COMMISSION REGULATION (EC) No 1395/94

of 17 June 1994

establishing a minimum import price for sour cherries

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables (1), as last amended by Regulation (EC) No 3669/93 (2), and in particular Article 29 (2) thereof,

Whereas Commission Regulation (EC) No 1394/94 of 17 June 1994 amending Regulation (EC) No 1118/94 fixing for the 1994 marketing year the reference prices for cherries (3) removes sour cherries from the scope of the reference prices for cherries; whereas, given the situation on the market this year, application of the reference price is no longer appropriate for that product; whereas, in the absence of a system of protection at the border, the marketing of Community production could be influenced by competition from third countries offering prices substantially lower than the prices at which Community products can be marketed; whereas, in such circumstances and in view of the experience of previous marketing years, the Community market would be at risk of serious disturbance, likely to jeopardize the objectives of Article 39 of the Treaty; whereas the existence of this threat is confirmed by requests for the adoption of safeguard measures by Germany and France;

Whereas, given the short marketing period for the products concerned, measures should be adopted forthwith in order to prevent low-price imports; whereas a system of minimum import prices and countervailing charges for products which do not comply with that price is the most appropriate system for that purpose;

Whereas Regulation (EEC) No 2707/72 of the Council laying down the conditions for applying protective measures for fruit and vegetables (4) does not rule out the adoption of a minimum import price system;

Whereas two minimum price levels should be fixed, taking account of the prevailing import prices and the trend of imports; whereas consultations have been held with the principal supplier countries of sour cherries under the relevant provisions of the agreements concluded with such third countries,

HAS ADOPTED THIS REGULATION:

Article 1

1. The minimum price to observed for imports into the Community of sour cherries shall be ECU 40 per 100 kilograms net for the product falling within CN code 0809 20 20 and ECU 36 per 100 kilograms net for the product falling within CN code 0809 20 60.

2. If the import price is lower than the minimum price referred to in paragraph 1, a countervailing charge equal to the difference between the two prices shall be levied.

Article 2

1. The minimum import price shall be deemed not to be complied with when the import price expressed in the currency of the Member State in which the product is released for free circulation is less than the minimum import price applicable on the day on which the declaration of release for free circulation is accepted.

2. The following factors shall constitute the import price:

(a) the fob price in the country of origin;

(b) transport and insurance costs to the point of entry into the customs territory of the Community.

3. For the purposes of paragraph 2, 'fob price' means the price paid or to be paid for the quantity of products contained in a consignment, including the costs of loading a consignment onto a means of transport at the place of shipment in the country of origin and other costs incurred in that country. The fob price shall not include the cost of any services to be borne by the seller from the time that the products are placed on board the means of transport.

4. Payment of the price to the seller shall be effected not later than three months after the day on which the declaration of release for free circulation is accepted by the customs authorities.

5. Where the factors referred to in paragraph 2 are expressed in a currency other than that of the importing Member State, the provisions on the valuation of goods for customs purposes shall be applied when converting such currency into the currency of the importing Member State.

Article 3

1. At the time of completion of the customs import formalities for release for free circulation, the customs authorities shall compare the import price of each consignment with the minimum import price.

(1) OJ No L 118, 20. 5. 1972, p. 1.
(2) OJ No L 338, 31. 12. 1993, p. 26.
(3) See page 30 of this Official Journal.
(4) OJ No L 291, 28. 12. 1972, p. 3.

2. The import price shall be indicated on the declaration of release for free circulation and the declaration shall be accompanied by all the documents required to verify the price.

3. In cases where :

(a) the invoice presented to the customs authorities has not been drawn up by the exporter in the country in which the products originated,

or,

(b) the authorities are not satisfied that the price declared in the declaration reflects the actual import price,

or,

(c) payment has not been effected within the time limit provided for in Article 2 (4) ;

the competent authorities shall take the necessary measures to determine the actual import price, in particular by reference to the importer's resale price.

Article 4

The importer shall retain evidence of payment to the seller. That evidence and all commercial documents, in particular invoices, contracts and correspondence concerning the purchase and sale of the products, shall be kept available for examination by the customs authorities for a period of three years.

Article 5

Licences issued but not wholly or partially used prior to the date of entry into force of this Regulation may be surrendered on request. In that case, the security relating to the quantities concerned shall be released.

Article 6

1. This Regulation shall not apply to products for which it can be shown that they have left the supplier country before the day of publication of this Regulation.

2. The parties concerned shall provide proof, to the satisfaction of the competent authorities, that the conditions set out in paragraph 1 have been complied with.

However, the competent authorities may regard the products as having left the supplier country before the day of publication of this Regulation if one of the following documents is submitted :

— in the case of transport by sea or waterway, the bill of loading showing that loading took place before that day,

— in the case of transport by rail, the consignment note accepted by the railways of the expediting country before that day,

— in the case of transport by road, the TIR (international road transport) carnet presented to the first customs office before that day,

— in the case of transport by air, the air consignment note showing that the airline received the products before that day.

3. Paragraphs 1 and 2 shall apply only insofar as the declaration of release for free circulation has been accepted by the customs authorities before 1 August 1993.

Article 7

This Regulation shall enter into force on the 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, 17 June 1994.

For the Commission

René STEICHEN

Member of the Commission