# COMMISSION REGULATION (EC) No 661/97

## of 16 April 1997

## laying down detailed rules for the application of Council Regulation (EC) No 2201/96 as regards the system of quotas for processed tomato products

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 Article 6 (5) thereof,

Whereas Article 6 (4) of Regulation (EC) No 2201/96 lays down rules for sharing out quantities of fresh tomatoes for the production of processed products granting entitlement to production aid between the various undertakings that commenced processing three marketing years before that for which the allocation is made; whereas rules should also be laid down as to how quantities are to be shared out among undertakings that commenced processing less than three years before the marketing year for which allocation is made; whereas the conditions to be met by undertakings in order to qualify for such quantities must accordingly be determined;

Whereas the detailed rules for the application of the system of production aid for products processed from fruit and vegetables were laid down in Commission Regulation (EC) No 504/97 [2];

Whereas, with a view to some development of the tomato-processing industry's production structures, a percentage of the quantities of each group of finished products allocated to the Member States should be reserved for new undertakings; whereas, since the quantities available are limited, only undertakings providing guarantees of efficiency and durability should be allocated quantities;

Whereas, pursuant to Article 6 (4) of Regulation (EC) No 2201/96, quantities actually produced during the 1996/97 marketing year are not taken into account when the rules for allocating quantities to processing undertakings are applied; whereas the consequences should be drawn for undertakings regarded as new during the 1996/97 marketing year and for all the other undertakings concerned until 1999/2000;

Whereas the competent authorities allocate to each processing undertaking the quantities of fresh tomatoes which may be used to produce finished products conferring entitlement to the aid; whereas such allocation must be based on information forwarded by the undertakings; whereas, if there are doubts as to the accuracy of the information received, the competent authorities must be authorized to defer allocation until such doubts have been dispelled;

Whereas, in order for the quota system to be as efficient as possible within each Member State, quantities not allocated and quantities allocated but not used should be redistributed fairly among their undertakings that sign contracts covering such additional quantities;

Whereas the allocation of a specific quota to each undertaking means that the production aid is paid in respect of a fixed quantity only; whereas the objective of the arrangements is met if quotas allocated to undertakings can be transferred to others where they change hands; whereas such changes of ownership, which may be total or partial, must entail a proportional transfer of quota rights; whereas, in the event of mergers between undertakings operating in the same Member State, the transfer of rights to the undertaking resulting from the merger should also be permitted;

Whereas, with a view to a better enforcement of processing contracts, processors should process quantities covered by such contracts before starting to process others;

Whereas the measures set out in this Regulation should replace those in Commission Regulation (EEC) No 1794/93 of 30 June 1993 laying down detailed rules for the application of production aid for processed tomato products [3]; whereas that Regulation should therefore be repealed;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Processed Fruit and Vegetables,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. The allocation provided for in Article 6 (4) of Regulation (EC) No 2201/96 shall be made by the Member States by 31 May preceding each marketing year.

[1] OJ No L 297, 21. 11. 1996, p. 29.
[2] OJ No L 78, 20. 3. 1997, p. 14.
[3] OJ No L 163, 6. 7. 1993, p. 23.

2. Undertakings which meet the conditions pursuant to Article 3 of Regulation (EC) No 504/97 and which

— have submitted production aid applications in respect of at least one of the three marketing years preceding that for which allocation is made, or

— commence their activity during the marketing year for which allocation is made,

may be allocated quantities pursuant to paragraph 1.

*Article 2*

Without prejudice to Article 3, quantities shall be allocated pursuant to Article 1 (1) to all undertakings concerned in proportion to the average quantities they produced and sold at least at the minimum price during the three marketing years preceding that for which allocation is made.

However, undertakings which commenced production during:

(a) the penultimate marketing year preceding that for which allocation is made, shall qualify for a quota based on the average quantities they produced and sold at least at the minimum price during the two marketing years preceding the marketing year in question;

(b) the marketing year preceding that for which allocation is made, shall qualify for a quota corresponding to the average quantities they produced and sold at least at the minimum price during that marketing year.

*Article 3*

1. New processing undertakings which commence production of any finished tomato product during the marketing year for which the allocation is made shall qualify for a production quota under the conditions set out in the second subparagraph, on condition that they provide sufficient guarantees to the satisfaction of the competent authorities regarding their efficiency and durability.

Producer Member States shall reserve 2 % of the total quantities of fresh tomatoes fixed for each group of finished products for the purposes of allocating quotas to undertakings as referred to in the first subparagraph. The quota allocated to each undertaking may not exceed 70 % of its processing capacity.

2. For the purposes of this Regulation, 'new undertaking' means an undertaking with plant and equipment suitable for the production of a group of finished tomato products and which did not qualify under the quota arrangements for the group in question for any of the three marketing years preceding that for which allocation is made.

*Article 4*

For the 1997/98 marketing year, undertakings which qualified in the 1996/97 marketing year for quotas reserved for new undertakings shall qualify for a quota equal to the quantities that they have actually produced in that marketing year, provided that the overall quota allocated in 1996/97 is not exceeded.

Member States shall, where applicable, take account of the quantities referred to in the first subparagraph when applying Article 2 for the 1997/98 marketing year.

*Article 5*

Where the quantities referred to in Articles 2, 3 and 4 have not been allocated in full, the remainder shall be divided fairly between applicant processing undertakings as referred to in the first subparagraph of Article 2, account being taken in particular of those undertakings using new production technology.

*Article 6*

1. By 15 January preceding the marketing year in which allocation is made, processing undertakings as referred to in Article 3 shall inform the competent authorities of their processing capacity and of the quantities of raw material that they intend to process. The quantities of raw material shall be broken down into:

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

(b) preserved whole peeled tomatoes;

(c) other tomato products.

2. By way of an exception in duly justified cases, Member States may accept information forwarded after the time limit laid down in paragraph 1, provided the quantities referred to in the second subparagraph of Article 3 (1) are not exceeded.

*Article 7*

1. Whereas the competent authorities of Member States have checked that the aid applications comply with Article 12 of Regulation (EC) No 504/97, and when they

are in possession of all the particulars needed for allocation pursuant to Articles 2 to 5 of this Regulation, they shall allocate a given quantity of fresh tomatoes to each processing undertaking. That quantity shall be broken down into quantities for the production of:

— tomato concentrate,

— preserved whole peeled tomatoes,

— other tomato products.

2. Where Member States note that the overall quantity allocated to their processing undertakings is not covered by preliminary contracts and processing contracts as provided for respectively in Article 6 and in Article 7 of Regulation (EC) No 504/97 for a given marketing year, they may decide to allocate the unused quantity among processing undertakings which declare that they are prepared to conclude processing contracts covering the additional quantities. Such additional quantities of fresh tomatoes shall only be allocated for the marketing year in question.

Member States may allocate the additional quantities until 15 October each year. The obligation to conclude preliminary contracts as referred to above covering the reallocated quantities for the purposes of the aid shall be waived in respect of undertakings notified that they have been allocated additional quantities by the competent authorities. Processing contracts covering such quantities shall be concluded by 25 October.

3. In the event of proven or suspected irregularities and where administrative or judicial inquiries have been initiated to ascertain entitlement to the aid, the competent authorities may decide not to allocate the quantity at issue until the dispute is settled.

*Article 8*

1. Where undertakings change hands, the provisions set out in the following points (a) and (b) shall apply:

(a) where processors qualifying for processing quotas dispose of their undertakings in any manner, they must transfer all their rights arising from the allocation as referred to in Articles 2 to 5 to the natural or legal person who takes over the business;

(b) where processors qualifying for processing quotas and having two or more plants for the production of finished tomato products dispose of one or more of those plants in any manner, they must transfer a proportion of the rights as referred to in point (a) corresponding to the production of the plant(s) thus sold or transferred to the natural or legal person who takes over the business.

Processors may in no circumstances transfer their quota rights without transferring their plant(s).

Where undertakings change hands in accordance with the first subparagraph, the processors concerned shall notify the competent authorities of the Member State in question.

2. In the case of mergers of undertakings, Member States in whose territory the relevant undertakings operate shall authorize the transfer of quota rights between the former processing undertakings and those resulting from the merger.

3. In the cases referred to in paragraphs 1 and 2, Member States shall take the measures necessary to ensure that transfers of quotas do not have adverse effects on the quota arrangements.

*Article 9*

Undertakings must have completed the processing of all fresh tomatoes delivered under contracts as referred to in Article 7 of Regulation (EC) No 504/97 before processing other tomatoes.

Member States shall take the measures necessary to verify compliance with the first paragraph.

*Article 10*

Member States shall take all steps necessary to ensure that:

— the overall quantity allocated per Member State and per group of products pursuant to Article 6 (3) of Regulation (EC) No 2201/96 is not exceeded,

— the quantities referred to in Articles 5 and 7 (2) are allocated fairly among the undertakings.

*Article 11*

Regulation (EEC) No 1749/93 is hereby repealed.

*Article 12*

This Regulation shall enter into force on the third 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, 16 April 1997.

*For the Commission*

Franz FISCHLER

*Member of the Commission*