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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 3468/88

of 7 November 1988

amending Regulation (EEC) No 3796/81 on the common organization of the market in fishery products and amending Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas certain species not at the moment covered by any Community intervention arrangements nonetheless account for a significant proportion of production of fishery products in certain regions; whereas these species make an essential contribution to the incomes of the producers concerned and to the general balance of the market;

Whereas, therefore, in order to foster greater market stability, due account being taken of the characteristics of the products concerned and of the diversity of the circumstances pertaining to their production and marketing, certain of them should be covered by a Community price support scheme;

Whereas, however, regional price disparities for these species do not permit their being covered at present by the existing scheme for the grant of financial compensation to producers' organizations;

Whereas, in the circumstances, an intervention scheme should be introduced that is based on a withdrawal price set by producers' organizations themselves; whereas provision should therefore be made for such organizations

to receive flat-rate aid on certain terms for products that have been the subject of such independent intervention;

Whereas, in order to encourage producers' organizations to adjust their supply to market requirements more effectively, provision should be made for suitable financial co-responsibility on their part and a limit should be set on the quantities for which aid can be given;

Whereas, in order where possible to prevent the destruction of fish withdrawn from the market, it should be possible for aid to be granted for the processing and storage for subsequent human consumption of certain quantities withdrawn;

Whereas, as regards three tuna species, namely albacore, bluefin and bigeye, the marketing characteristics are similar to those of the other species qualifying for the flat-rate aid and provision should be made to include these species as well under this scheme;

Whereas the aid should be made conditional on the observance of common marketing standards;

Whereas the trend of market prices may make it necessary for action to be taken to help harmonize prices in the Community; whereas it should therefore be possible for the grant of flat-rate aid to be made conditional on autonomous withdrawal prices not exceeding a maximum level;

Whereas, where application of the flat-rate aid scheme brings about greater harmonization of prices as a result of changes in the production and marketing of the species concerned, the species in question should be brought within the scope of the financial compensation scheme;

Whereas experience has shown that the conditions for the granting of private storage aid need to be specified in the case of certain products frozen on board and that at the same time the scheme in question needs to be made to comply with the general principles of the other Community intervention schemes;

⁽¹⁾ OJ No C 308, 18. 11. 1987, p. 5.

⁽²⁾ OJ No C 13, 18. 1. 1988, p. 125.

⁽³⁾ OJ No C 319, 30. 11. 1987, p. 37.

Whereas the tuna market is dependent on the pattern of landings of fish and provision should be made for granting private storage aid under certain conditions to the producers' organizations which intervene in order to regulate supply on the Community market;

Whereas, in the case of tuna, in order to rationalize the marketing of a uniform product, the compensatory allowance should be reserved to producers' organizations satisfying certain conditions;

Whereas, in order to assess whether a situation exists on the Community market linked to the trend of prices on the world market in tuna that warrants payment of the compensatory allowance, a check must be made that the drop in Community market prices stems from a drop in import prices;

Whereas, in order to discourage an abnormal increase in tuna production, provision should be made for limits to be laid down within which the allowance may be granted to producers' organizations on the basis of supply conditions recorded on the Community market;

Whereas, in order not to disturb traditional trading patterns, provision should be made for producers' organizations to help finance intervention on the Community market in cases where their production of tuna landed on this market increases;

Whereas therefore Regulation (EEC) No 3796/81⁽¹⁾, as last amended by Regulation (EEC) No 3759/87⁽²⁾, should be amended;

Whereas the tariff nomenclature resulting from the application of Regulation (EEC) No 3796/81 is included in the Common Customs Tariff; whereas consequently, an amendment should be made to the Common Customs Tariff adopted by Regulation (EEC) No 2658/87⁽³⁾, as last amended by Regulation (EEC) No 1858/88⁽⁴⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3796/81 is hereby amended as follows:

1. In the second subparagraph of Article 9 (1):

- in the first indent, the words 'in Annex I (A) and (D)' shall be replaced by 'in Annex I (A) or (D) and in Annex VI';
- in the second indent the words 'but not in Annex I (A) and (D)' shall be replaced by 'but not in Annex I (A) and (D) nor in Annex VI';

⁽¹⁾ OJ No L 379, 31. 12. 1981, p. 1.

⁽²⁾ OJ No L 359, 21. 12. 1987, p. 1.

⁽³⁾ OJ No L 256, 7. 9. 1987, p. 1.

⁽⁴⁾ OJ No L 166, 1. 7. 1988, p. 10.

2. In Article 13 (1) (a), the figure '5' shall be replaced by the figure '10';

3. The following shall be inserted:

Article 14b

1. For products listed in Annex VI, Member States shall grant flat-rate aid to producers' organizations which practise intervention in accordance with Article 9, on condition that:

- (a) the said organizations determine a withdrawal price, hereinafter called an 'autonomous withdrawal price', before the beginning of the fishing year; the producers' organizations shall apply that price throughout the fishing year, a tolerance of 10 % below and 5 % above being allowed; the price may not, however, exceed 80 % of the weighted average price recorded for the product categories in question in the area of activity of the producer's organizations concerned during the previous three fishing years;
- (b) the products withdrawn meet the standards adopted in accordance with Article 2;
- (c) the indemnity granted to associated producers in respect of the products withdrawn from the market is equal to the autonomous withdrawal price.

2. The flat-rate aid shall be granted for quantities withdrawn from the market on condition that they:

- (a) were put up for sale in accordance with Article 5 (1), and
- (b) were, before withdrawal, put up for sale under conditions to be determined, and
- (c) — are disposed of in a way that does not affect the normal disposal of production or
— are processed and stored. Processing for the purposes of this Article shall be freezing, and filleting or cutting accompanied by freezing.

3. The flat-rate aid shall be granted only for quantities not in excess of 10 % of the annual quantities sold in accordance with Article 5 (1).

The grant of flat-rate aid may be made subject to the condition that the autonomous withdrawal price does not exceed a maximum level fixed in accordance with the procedure laid down in Article 33.

4. The flat-rate aid for quantities:

- (a) dealt with in accordance with the first indent of paragraph 2 (c) shall be 75 % of the withdrawal price applied during the current fishing year;
- (b) dealt with in accordance with the second indent of paragraph 2 (c) may not exceed 50 % of the maximum level referred to in paragraph 1 (a) or exceed the technical costs of processing and storage recorded during the previous fishing year, the highest costs being disregarded.

5. The flat-rate aid shall be reduced by the value, fixed at a standard amount, of the product when it is disposed of as specified in the first indent of paragraph 2 (c).

6. The Member States concerned shall introduce a control system ensuring that products for which the flat-rate aid is applied do in fact qualify for it.

For the purposes of this control system, recipients of the flat-rate aid shall keep stock records which meet criteria to be determined. Member States shall communicate to the Commission at intervals to be laid down a table showing average product and category prices recorded at representative wholesale markets or ports.

7. The Council, acting by a qualified majority on a proposal from the Commission, shall decide, depending on the alignment of the prices for the species referred to under this Article, on their inclusion in the list of products in Annex I (A).

8. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 33.

9. The provisions of this Article shall apply for a period of five years following its date of entry into force.

The Commission shall submit to the Council, one year before the end of that period, a report on the functioning of the scheme and in particular on the trend of prices for the products listed in Annex VI. The Council, acting by a qualified majority on a proposal from the Commission, shall decide on appropriate measures before the expiry of the five-year period;

4. Article 16 shall be replaced by the following:

Article 16

1. Private storage aid for the products listed in Annexes II and III may be granted to producers' organizations applying Article 5 (1) to production and marketing during the current fishing year if:

(a) the average prices realized for a product offered for sale by the producers' organizations during a significant period to be determined are less than:

- 85 % of the guide price mentioned in Article 15 (1) for the products in Annex II, and
- 95 % of the Community producer price mentioned in Article 17 (1) for the products of Annex III and that

(b) the price situation is likely to persist.

2. The following rules shall apply to the grant of private storage aid:

- the products must have been fished, frozen on board and landed in the Community by a member of a producers' organization;
- the aid shall be restricted to 20 % of the average quantity of the products offered for sale in the Community in accordance with Article 5 during the same period of three fishing years preceding the fishing year in respect of which the aid is granted. Aid may not, however, be granted for more than 20 % of the quantity offered for sale during the period in progress;
- it must have been established, under conditions to be laid down, that the products concerned are Community products;
- the products must be stored for a minimum period and then placed on the Community market again.

3. The amount of the private storage aid may not exceed the sum of technical costs and interest for a maximum period of three months. This amount shall be fixed each month degressively.

4. Detailed rules for the application of this Article, in particular the amount of the private storage aid and the conditions on which it is granted, shall be adopted in accordance with the procedure laid down in Article 33.

5. By way of derogation from paragraphs 1 and 2 and until 31 December 1991, the aid shall also be granted to producers who are established in Greece and do not belong to a producers' organization;

5. Article 17 shall be replaced by the following:

Article 17

1. For the products listed in Annex III, a Community producer price shall be fixed before the beginning of each fishing year.

That price shall be valid throughout the Community and shall be fixed for each fishing year.

2. The Community producer price shall be fixed:

- on the basis of the average of the price recorded during the three years preceding the fixing of the price at representative wholesale markets or ports in respect of a significant proportion of Community production and for a product with defined commercial characteristics;
- taking into account trends in production and demand.

In fixing this price, account shall also be taken of the need to :

- take into consideration the flows of supply of the Community canning industry ;
- help support producers' incomes ;
- avoid the formation of surpluses in the Community.

3. The Council, acting by a qualified majority on a proposal from the Commission, shall set the Community producer price referred to in paragraph 1 before the beginning of each fishing year.

4. Member States shall notify the Commission of average monthly prices recorded at representative wholesale markets or ports for products of Community origin as referred to in paragraph 1 which have defined commercial characteristics.

5. For the purpose of paragraph 4 the representative markets and ports of the Member States shall be those where a significant proportion of Community production of tuna is marketed.

6. Detailed rules for the application of this Article, in particular the setting of conversion factors for the various species, sizes and presentations of tuna and a list of the presentative markets and ports referred to in paragraph 4, shall be adopted in accordance with the procedure laid down in Article 33.

Article 17a

1. Within the limits laid down in paragraph 4, an allowance shall be granted to producers' organizations in respect of the products listed in Annex III if it is found, in respect of a given calendar quarter, that

- the average selling price recorded on the Community market, and
- the free-at-frontier price mentioned in Article 21 plus any applicable countervailing charge,

are both lower than a triggering threshold of 93 % of the Community producer price for the product in question.

2. The allowance shall be granted to producers' organizations for quantities of the product in question caught by their members and sold and delivered during the quarter in question to canning industries located within the customs territory of the Community, subject to the conditions and limits laid down in this Article.

3. The allowance may not exceed :

- the difference between the triggering threshold and the average selling price of the product in question recorded on the Community market, or
- a flat-rate amount equivalent to 12 % of the said threshold, or

- for each producers' organization, the difference between that threshold and the average selling price realized by that producers' organization.

4. In the quarter in respect of which the allowance is granted, the total quantities that may be eligible for the allowance shall in no case exceed :

- 62,8 % of the quantities of tuna used by the Community canning industry during that quarter ;
- the average quantities sold and delivered in accordance with paragraph 2 during the equivalent quarter of the three fishing years preceding the one in respect of which the allowance is paid ;
- 110 % of the average quantities sold and delivered in accordance with paragraph 2 during the equivalent quarter of the fishing years 1984-1986.

5. In the light of the trends in Community production and the supply situation in the Community canning industry, the Council, acting by a qualified majority on a proposal from the Commission, shall, before 1 January 1993, determine any necessary amendments to be made to the percentages and the reference period referred to in paragraph 4.

6. Within the limits laid down in paragraph 4, the amount of the allowance granted to each producers' organization shall be equal to :

- the amount laid down in paragraph 3 for quantities of the product in question which have been disposed of in accordance with paragraph 2 and which do not exceed the average quantities sold and delivered under the same conditions by its members in the equivalent quarter in the reference fishing years 1984-1986 ;
- 95 % of the amount laid down in paragraph 3 for quantities of the product in question which exceed the average quantities referred to in the previous indent, up to a limit of 110 % of those quantities ;
- 90 % of the amount laid down in paragraph 3 for quantities of the product in question which exceed those laid down in the previous indent and which are equal to the surplus of the quantities resulting from the allocation among producers' organizations of the quantities eligible for an allowance under paragraph 4.

The allocation shall be made between the producers' organizations concerned proportionately on the basis of their respective production during the equivalent quarter in the fishing year 1984-1986.

7. Producers' organizations shall allocate the allowance granted to their members proportionately on the basis of the quantities produced by them and sold and delivered in accordance with paragraph 2.

The allowance paid by a producers' organization to its member producers shall be increased by a compensatory payment equal to :

- 2,5 % of the amount laid down in paragraph 3 when the amount paid to the producers' organization is equal to that amount;
- 5 % of the amount laid down in paragraph 3 when the amount paid to the producers' organization is equal to 95 % of that amount;
- 10 % of the amount laid down in paragraph 3 when the amount paid to the producers' organization is equal to 90 % of that amount.

This compensation shall be financed by a fund set up in accordance with Article 9 (3).

8. The storage aid granted under Article 16 shall be deducted from the compensatory allowance for quantities in respect of which it has been paid.

9. The Council, acting by a qualified majority on a proposal from the Commission, shall adopt general rules for the grant of the allowance.

10. Detailed rules for the application of this Article, in particular the amount of the allowance and the rules for its grant, shall be adopted in accordance with the procedure laid down in Article 33;

6. In Article 19(1) the figure 'VI' shall be replaced by 'VII';

7. In Article 26 (2) the figure '14b' shall be inserted after '14a' and the figure '17' shall be replaced by '17a';

8. Annex III shall be replaced by the following :

ANNEX III

Tuna (of the genus *Thunnus*), skipjack or stripe-bellied bonito (*Euthynnus (Katsuwonus) pelamis*) and other species of the genus *Euthynnus*, fresh, chilled or frozen, intended for industrial manufacture of products falling within heading 16.04 and classified under one of the following codes of the Combined Nomenclature :

Description	CN code	
	Fresh or chilled	Frozen
Presented in a form other than those mentioned under heading 0304 :		
I. The following species :		
a. Albacore or longfinned tuna (<i>Thunnus alalunga</i>), excluding fresh or chilled,		
1. Weighing more than 10 kg each (1)		0303 41 11, 0303 41 13 and 0303 41 19
2. Weighing not more than 10 kg each (1)		0303 41 11, 0303 41 13 and 0303 41 19
b. Yellowfin tuna (<i>Thunnus albacares</i>),		
1. Weighing more than 10 kg each (1)	0302 32 10	0302 42 11, 0303 42 31 and 0303 42 51
2. Weighing not more than 10 kg each (1)	0302 32 10,	0303 42 19, 0303 42 39, and 0303 42 59
c. Skipjack or stripe-bellied tuna (<i>Euthynnus (Katsuwonus) pelamis</i>)	0302 33 10	0303 43 11, 0303 43 13 and 0303 43 19
d. Bluefin tuna (<i>Thunnus Thynnus</i>), excluding fresh or chilled		0303 49 11, 0303 49 13 and 0303 49 19
e. Other species of the genres <i>Thunnus</i> and <i>Euthynnus</i> with the exception of bigeye tuna (<i>Parathunnus obesus</i>), fresh or chilled	0302 39 10 and 0302 69 21	0303 49 11, 0303 49 13, 0303 49 19, 0303 79 21, 0303 79 23 and 0303 79 29
II. Presented in one of the following ways :		
a. Whole		
b. Gilled and gutted		
c. Other (for example 'heads off')		

(1) Reference to weight applies to whole products;

9. The following Annex shall be inserted:

ANNEX VI

Fresh or chilled products of the following species	Falling within the following CN Codes
1. Dab (<i>Limanda limanda</i>)	0302 29 00
2. Lemon sole (<i>Microstomus kitt</i>)	0302 29 00
3. Albacore or longfinned tuna (<i>Thunnus alalunga</i>)	0302 31 10 0302 31 90
4. Bluefin tuna (<i>Thunnus thynnus</i>)	0302 39 10 0302 39 90
5. Bigeye tuna (<i>Thunnus obesus</i> or <i>Parathunnus</i>)	0302 39 10 0302 39 90
6. Pollack (<i>Pollachius pollachius</i>)	0302 69 51
7. Blue whiting (<i>Micromesistius poutassou</i> or <i>Gadus poutassou</i>)	0302 69 85
8. Pout (<i>Trisopterus luscus</i>)	0302 69 95
9. Bogue (<i>Boops boops</i>)	0302 69 95
10. Picarel (<i>Maena smaris</i>)	0302 69 95
11. Conger (<i>Conger conger</i>)	0302 69 95
12. Gurnard (<i>Trigla spp.</i>)	0302 69 95
13. Horse mackerel (<i>Trachurus spp.</i>)	0302 69 95
14. Mullet (<i>Mugil spp.</i>)	0302 69 95
15. Skate (<i>Raja spp.</i>)	0302 69 95 and 0304 10 99'

10. Annex VI shall become Annex VII.

11. In the text of Chapter 3 of the Common Customs Tariff, which appears in the new Annex VII, in codes 0303 42 11, 0303 42 31 and 0303 42 51, the word 'not' shall be deleted;

12. Annex VII shall become Annex VIII.

Article 2

Regulation (EEC) No 1196/76⁽¹⁾ is hereby repealed.

Article 3

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

However, Article 1 (11) shall apply from the twenty-first day following publication of this Regulation 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, 7 November 1988.

For the Council
The President
P. ROUMELIOTIS

⁽¹⁾ OJ No L 133, 22. 5. 1976, p. 1.