COMMISSION REGULATION (EEC) No 2163/92

of 30 July 1992

on the levying of the additional amount provided for by Regulations (EEC) No 3429/80, (EEC) No 796/81, and (EEC) No 1755/81 adopting protective measures applicable to imports of preserved cultivated mushrooms

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 426/86 of 24 February 1986 on the common organization of the market in products processed from fruit and vegetables [1], as last amended by Regulation (EEC) No 1569/92 [2], and in particular Article 18 thereof,

Whereas Commission Regulations (EEC) No 3429/80 [3], (EEC) No 796/81 [4] and (EEC) No 1755/81 [5], adopting protective measures applicable to imports of preserved cultivated mushrooms, provided for an additional flat-rat amount to be levied on the release into free circulation in the Community of preserved cultivated mushrooms exceeding the quantities laid down in those Regulations; whereas those Regulations were declared invalid by the Court of Justice in its Judgments of 16 October 1991 in Cases 24/90, 25/90 and 26/90 [6] to the extent that the aforementioned amount was fixed, without any distinction, for preserved mushrooms from all origins and of all classes, the effect of which was to increase the cost of imported preserved mushrooms, particularly those of lower quality thus penalising imports of lower quality mushrooms to a greater extent;

Whereas the aim of the Regulations in question was to discourage imports of preserved mushrooms into the Community beyond the quantities laid down; whereas, to achieve that objective, protective measures must be applied to imports of all classes of preserved mushrooms from all third countries;

Whereas the amount should be set at a sufficiently high level to achieve the desired aim; whereas the amount should be fixed at the same level for all the products in question so as not to encourage the declaration of imports, particularly of preserved mushrooms, as being of lower quality than is actually the case, given that varying the amount according to the quality of the products would, in the absence of a precise Community definition of the different classes, hamper effective control of the goods concerned;

Whereas the Court did not criticize the levying of an amount based on the Community cost price of preserved mushrooms; whereas, so that the additional amount for lower-quality preserved mushrooms imported from third countries does not significantly exceed the production cost of the same type of preserved mushrooms in the Community, the amount should be fixed at a level equal to the Community cost price of Class III preserved mushrooms,

HAS ADOPTED THIS REGULATION:

Article 1

The additional amount referred to in Article 1 of Regulations (EEC) No 3429/80, (EEC) No 796/81 and (EEC) No 1755/81 shall be ECU 105 per 100 kg net.

Article 2

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

It shall apply to all imports made between 1 January 1981 and 30 September 1981 for which a file is still open.

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

Done at Brussels, 30 July 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

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[1] OJ No L 49, 27. 2. 1986, p. 1.
[2] OJ No L 166, 20. 6. 1992, p. 5.
[3] OJ No L 358, 31. 12. 1980, p. 66.
[4] OJ No L 82, 28. 3. 1981, p. 8.
[5] OJ No L 175, 1. 7. 1981, p. 23.
[6] Not yet published.