COMMISSION REGULATION (EC) No 504/97

of 19 March 1997

laying down detailed rules for the application of Council Regulation (EC) No 2201/96 as regards the system of production aid for products processed from fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organization of the markets in processed fruit and vegetable products (1), and in particular Articles 1 (3), 4 (9) and 6 (5), 25, 26 and 27 (1) thereof,

Whereas Regulation (EC) No 2201/96 introduces a system of production aid for the products listed in Annex I thereto and obtained from fruit and vegetables harvested in the Community;

Whereas the products on which the aid is payable, and their marketing years, should be defined with a view to ensuring a uniform application of the arrangements;

Whereas, with a view to facilitating the way the arrangements operate, the authorities should be apprised of each processor wishing to qualify under the system; whereas processors should also notify the authorities of the information needed to ensure that the system operates correctly;

Whereas the new system must be capable of operating from the outset with a sufficient number of producer organizations; whereas, in accordance and by analogy with Council Regulation (EC) No 2202/96 of 28 October 1996 introducing a Community aid scheme for producers of certain citrus fruits (2), the term 'producer organizations ... provisionally authorized' in the first subparagraph of Article 2 (2) of Regulation (EC) No 2201/96 must be interpreted as covering not only producer organizations provisionally recognized by virtue of Article 14 of Regulation (EC) No 2200/96 of 28 October 1996 on the common organization of the market in fruit and vegetables (3) but also producer organizations as referred to in Article 13 of that Regulation;

Whereas the production aid system is based on contracts between producer organizations recognized or provisionally recognized pursuant to Regulation (EC) No 2200/96 or individual producers during the period referred to in the second subparagraph of Article 2 (2) of Regulation (EC) No 2201/96, on the one hand, and processors, on the other hand; whereas, producers and producer organizations may also act as processors in certain circumstances; whereas the types of contracts and the particulars to be included therein should be specified with a view to the application of the aid system;

Whereas, such contracts must be concluded before the beginning of each marketing year; whereas the parties thereto should nevertheless be authorized to increase, by way of amendments thereto and within a definite ceiling, the quantities originally stipulated therein, so that the system may be as efficient as possible;

Whereas the tomato harvest depends on the area planted during the year in question and may accordingly vary substantially from year to year; whereas the quantities available for processing are consequently subject to fluctuations; whereas, in order to encourage producers to take account of the real needs of the processing industry and to adjust their areas planted in consequence, provision should be made for a system of preliminary contracts; whereas such contracts should be concluded before the planting period, in such a way that any planted area will produce only such quantities as can later be disposed of for processing;

Whereas the number of aid applications to be submitted by processors must be determined in line with processing; whereas aid applications must include all particulars necessary for calculating the aid to be paid to processors;

Whereas, the system of production aid set up by Regulation (EC) No 2201/96 is based essentially on direct relations between producer organizations and processors and on the obligation as to the minimum price; whereas it should be provided that a price at least equal to the minimum price for the raw material is to be paid direct by the processor to the producer organization by bank or postal transfer; whereas, in order to administer the system rationally and to facilitate controls, that obligation should be deemed to have been discharged once the processor has made the abovementioned transfer;

Whereas, in return for the obligations imposed on processors of processed tomato products, provision should be made for the possibility of provisional payment of part of the production aid; whereas such provisional payments must be subject to the lodging of a security guaranteeing reimbursement in cases where the conditions for receiving provisional production aid are not observed;

(1) OJ No L 297, 21. 11. 1996, p. 29.
(2) OJ No L 297, 21. 11. 1996, p. 49.
(3) OJ No L 297, 21. 11. 1996, p. 1.

Whereas the quota system for processed tomato products provided for in Article 6 (2), (3) and (4) of Regulation (EC) No 2201/96 stipulates that quantities produced in excess of the quotas for which at least the minimum price was paid should be taken into account when apportioning annual quotas among the Member States and among undertakings; whereas, as a consequence, such quantities, which do not qualify for production aid, should be subject to the same provisions *mutatis mutandis* as quantities covered by the quotas;

Whereas, with a view to the correct application of the production aid system, processors should be under an obligation to keep suitable updated records for the purposes of any inspections and checks deemed necessary;

Whereas experience gained in the administration of the production aid system calls, on the one hand, for the provisions on controls to be stepped up by providing for checks to be carried out on a sufficiently representative number of aid applications and, on the other hand, for certain penalties to be laid down for failure by processors to comply with the legislation and in particular for any false declarations;

Whereas the measures provided for in this Regulation are to replace those laid down in Commission Regulation (EEC) No 1558/91 of 7 June 1991 laying down detailed rules for the application of the system of production aid for products processed from fruit and vegetables [1], as last amended by Regulation (EC) No 2529/95 [2]; whereas that Regulation should accordingly be repealed;

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:

TITLE I

General provisions

Article 1

1. For the purposes of this Regulation:

(a) *producer* means any natural or legal person who grows on his holding raw material intended for processing;

(b) *individual producers* means producers not affiliated to any collective body, as referred to in the second subparagraph of Article 2 (2) of Regulation (EC) No 2201/96;

(c) *producer organizations* means producer organizations as referred to in Articles 11 and 13 of Regulation (EC) No 2200/96 and producer organizations recognized provisionally by virtue of Article 14 thereof;

(d) *associations of producer organizations* means associations as referred to in Article 16 (3) of Regulation (EC) No 2200/96;

(e) *processor* means a processing enterprise operating, for economic ends and under its own responsibility, one or more plants having facilities for manufacturing one or more of the products listed in Annex I to Regulation (EC) No 2201/96;

(f) *association of processors* means an association of processors recognized by a Member State.

2. For the purposes of the system of production aid:

(a) *peaches in syrup and/or in natural fruit juice* means whole peaches or pieces of peaches, without peel, having undergone a heat treatment, packed in hermetically sealed containers with a covering liquid of sugar syrup or natural fruit juice and covered by CN codes ex 2008 70 61, ex 2008 70 69, ex 2008 70 71, ex 2008 70 79, ex 2008 70 92, ex 2008 70 94 and ex 2008 70 99;

(b) *Williams and Rocha pears in syrup and/or in natural fruit juice* means pears of the Williams or Rocha varieties, whole or in pieces, without peel, having undergone a heat treatment, packed in hermetically sealed containers with a covering liquid of sugar syrup or natural fruit juice and covered by CN codes ex 2008 40 51, ex 2008 40 59, 2008 40 71, ex 2008 40 79, ex 2008 40 91 and ex 2008 40 99;

(c) *prunes* means prunes obtained from dried plums of the *prunes d'Ente* variety which have been suitably treated or processed and are packed in appropriate containers, covered by CN code ex 0813 20 00 and ready to be offered for human consumption;

(d) *dried figs* means dried figs, including fig paste, which have been suitably treated or processed and are packed in appropriate containers, covered by CN code ex 0804 20 90 and ready to be offered for human consumption;

(e) *unprocessed dried figs* means dried figs which have not been treated in such a way that they are ready to be offered for human consumption;

(f) *whole peeled quick-frozen tomatoes* means peeled tomatoes of the San Marzano, Roma or similar varieties, frozen, packed in appropriate containers and covered by CN code ex 0710 80 70, where not less than 90 % of the net weight of the tomatoes consists of whole tomatoes not showing any damage which substantially alters their appearance. That percentage shall be determined after the tomatoes have been thawed;

[1] OJ No L 144, 8. 6. 1991, p. 31.
[2] OJ No L 258, 28. 10. 1995, p. 52.

(g) *non-whole quick-frozen tomatoes* means pieces of peeled tomatoes of the San Marzano, Roma or similar varieties, or round varieties which are as easy to peel as the said varieties, preserved by freezing, packed in appropriate containers and covered by CN code ex 0710 80 70;

(h) *whole peeled preserved tomatoes* means peeled tomatoes of the San Marzano, Roma or similar varieties, having undergone a heat treatment, packed in hermetically sealed containers and covered by CN code ex 2002 10 10, where not less than 65 % of the weight of the drained tomatoes consists of whole tomatoes which do not show damage which substantially alters their appearance;

(i) *non-whole peeled preserved tomatoes* means peeled tomatoes in pieces or partially crushed of the San Marzano, Roma or similar varieties, or round varieties which are as easy to peel as the said varieties, having undergone a heat treatment, packed in hermetically sealed containers and covered by CN code ex 2002 10 10;

(j) *tomato flakes* means flakes obtained by drying of tomatoes, packed in appropriate containers and covered by CN code ex 0712 90 30;

(k) *tomato juice* means juice obtained direct from fresh tomatoes, the juice being strained free from skins, pips and other coarse parts and having, where applicable after concentration, a dry weight content of less than 12 %, packed in hermetically sealed containers and covered by CN codes ex 2002 90 11, 2002 90 19, 2009 50 10 and 2009 50 90;

(l) *tomato concentrate* means the product obtained by concentrating tomato juice, packed in appropriate containers, having a dry weight of 12 % or more and covered by CN codes ex 2002 90 31, ex 2002 90 39, ex 2002 90 91 and ex 2002 90 99. However, certain preparations of concentrate having a dry weight of not more than 18 % may contain not more than 4 % skin and pips by weight of product;

(m) *whole unpeeled preserved tomatoes* means whole unpeeled tomatoes of the Roma or similar varieties or of the round varieties, having undergone a heat treatment, packed in hermetically sealed containers, lightly brined (natural preparation) or in tomato purée (tomato purée or juice preparation), where not less than 65 % of the weight of the drained tomatoes consists of whole tomatoes not showing any damage which substantially alters their appearance, and covered by CN code ex 2002 10 90;

(n) *non-whole unpeeled preserved tomatoes* means tomatoes in pieces or crushed, of the Roma or similar varieties or of the round varieties, having been slightly strained, whether or not slightly concentrated, packed in hermetically sealed containers where the dry weight content is between 4,5 % and 14 %, and covered by CN code ex 2002 10 90;

(o) *sugar syrup* means a liquid in which water is combined with sugars and which has a total sugar content determined after homogenization of not less than 14 % in respect of fruits in syrup;

(p) *natural fruit juice* means a covering liquid with a minimum of 10,5° Brix, consisting solely of juice extracted mechanically from fermentable but unfermented fruit, or of juice obtained from concentrated fruit juice by the restoration of the proportion of water extracted during concentration as defined in Council Directive 93/77/EEC [1], without added sugar.

3. Products as referred to in paragraph 2 (a), (b) and (c) shall not include fruit preserved by sugar as defined in CN code 2006 00 that is subsequently packed with a covering liquid of sugar, nor shall they include fruit purées and other crushed fruit preparations.

4. Tomato juice and tomato concentrate to be added to preserved tomatoes shall be products on which production aid has not been, and will not be, applied for. The weight of the tomato juice and tomato concentrate added to such products shall be included in the net weight of the tomatoes themselves, whether peeled or unpeeled.

TITLE II

Marketing years

Article 2

1. The marketing years within the meaning of Article 1 (3) of Regulation (EC) No 2201/96 for the products referred to in Article 1 (2) of this Regulation shall run:

(a) from 15 June to 14 June for:

— peeled frozen tomatoes, whether or not cooked, covered by CN code ex 0710 80 70,

— tomato flakes covered by CN code ex 0712 90 30,

— prepared or preserved tomatoes covered by CN code ex 2002,

— tomato juice covered by CN code 2009 50,

— peaches in syrup and/or in natural fruit juice covered by CN code ex 2008 70;

[1] OJ No L 244, 30. 9. 1993, p. 23.

(b) from 1 July to 30 June for dried figs covered by CN code ex 0804 20 90;

(c) from 15 July to 14 July for Williams and Rocha pears in syrup and/or in natural fruit juice covered by CN code ex 2008 40;

(d) from 1 September to 31 August for prunes obtained from dried plums of the *prunes d'Ente* variety, covered by CN code ex 0813 20 00;

2. Production aid shall be granted solely on products delivered to the processing industry in the following delivery periods:

(a) tomatoes: between 15 June and 25 November,

(b) peaches: between 15 June and 25 October,

(c) Williams and Rocha pears: between 15 July and 15 December,

(d) prunes obtained from plums of the *prunes d'Ente* variety: between 1 September and 31 December,

(e) dried figs: between 15 July and 15 June.

TITLE III

Information forwarded by processors

Article 3

Processors wishing to qualify under the system of aid shall so inform the competent authorities of the Member States by 15 January preceding the marketing year in which aid applications are to be made, giving all information required by the Member State with a view to the administration and monitoring of the system of aid. Member States may decide that such information shall:

(a) be notified by new processors only, where they have already received the necessary information concerning other processors;

(b) cover one or more marketing years or an unlimited period.

Article 4

1. At least five working days before commencement of processing each marketing year, processors shall inform the competent authorities of the week in which they so begin processing. The processor shall be deemed to have fulfilled this requirement if he furnishes proof that he has sent the said information at least eight working days before the abovementioned deadline.

2. In exceptional, duly justified cases, Member States may accept notifications after the deadlines laid down in paragraph 1; however, in such cases no aid shall be granted in respect of quantities already processed and on which the necessary checks on compliance with the conditions for granting the aid cannot be conducted to the satisfaction of the competent authorities.

Article 5

Each year processors as referred to in Article 3 shall notify the agency designated by the Member State of the following:

1. in the case of peaches, pears and tomatoes:

(a) by 1 November:

(i) the quantity of raw material delivered before 22 October and entered in the records of raw materials, and the quantity of raw material scheduled to be delivered during the remainder of the delivery period as defined in Article 2 (2). The quantity to be notified shall be that used or intended to be used for processing into finished products as defined in Article 1 (2), broken down into:

— the quantity in respect of which the production aid has been or is to be applied for,

— the quantity in respect of which the production aid has not been or will not be applied for.

In the case of tomatoes, the quantity referred to in the second indent shall be broken down into the quantities for which at least the minimum price has and has not been paid;

(ii) the quantity of finished products obtained or likely to be obtained from the quantities of fresh products referred to in point (i).

In the case of processed tomato products, the quantity of finished products to be notified in respect of each category of raw material as referred to in point (i) shall be broken down into:

— tomato concentrate of a dry-matter content by weight of 28 % or more but less than 30 %,

— preserved whole peeled tomatoes of the San Marzano variety,

— preserved whole peeled tomatoes of the Roma or similar varieties,

— other processed tomato products;

(iii) the quantities, expressed in net weight, of finished products in stock at the end of the preceding marketing year, broken down into products sold and products unsold and, in the case of processed tomato products, further broken down in accordance with point (ii);

(b) by 20 January, the quantities referred to in point (a) (ii) in stock at 31 December, broken down into products sold and products unsold;

2. in the case of dried figs and prunes, by 15 May:

(a) the quantity of raw material used at 1 May;

(b) the quantity of finished products obtained from the raw material as referred to in (a), broken down into products on which aid is paid and products on which aid is not paid and into quality classes;

(c) the quantity of products referred to in (a) and (b) in stock at 1 May, broken down into products sold and products unsold.

TITLE IV

Contracts

CHAPTER I

Preliminary contracts

Article 6

1. In the case of tomatoes, preliminary contracts shall be concluded by 16 February each year, pending the conclusion of contracts as referred to in Article 7 (1). Member States may defer that date to 16 March.

However, during the period referred to in the second subparagraph of Article 2 (2) of Regulation (EC) No 2201/96, preliminary contracts may be concluded by individual producers. Where individual producers become full members of a producer organization between the conclusion of the preliminary contract and that of the processing contract, the rights arising under preliminary contracts shall be transferred to the producer organization in question.

2. Preliminary contracts shall bear an identification number and shall include the particulars specified in Article 7 (2) (a) and (b), the area planted and the estimated quantity of tomatoes to be harvested on that area.

3. A copy of the preliminary contract shall be forwarded by the processor or the association of processors to the agency referred to in Article 8 (1) so as to reach the latter within 10 working days of the conclusion of that contract.

The provisions of Article 8 (2) shall apply.

4. For the purposes of the production aid system, processing contracts as referred to in Article 7 (1) shall not be valid for tomatoes unless they cover the total quantity of tomatoes harvested on the area stipulated in the preliminary contract or the estimated quantity indicated therein. Processing contracts shall include a reference to the number of the preliminary contract.

5. Once preliminary contracts as referred to in paragraph 1 are concluded, the producer organization or association of producer organizations and associations of processors shall forward to the competent authorities, or shall allow the latter to consult, a list giving the names and addresses of each producer or each processor covered by the contract and the cadastral reference numbers, or references recognized as equivalent by the inspection body, for the area on which each producer is to harvest tomatoes.

CHAPTER II

Processing contracts

Article 7

1. Contracts as referred to in Article 2 (2) of Regulation (EC) No 2201/96, hereinafter referred to as 'processing contracts', shall be concluded in writing. They shall take one of the following forms:

(a) a contract between a producer organization or an association of producer organizations, on the one hand, and a processor or an association of processors, on the other;

(b) an undertaking covering supplies, where the producer organization or association of producer organizations acts as processor;

(c) a contract between an individual producer, on the one hand, and a processor or an association of processors, on the other, covering the period defined in the second subparagraph of Article 2 (2) of Regulation (EC) No 2201/96.

2. Processing contracts must specify:

(a) the name and address of the producer, producer organization or association of producer organizations;

(b) the name and address of the processor or association of processors;

(c) the quantities of raw materials covered.

In the case of tomatoes, such quantities shall be broken down according to the finished products to be obtained. Contracts shall also specify the quantities not covered by the quota for which at least the minimum price was paid, broken down in the same manner;

(d) the schedule for deliveries to the processor;

(e) the price to be paid to the other party to the contract for the raw materials, excluding in particular costs connected with packing, loading, transport, unloading and the payment of taxes, which shall, where applicable, be indicated separately.

The price shall not be lower than the minimum price fixed pursuant to Article 3 of Regulation (EC) No 2201/96;

3. The parties may decide, by written amendments to processing contracts, to increase the quantities originally stipulated therein.

Such amendments shall be concluded by:

— 15 September for tomatoes,

— 15 August for peaches,

— 15 September for Williams and Rocha pears,

— 15 November for prunes obtained from plums of the *prunes d'Ente* variety and dried figs.

Such amendments shall relate to no more than 20 % of the quantities originally stipulated in the contracts. However, in the case of prunes, that maximum shall be 30 %.

4. Where producer organizations or, during the period referred to in the second subparagraph of Article 2 (2) of Regulation (EC) No 2201/96, individual producers act as processors, the processing contracts covering their own production shall be deemed to have been concluded after the following particulars are forwarded to the competent authority within the time-limit laid down in Article 8 (1):

(a) the total area on which the raw material is grown, together with cadastral reference numbers or a reference recognized as equivalent by the inspection agency,

(b) an estimate of the total harvest,

(c) the quantity intended to be processed, broken down in the case of tomatoes in accordance with paragraph 2 (c),

(d) the processing schedule.

5. Where the minimum price payable to the producer for a given product is not published in the *Official Journal of the European Communities* fifteen days before the beginning of the marketing year, the deadline for signature of contracts shall, for the purposes of the fourth subparagraph of Article 2 (2) of Regulation (EC) No 2201/96, be deemed to be the fifteenth day following that of publication of the price.

Article 8

1. Processors and associations thereof shall forward copies of processing contracts and any amendments thereto to the agency designated by the Member State where the raw materials are produced and, where applicable, to the agency designated by the Member State where processing takes place. Such copies must reach the competent authorities within 10 working days of conclusion of the contract.

2. In exceptional and duly justified cases, Member States may accept processing contracts and amendments thereto which reach their authorities at a later date, provided that such acceptance is compatible with the objectives of the system of aid and does not jeopardize the possibility of controls.

Article 9

1. Without prejudice to cases covered by Article 7 (1) (b), a price at least equal to the minimum price shall be paid for the raw materials by processors by bank or post-office transfer order to producer organizations or, during the period referred to in the second subparagraph of Article 2 (2) of Regulation (EC) No 2201/96, to individual producers.

A producer organization shall pay the amounts referred to in the first subparagraph in full within 15 working days by transfer order to its members and, where applicable, to producers who market their production through the organization in accordance with the third subparagraph of Article 2 (2) of Regulation (EC) No 2201/96. In cases envisaged by Article 7 (1) (b) of this Regulation, such payments may be expressed as credits.

2. Member States may adopt additional provisions relating to processing contracts, covering in particular time-limits, terms of payment of the minimum price and damages payable by processors, producer organizations or producers where the latter do not fulfil their obligations under contracts.

Article 10

Without prejudice to minimum quality criteria laid down or to be laid down in accordance with the procedure provided for in Article 46 of Regulation (EC) No 2200/96, raw materials delivered to processors under processing contracts shall be of sound and fair merchantable quality and suitable for processing.

TITLE V

Aid applications

Article 11

1. Processors shall submit production aid applications to the agency designated by the Member State on whose territory processing is carried out.

2. In the case of dried figs, processors shall submit three aid applications in respect of each marketing year:

(a) the first relating to products processed before 30 November,

(b) the second relating to products processed from 1 December to the end of February, and

(c) the third relating to products processed during the remainder of the marketing year concerned.

Aid applications as referred to in (a) and (b) shall be submitted within 30 days of expiry of the processing period concerned, and, in the case of those referred to in (c), by 31 October of the following marketing year.

3. In the case of prunes, processors shall submit three aid applications in respect of each marketing year:

(a) the first relating to products processed before 31 December,

(b) the second relating to products processed from 1 January to 30 April, and

(c) the third relating to products processed during the remainder of the marketing year concerned.

Aid applications as referred to in (a) and (b) shall be submitted within 30 days of expiry of the processing period concerned and, in the case of those referred to in (c), by 30 November of the following marketing year.

4. In the case of products processed from peaches, pears and tomatoes, aid applications may be submitted once only per marketing year. They must reach the competent authorities by 1 February of the marketing year concerned.

5. In exceptional, duly justified cases, Member States may accept aid applications after the deadlines laid down in this Article, provided that this does not adversely affect the system of production aid.

Article 12

1. Aid applications shall include, in particular:

(a) the name and address of the applicant;

(b) the net weight of finished products for which a specific rate of aid is applicable, broken down into products on which aid is and is not paid;

(c) the net weight of the raw materials used to obtain each category of products as referred to in (b), broken down into quantities covered by contracts signed with producer organizations and those covered by contracts signed with individual producers;

(d) a declaration by the processor to the effect that the finished products comply with the quality standards laid down pursuant to Article 8 of Regulation (EC) No 2201/96.

2. Aid applications shall be accompanied by copies of the transfer orders provided for in the first subparagraph of Article 9 (1). In the case of undertakings covering supplies, such copies may be replaced by a declaration by the producer to the effect that the processor has credited him with a price at least equal to the minimum. Such copies or declarations shall quote the references of the relevant contracts.

3. For the purposes of the second subparagraph of Article 2 (2) of Regulation (EC) No 2201/96, the quantities on which the aid is payable and obtained from raw materials delivered under contracts concluded with individual producers may not exceed the percentages laid down in that subparagraph, of the total quantity of finished products obtained by the processor in respect of which the other conditions for the granting of the aid are fulfilled.

4. In the case of processed tomato products, aid applications must also be accompanied by the following information:

(a) in respect of products not covered by the quota for which at least the minimum price has been paid:

— the net weight of the finished products, broken down as for the products on which the aid is payable,

— the net weight of the raw materials used for processing into each of the finished products referred to in the first indent,

— a declaration by the processor to the effect that the finished products meet the quality standards laid down by the Community,

— copies of the transfer orders referred to in the first subparagraph of Article 9 (1) or, in the case of undertakings covering supplies, of a declaration by the producer to the effect that the processor has credited him with a price at least equal to the minimum. Such declarations must quote the references of the relevant contracts;

(b) in respect of products not covered by the quota for which at least the minimum price has not been paid:

— the net weight of the finished products, broken down as for products on which aid is payable,

— the net weight of the raw materials used for processing into each of the finished products referred to in the preceding indent.

Article 13

1. In the case of processed tomato products, between 1 September and 30 November processors may submit applications for payment of provisional aid. Such applications shall include in particular:

(a) the name and address of the applicant;

(b) the net weight of the finished products processed by 25 November and covered by the provisional aid application, broken down into the rates of aid applicable;

(c) the net weight of the tomatoes used for processing into each of the products referred to in (b);

(d) a copy of the bank or post-office transfer orders proving payment of a price of 50 % or more of the minimum price for the quantities of tomatoes referred to in (c) and the references of the concluded contracts to which those quantities relate;

(e) a declaration by the processor to the effect that the products referred to in (b) meet the quality requirements laid down by the Community.

2. The provisional production aid payable on the quantity of finished products referred to in paragraph 1 (b) shall be paid to the processor. The provisional aid shall be paid subject to the lodging of a security equal to the aid, plus 10 %.

Article 12 (3) shall apply.

The provisional aid shall be paid by the competent body within 30 days of the date of lodging of the application.

At the request of the Member State, the time-limit may, with the agreement of the Commission, be extended to 45 days where, for duly justified reasons of verification, the shorter time-limit cannot be met.

3. Securities shall be forfeited in proportion to any quantity in respect of which provisional aid has been unduly applied for, without prejudice to Article 16.

4. Without prejudice to paragraph 3, securities shall be released once production aid based on aid applications as referred to in Article 12 is paid by the competent authorities.

5. Where this Article is implemented, the information and documents referred to in Article 12 (1) and (2) shall cover the entire production of processors during the marketing year concerned and aid applications shall state that an application for provisional aid has been submitted.

TITLE VI

Checks and penalties

Article 14

1. Processors shall keep records showing at least the following:

(a) consignments of raw materials purchased and entering their premises each day, specifying those covered by processing contracts or amendments thereto, together with the numbers of any receipts in respect of such consignments;

(b) the weight of each consignment and the name and address of the other party to the contract;

(c) the quantities of finished products obtained each day from processing of the raw materials, broken down into quantities on which the aid is payable and others;

(d) in the case of processed tomato products, the quantities of finished products obtained each day from the processing of raw materials not covered by the quota, for which at least the minimum price was paid;

(e) the quantities and prices of products leaving the processor's premises, consignment by consignment, with details of the consignee. Such data may be recorded by reference to supporting documents, provided the latter contain the abovementioned particulars.

2. Processors shall retain proof of payment in respect of all raw materials purchased under processing contracts or amendments thereto.

3. Processors shall undergo any inspections or checks deemed necessary and shall keep such additional records as the national authorities require to conduct any checks they deem necessary. Where an inspection or checks laid down cannot be conducted for reasons attributable to the processor, despite the latter's having been formally notified thereof, no aid shall be paid in respect of the marketing year in question.

Article 15

1. Each marketing year the competent authorities shall verify processors' records and shall conduct on-the-spot sampling checks of aid applications covering at least 25 % of the quantities of finished products in question, to ensure, in particular, that:

(a) finished products which may be the subject of a production aid application meet the applicable quality standards. Where the results of analysis of official

samples are at variance with the particulars entered in processors' records, thereby implying that the minimum Community quality standards have not been met, no aid shall be paid in respect of the processing operations in question;

(b) the quantities of raw materials used for processing correspond to those indicated in the aid application;

(c) the price paid for the raw materials processed into products as referred to in (a) is at least equal to the minimum price laid down; and

(d) the raw materials comply with the quality requirements.

2. In the case of processed tomato products, verification of processors' records and sampling checks as provided for in paragraph 1 shall also be carried out in respect of quantities not covered by the quota for which at least the minimum price has been paid.

3. Each marketing year, the competent authorities shall also conduct sampling checks covering:

(a) the weight of the raw materials delivered to processing plants,

(b) transfer orders as referred to in Article 9 (1).

4. Verifications undertaken pursuant to this Article shall be without prejudice to any checks conducted subsequently by the competent authorities or any consequences resulting from the application of the provisions in force.

5. Member States shall take all measures necessary to prevent and punish fraud in respect of the production aid system and to ensure the correct implementation thereof.

Article 16

1. With regard to provisional aid under Article 13, where processors do not submit aid applications covered by Article 11 (4), the securities provided for in Article 13 (2) shall be forfeited in full and the processors shall be disqualified from the production aid system provided for in Article 2 of Regulation (EC) No 2201/96 for the following marketing year.

2. Where it is ascertained that the production aid on a product, applied for by a processor in respect of any marketing year, exceeds the amount due, then that amount shall be reduced where the difference is the result of false declarations or false documents or of negligence on the part of the processor. The reduction shall be equal to twice the difference, plus interest calculated on the time elapsing between payment and reimbursement by the recipient of the excess amount.

The rate of interest shall be that applied by the European Monetary Institute to operations in ecus and published in the 'C' series of the *Official Journal of the European Communities* in force at the date of over-payment, plus three percentage points.

3. Where paragraph 2 is applied, if the difference between the aid actually paid and the aid due exceeds 20 % of the latter, the recipient shall reimburse the total aid paid, plus interest calculated in accordance with that paragraph; if that difference exceeds 30 %, the processor shall in addition forfeit any right to production aid for the following marketing year.

4. Amounts recovered and interest due shall be paid to the competent paying agency and deducted from expenditure financed by the European Agricultural Guidance and Guarantee Fund.

5. Member States shall take the measures necessary to ensure compliance with the second subparagraph of Article 9 (1). They shall make provision in particular for the penalties applicable to the officers of producer organizations, to be commensurate with the seriousness of any misconduct on their part.

6. This Article shall apply without prejudice to other penalties to be adopted in accordance with Article 25 of Regulation (EC) No 2201/96.

TITLE VII

Notifications to the Commission

Article 17

Each Member State concerned shall notify the Commission:

1. by 1 December, of the following:

(a) the estimated harvest of unprocessed dried figs, prunes, peaches, pears and tomatoes used or intended to be used for processing into any of the finished products referred to in Article 1 (2), broken down in accordance with (b);

(b) the estimated production during the current marketing year of:

— tomato concentrate,

— whole peeled preserved tomatoes, broken down into peeled tomatoes of the San Marzano variety and peeled tomatoes of the Roma variety and similar varieties,

— other processed tomato products,

— peaches in syrup and/or in natural juice,
— Williams and Rocha pears in syrup and/or in natural juice,
— dried figs,
— prunes;

2. by 1 April, of the following:

(a) the quantity, expressed as net weight, of finished products processed from peaches, pears and tomatoes, broken down into products on which aid is paid and products on which aid is not paid;

(b) the quantity of raw materials used to manufacture the products referred to in (a);

(c) the quantity, expressed as net weight, of products as referred to in (a) in stock at 31 December of the preceding year, broken down into products sold and products unsold;

(d) in the case of tomatoes, the quantities referred to in (a), (b) and (c), further broken down by rate of aid;

(e) in the case of processed tomato products:

(i) in the case of products not covered by the quota for which at least the minimum price was paid:

— the quantity, expressed as net weight, of finished products covered by aid applications,
— the quantity of raw materials quoted in aid applications as having been used to manufacture products covered by the first indent;

(ii) in the case of products not covered by the quota for which at least the minimum price was not paid:

— the quantity, expressed as net weight, of finished products covered by aid applications,
— the quantity of raw material quoted in aid applications as having been used to manufacture products as referred to in the first indent;

(iii) the quantities of finished products and raw materials as referred to in points (i) and (ii), broken down in the same way as products qualifying for aid;

(iv) the total area in hectares planted during the marketing year;

(v) the average yield, expressed in tonnes per hectare, for the marketing year;

(vi) the area and yield, broken down into:

— tomatoes of the San Marzano variety,
— tomatoes of the Roma and similar varieties,
— tomatoes of round varieties;

3. by 1 June, of the following:

(a) the quantity, expressed as net weight, of prunes and dried figs, broken down into products on which the aid is paid and products on which the aid is not paid, and by quality class;

(b) the total quantity of dried figs and prunes obtained from plums of the *prunes d'Ente* variety used in the manufacture of products as referred to in (a);

(c) the quantity, expressed as net weight, of products as referred to in (a) and (b) in stock at 1 May, broken down into products sold and products unsold.

TITLE VIII

Final provisions

Article 18

Regulation (EC) No 1558/91 is hereby repealed. However, it shall remain applicable for each product concerned until the end of the 1996/97 marketing year.

Article 19

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

However, the first subparagraph of Article 6 (1) concerning the closing date for the conclusion of preliminary contracts shall not apply for the 1997/98 marketing year.

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

Done at Brussels, 19 March 1997.

For the Commission
Franz FISCHLER
Member of the Commission