authorities must, where necessary, be able to define categories of users to whom priority should be given or to allocate the quantity available within the framework of the supply balance, which may be revised during the course of the financial year;

Whereas the effects of the benefits granted in the form of exemption from import duties and the grant of aid in respect of Community products must be passed on in production costs and in the prices paid by the end user; whereas checks are needed to ensure that the benefits are actually passed on;

Whereas there should be a system of Community checks on the measures taken by the competent authorities in order to ensure that they are properly implemented; whereas, to that end, provision should be made for periodic communications to the Commission;

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

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down common detailed rules for implementation of the scheme of exemption from import duties and aid for the Community supply of the French overseas departments, within the framework of the forecast supply balance, which may be revised during the course of the financial year.

These provisions shall apply to the supply operations provided for in Articles 2, 3 (1), 4 and 7 of Regulation (EEC) No 3763/91.

TITLE I

Imports from third countries

Article 2

1. The exemption from import duties referred to in Title I of Regulation (EEC) No 3763/91 shall supply subject to presentation of an import licence giving the special information referred to in paragraph 3.

(1) OJ No L 356, 24. 12. 1991, p. 1.
(2) OJ No L 331, 2. 12. 1988, p. 1.
(3) OJ No L 151, 15. 6. 1990, p. 29.

2. The licence referred to in paragraph 1 shall be issued at the request of the parties concerned exclusively by the competent authorities designated by France, subject to the quantity provided for in the supply balance.

The authorities may lay down a time limit for the issue of the licence.

3. The licence application and the licence shall contain :

(a) in box 20, one of the following entries, as the case may be :

— intended for use in accordance with Article 2 (2), first subparagraph, point (a) of Regulation (EEC) No 3763/91,

— intended for use in accordance with Article 2 (2), first subparagraph, point (b) of Regulation (EEC) No 3763/91,

— intended for use in accordance with Article 2 (2), second subparagraph, point (a) of Regulation (EEC) No 3763/91,

— intended for use in accordance with Article 2 (2), second subparagraph, point (b) of Regulation (EEC) No 3763/91,

— intended for use in accordance with Article 3 (1) of Regulation (EEC) No 3763/91,

— intended for use in accordance with Article 7 (1) of Regulation (EEC) No 3763/91 ;

(b) in box 8, the group of countries of origin ;

(c) in box 24, the following entries :

— exemption from import duties,

— licence to be used in ... (name of overseas department).

4. Under the scheme import duties shall be levied on quantities which exceed those stated on the import licence and on the import tolerance of 5 %.

5. Notwithstanding Article 33 (3) of Regulation (EEC) No 3719/88, the proof referred to in Article 30 of that Regulation must be furnished within 30 days following expiry of the period of validity of the licence, except in cases of *force majeure.*

TITLE II

Community supply

Article 3

1. Aid shall be paid at the written request of the interested party and on presentation of a duly charged 'aid certificate'. The competent authorities may provide for a special application form.

The application must be lodged no later than 12 months after the date of charging, except in cases of *force majeure.*

The aid shall be paid by the competent authorities no later than two months after the date on which the application was lodged, except :

(a) in cases of *force majeure,* or

(b) where an administrative enquiry has been opened concerning entitlement to the aid. In such cases, payment shall take place only when entitlement has been recognized.

2. The 'aid certificate' shall be drawn up on the import licence form in the Annex to Regulation (EEC) No 3719/88.

Articles 8 (3) and (5), 9, 10, 13 to 16, 19 to 21, 24 to 31 and 33 to 37 of Regulation (EEC) No 3719/88 shall apply, *mutatis mutandis,* subject to the provisions of this Regulation.

3. The words 'aid certificate' shall be printed or stamped in the upper left-hand section of the certificate.

Boxes 7 and 8 of the certificate shall be struck out.

4. The amount of the aid shall be that in force on the day the application for the 'aid certificate' was lodged.

5. The 'aid certificate' shall be issued at the request of the parties concerned, subject to the quantity provided for in the supply balance, by the competent authorities designated by France.

Issue of the 'aid certificate' shall be conditional on the lodging of a security, the amount of which shall be fixed for each of the products in question.

The authorities may fix a time limit for the issue of the certificate.

6. The 'aid certificate' shall be presented for charging to the competent authorities of the department of destination at the same time as the products to which it relates.

7. The proof of utilization of the 'aid certificate' must be furnished within thirty days following expiry of the period of validity of the certificate, except in cases of *force majeure.*

TITLE III

Common provisions and transmission of benefits to the end user

Article 4

1. If the state of execution of the forecast supply balance indicates for a given product a significant increase in applications for import licences or aid certificates, and if this increase leads to the forecast quantities laid down for the marketing year or part thereof being reached or exceeded, the competent authorities shall restrict or suspend the issue of licences and certificates.

In the event of restrictions on the issue of licences and certificates, the competent authorities shall apply to all pending applications a uniform percentage of quantity reduction. This measure shall be applied so as to ensure equal treatment of applicants regardless of their place of establishment in the Community.

Where appropriate the competent authorities shall provide the Commission with all and any useful information on the supply needs of the departments concerned.

2. If there is a risk of the regular supply in a department being jeopardized by a significant increase in applications for licences and certificates, the competent authorities shall divide up the quantities of the forecast balance available to ensure that the priority needs in the department concerned are met.

This dividing up shall provide for priority issuing of licences and certificates to certain categories of operators, and in particular shall reserve a quantity for new operators.

France shall inform the Commission forthwith, prior to their implementation, of the measures it plans to take to apply this paragraph and the reasons for these measures. The Commission shall inform the Member States thereof.

In the event of any difficulties in application, the Commission shall take appropriate measures.

3. The provisions of paragraphs 1 and 2 shall apply without prejudice to special provisions adopted to overcome sensitive difficulties in a given sector.

4. France shall publish periodically a record of the state of execution of the balance, and in particular the quantities available.

Article 5

1. The holder of the import licence or 'aid certificate' shall include in the contract, in the event of the sale of the products or transfer of the licence or certificate, a clause requiring the benefits of the measure to be passed on to the end user.

Such a clause shall be included in any subsequent contracts relating to the product.

These provisions shall not apply to the supply of products and animals referred to in Article (4) of Regulation (EEC) No 3763/91.

2. The competent authorities shall take all appropriate steps to check that the benefits derived from the exemption from import duties or the grant of Community aid are passed on. In doing so they may have regard to the trading margins applied by the various traders concerned.

These measures shall be implemented with the assistance of the trade sectors concerned.

France shall inform the Commission of the measures taken within three months of the entry into force of this Regulation.

3. Where the benefits granted are not passed on, the competent authorities :

— shall recover all or part of the benefit granted from the holder of the import licence or 'aid certificate',

— may, depending on the seriousness of the failure to fulfil the obligations, provisionally or definitively limit or suspend the right to apply for the licence referred to in Article 2 or the 'aid certificate' referred to in Article 3 (2).

4. For the purposes of the first indent of paragraph 3 :

— the holder of the import licence or 'aid certificate' shall be considered to have received the benefit granted ;

— the benefit granted shall be equal to the amount of the exemption from import duties or to the amount of the aid.

To ensure the proper implementation of the provisions of the first indent of paragraph 3, the competent authorities may provide for the lodging of a security.

TITLE IV

Final provisions

Article 6

The competent authorities shall adopt the necessary measures for the application of Article 8 of Regulation (EEC) No 3763/91 and shall communicate these to the Commission no later than 31 March 1992.

Article 7

France shall notify the Commission no later than the last day of each month of the following data relating to the previous month, by product and, where applicable, by individual destination :

— separately, the quantities which were the subject of applications for import licences and 'aid certificates',

— separately, the quantities and cases of non-utilization of import licences and 'aid certificates'.

Article 8

Pending the implementation of the administrative procedures provided for in this Regulation, and until 30 June 1992 at the latest, the competent authorities may :

(a) — decide that :

— exemption from import duties shall be granted on presentation of an import licence applied for before 27 December 1991,

— the aid shall be granted on presentation and acceptance of the declaration of entry of the products to the competent authorities of the overseas department of destination.

(b) reserve a proportion of the quantity provided for in the forecast supply balance to traditional importers, in order to ensure a smooth transition and regular supply.

Article 9

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

Article 8 shall apply from 27 December 1991.

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

Done at Brussels, 21 January 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission