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REGULATION (EEC) No 1035/72 OF THE COUNCIL

of 18 May 1972

on the common organization of the market in fruit and vegetables

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 42 and 43 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament;

Whereas the basic provisions on the organization of the market in fruit and vegetables are at present contained in a number of separate regulations, drawn up at different times and, in some cases, amended several times since their adoption; whereas the contents of these regulations, by reason of their number, their complexity and the difficulty of coordinating their provisions, lack the clarity which rules must have; whereas they should therefore be codified;

Whereas the operation and development of the common market in agricultural products must be accompanied by the establishment of a common agricultural policy to include in particular a common organization of agricultural markets, established product by product;

Whereas the production of fruit and vegetables constitutes a substantial factor in agricultural income and whereas the essential objective must be achievement of a balance between supply and demand at fair prices to the producer, account being taken of trade with third countries, while encouraging specialization within the Community;

Whereas, within the context of the objectives to be attained, one of the steps to be taken for the introduction of a common organization of the market is the adoption of common standards to be applied to fruit and vegetables marketed within the Community or exported to third countries; whereas application of these standards should have the effect of keeping

products of unsatisfactory quality off the market, guiding production to meet consumers' requirements, and facilitating trade relations based on fair competition, thus helping to improve the profitability of production;

Whereas standardization cannot be fully effective unless applied at all stages of marketing; whereas, however, there may be exceptions for certain activities at the start of the distribution process and for products sent for processing;

Whereas provision must be made for the quality standards to be supplemented, if need be, by the addition of lower quality classes for a limited period; whereas such classes must be defined in the light of production and marketing techniques and of the fact that the marketing of the products in question is of local concern only and that the classes should not therefore be applied to products imported from third countries; whereas it should, however, be provided that such quality classes or certain specifications relating thereto should apply only where the products concerned are needed to satisfy consumer demand;

Whereas provision should be made for the possibility, in the event of particularly poor harvests, of adopting for a limited period measures derogating from the application of the quality standards in order to permit the marketing of products which do not conform to those standards;

Whereas, should there be sufficient products conforming to the quality standards to exceed consumer demand even without the additional quality class, provision should be made for the possibility of adopting measures altering the minimum size required for those products;

Whereas, to ensure compliance with the quality standards and to secure uniform application, provision must be made for supervision and for obligatory penalties in case of non-compliance;

Whereas, given the special features of the market in fruit and vegetables, the formation of producers' organizations whose members are obliged to comply with certain rules, in particular as regards marketing, is likely to contribute to the attainment of the objectives of the common organization of the market;

Whereas provision should therefore be made for measures to facilitate the formation and operation of such organizations; whereas, to that end, Member States should be permitted to grant aid to such organizations, this aid being in part financed by the Community; whereas this aid should, however, be limited in amount and be of a transitional and degressive nature so that the financial responsibility of producers will progressively increase;

Whereas, in order to stabilize prices, such organizations should be able to intervene on the market, in particular by applying a withdrawal price below which their members' produce is withdrawn from the market;

Whereas, in order to contend with serious disturbances on the Community market, in the case of certain fruit and vegetables which are of special importance to the income of producers, it is necessary to fix for each of these products a basic price which is representative of the Community production areas with the lowest prices, and a buying-in price, these prices serving to determine the price level for intervention and the amount of compensation to be granted in the event of intervention;

Whereas, when such disturbances occur, the obligation should be laid upon Member States to grant financial compensation to producers' organizations which withdraw products from the market, and also to buy in products offered in the event of a serious crisis; whereas, however, since serious difficulties might, in certain Member States, prevent the fulfilment of this latter obligation, provision should be made for the possibility of exempting those Member States therefrom;

Whereas producers' organizations must be enabled to act in the light of certain local market conditions and with the promptness necessary to avoid a more extended slump in prices;

Whereas measures should be adopted whereby intervention buying will first affect products of the lower quality classes in order, in particular, to facilitate marketing of products of the higher quality classes;

Whereas intervention measures can be fully effective only if products withdrawn from the market are not re-introduced into the normal trade channels for that

class of product; whereas the various purposes and uses corresponding to this condition should be defined so that, to the greatest possible extent, the destruction of products so withdrawn may be avoided;

Whereas, in periods of market intervention, a danger exists that the quantities of products liable to be withdrawn or bought in might exceed the possibilities offered by accepted purposes and uses; whereas, in such circumstances, Member States should be authorized to make arrangements under certain conditions to encourage the use of the products by the producers on their holdings;

Whereas the establishment of a single Community market in fruit and vegetables requires the introduction of a single trading system at the external frontiers of the Community; whereas the application of the Common Customs Tariff duties should suffice, as a rule, to stabilize the Community market by preventing the price level in third countries and fluctuations thereof from having repercussions on prices ruling within the Community;

Whereas disturbances on the Community market arising from offers at abnormal prices from third countries must, however, be avoided; whereas, to this end, provision should be made for the fixing of reference prices and the levying of a countervailing charge in addition to the customs duty for fruit and vegetables when the entry price of imported products is below the reference price;

Whereas, in most cases, the system thus introduced will enable all quantitative restrictions at the external frontiers of the Community to be dispensed with; whereas this machinery might in exceptional circumstances prove inadequate; whereas, in order not to leave the Community market without defence against disturbances which might arise in such cases after the import barriers which existed previously have been removed, the Community should be able to adopt all necessary measures without delay;

Whereas, however, for certain products, the too rapid application of these arrangements could give rise to serious disturbances on certain markets in Member States; whereas, therefore, to enable adjustment to be made to the new conditions of competition which will result from these prohibitory measures, retention should be authorized for a certain period and under certain conditions of restrictive measures currently existing in Member States in respect of these products;

Whereas, in order to protect Community participation in international trade in fruit and vegetables, provision should be made for the

possibility of granting a refund on exports of these products to third countries;

Whereas the establishment of a single market would be jeopardized by the granting of certain aids; whereas the provisions of the Treaty which allow the assessment of aids granted by Member States and the prohibition of those which are incompatible with the common market should therefore be applicable to fruit and vegetables;

Whereas the common organization of the market in fruit and vegetables must take appropriate account, at the same time, of the objectives set out in Articles 39 and 110 of the Treaty;

Whereas, in order to facilitate implementation of the proposed measures, a procedure should be provided for establishing close cooperation between Member States and the Commission within a Management Committee;

HAS ADOPTED THIS REGULATION:

Article 1

1. The common organization of the market in fruit and vegetables shall comprise common rules on competition, a price and intervention system and arrangements for trade with third countries.

2. The organization shall cover products falling within heading No 07.01 (excluding subheadings Nos 07.01 A and 07.01 N) and headings Nos 08.02 to 08.09 (excluding subheadings Nos 08.04 A II and 08.05 F) of the Common Customs Tariff.

TITLE I

Common standards

Article 2

1. Common standards (hereinafter called 'quality standards') may be established, by product or group products, for products to be delivered fresh to the consumer.

These standards may include a Class III, defined with due regard for

- the economic benefit derived from the relevant products by the producers,
- the need to satisfy consumers' requirements.

Quality standards may also be established for products for industrial processing.

2. The Council, acting in accordance with the procedure laid down in Article 43 (2) of the Treaty; shall decide to which products quality standards shall be applied.

The quality standards and the date on which they begin to apply shall be adopted in accordance with the procedure laid down in Article 33.

3. Quality standards shall apply to products listed in Annex I to be delivered fresh to the consumer.

The necessary amendments to standards current on the date this Regulation enters into force shall be adopted in accordance with the procedure laid down in Article 33.

Article 3

1. When quality standards have been established, products to which they apply may not be displayed or offered for sale, sold, delivered or marketed in any other manner within the Community unless they conform to the standards.

2. The following shall not be obliged to conform to the quality standards within a Member State:

- (a) products sold, delivered or consigned by the grower from his holding for market preparation and packing or storage;
- (b) products consigned from storage for market preparation and packaging;
- (c) nor, without prejudice to more restrictive national provisions:
 - products displayed or offered for sale, sold, delivered or marketed in any other manner by the grower on wholesale markets, in particular on producer markets, situated in the production area,
 - products consigned from wholesale markets to preparation and packing stations or storage stations situated in the same production area.

3. The following shall not be obliged to conform to the quality standards:

- (a) products consigned to processing plants, subject to possible establishment of quality standards for products intended for industrial processing;
- (b) products transferred by the producer on his holding to consumers for their personal use.

4. Evidence must be supplied that products as referred to in paragraphs 2 and 3 (a) fulfil the conditions laid down, in particular with regard to their intended use.

5. Additional exemptions from the obligation to conform to the quality standards, and detailed rules for applying this Article, shall be adopted in accordance with the procedure laid down in Article 33.

Article 4

1. Class III or certain of its requirements may be applied only if products corresponding to the class or to certain of its requirements are needed to meet consumer demand.

The application of Class III or of certain of its requirements shall be decided in accordance with the procedure laid down in Article 33.

2. Unless an extension is decided upon in accordance with the voting procedure laid down in Article 43 (2) of the Treaty, Class III may not be applied beyond the fifth year following the date of entry into force of the Regulation which defines it.

Article 5

1. Where the supply of products conforming to the quality standards is insufficient to meet consumer demand, measures derogating from the application of the standards may be applied for a limited period. In the case of products for which a Class III has been defined, such measures may be applied only if that quality class is already in operation or is brought into operation at the same time.

2. Where the supply of products conforming to the quality standards exceeds consumer demand, measures may be adopted altering the minimum size required for products accepted for marketing within the Community under the provisions of Article 3.

In the case of products for which a Class III has been defined, these measures may be implemented only if the class is not in operation.

3. The measures referred to in paragraphs 1 and 2 shall be adopted in accordance with the procedure laid down in Article 33.

Article 6

1. The markings required by the quality standards must be made legibly and indelibly on one side of the package, either printed directly onto the package or on a label firmly affixed to the package.

2. For goods dispatched in bulk, loaded directly into some means of transport, these particulars shall be given in a document accompanying the goods or on a notice placed in a visible position inside the means of transport.

Article 7

At the retail stage, where products are put up in packages, the required particulars on the labels shall be clearly visible.

Products may be presented unpackaged, provided that the retailer displays with the goods offered for sale a show card giving, in clear characters, the information specified in the quality standards in respect of:

- variety,
- origin of the product,
- quality class.

Article 8

1. To establish whether the products for which quality standards have been laid down conform to the provisions of Articles 3 to 7, a check shall be made by sampling at all marketing stages and during transport by the authorities appointed by each Member State.

This check shall preferably be made prior to dispatch from the production areas when the goods are being packed or loaded.

Member States shall communicate to the other Member States and to the Commission the names of the authorities which they have appointed to be responsible for checking.

2. Detailed rules for applying this Article shall be adopted in accordance with the procedure laid down in Article 33.

Article 9

The provisions of Articles 3 to 8 shall apply to products imported into the Community after completion of the procedure to be carried out on importation in accordance with existing Community provisions.

When marketed in their original packaging, products originating in or coming from third countries other than European third countries and the non-European countries of the Mediterranean area shall be required to conform to the provisions in respect of marking, laid down by the quality standards only as regards indication of:

- variety
- country of origin
- quality class.

Should such information not be given on packages admitted for importation, the marking procedure shall be undertaken by the importer.

The latter may, however, be absolved from this obligation if the first buyer to whom he sells the goods undertakes to carry out this marking procedure under the supervision of the competent agency of the importing Member State.

Article 10

1. Measures to ensure uniform application of the provisions of this Title, in particular as regards checking, shall be adopted in accordance with the procedure laid down in Article 33.

2. Member States shall take any appropriate measures to penalize infringements of the provisions of this Title.

They shall notify the Commission of the measures provided for in the preceding subparagraph not later than one month after their adoption.

Article 11

Products for which quality standards are laid down shall be accepted for importation from third countries only if they conform to the quality standards for the 'Extra' Class, Class I or Class II or to standards at least equivalent. The Commission shall take the necessary measures for applying the provisions of this Article.

Article 12

1. Products for which quality standards are laid down shall be accepted for export to third countries only if they conform to the quality standards for the 'Extra' Class, Class I or Class II.

Derogations may, however, be granted in accordance with the procedure laid down in Article 33 in the light of the requirements of the intended markets.

2. Exporting Member States shall submit products for export to third countries to a quality control before they leave their territory.

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

TITLE II

Producers' organizations

Article 13

For the purposes of this Regulation, "producers' organization" means any organization of fruit and vegetable producers which is established on the producers' own initiative for the purpose, in particular:

- of promoting the concentration of supply and the regularization of prices at the producer stage in respect of one or more of the products referred to in Article 1;
- of making suitable technical means available to producer members for presenting and marketing the relevant products; which requires it:
- to sell their total output of the product or products by reason of which they have become members through the organization; the organization may, however, waive this requirement in respect of certain quantities;
- to apply, with regard to production and marketing, rules which have been adopted by the producers' organization with a view to improving product quality and adapting the volume of supply to market requirements.

Article 14

1. Member States may grant aid to producers' organizations, during the three years following the date on which they are established, to encourage their formation and to facilitate their operation, provided that the organizations furnish adequate guarantees as regards the duration and effectiveness of their activities. The amount of such aid shall not exceed, for the first, second and third years respectively, 3%, 2% and 1% of the value of production marketed under the auspices of the producers' organization. In respect of each year, the value of production marketed shall be calculated on a standard basis, namely:

- members' average marketed production during the three calendar years immediately preceding the year in which they became members,
- average producer prices obtained by those members over the same period.

2. Member States may, during the five years immediately following the setting up of the intervention fund referred to in Article 15, grant aid to producers' organizations, either directly or through credit institutions in the form of loans on special

terms to cover part of the anticipated cost of the market intervention described in Article 15.

3. The aid referred to in this Article shall be notified to the Commission in a report from the Member States at the close of each financial year.

Article 15

1. For the products referred to in Article 1, producers' organizations or associations of such organizations may fix a withdrawal price below which the producers' organizations will not offer for sale products supplied by their members; if a withdrawal price is so fixed, in respect of products listed in Annex II which conform to the quality standards, producers' organizations or, where appropriate, associations of such organizations shall grant an indemnity to members for the quantities that remain unsold, without prejudice to the option to grant an indemnity for other products referred to in Article 1 but not listed in Annex II. Member States may fix a maximum level for the withdrawal price. If they so do in respect of products listed in Annex II, they shall fix the price at a level at least equal to that resulting from the application of Article 18.

The disposal of products thus withdrawn from the market shall be determined by producers' organizations in such a way as not to interfere with normal marketing of the product in question.

To finance these withdrawal measures, producers' organizations shall establish an intervention fund, maintained by contributions assessed on quantities offered for sale.

2. Each producers' organization shall supply the following information to the national authorities, who shall communicate it to the Commission:

- the list of products for which it intends to operate the system described in paragraph 1;
- the period during which withdrawal prices are applicable;
- the levels or withdrawal prices proposed and applied.

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

TITLE III

Prices and intervention system

Article 16

1. For each of the products listed in Annex II, the Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, shall, each year before the beginning of the marketing year, fix a basic price and a buying-in price, determined in accordance with paragraphs 2 and 3 respectively of this Article.

These prices shall be valid for the whole Community and shall be fixed for each marketing year or for each of the periods into which the marketing year may be subdivided on the basis of seasonal price trends. In determining the duration of the marketing year, slack marketing periods at the beginning and at the end of the marketing year shall be disregarded.

2. The basic price shall be equal to the arithmetic mean of prices recorded on the representative Community market or markets which are situated in the surplus production areas with the lowest prices during the three marketing years immediately preceding the date on which the basic price is fixed for a product with defined commercial characteristics (such as variety or type, quality class, sizing and packaging). In calculating the arithmetic mean, prices which on each representative market could be considered excessively high or excessively low in relation to normal price fluctuations on that market shall be disregarded.

The surplus production areas by reference to which the basic price is fixed shall, taken together, represent for the period in question between 20% and 30% of Community output of the relevant product.

3. The buying-in price shall be fixed for each of the relevant products at between:

- 40% and 45% of the basic price in the case of cauliflowers and tomatoes,
- 50% to 55% of the basic price in the case of apples and pears,
- 60% and 70% of the basic price in the case of the remaining products listed in Annex II.

In fixing the buying-in price, account shall be taken of:

- the characteristics of the market and, in particular, the extent to which market prices fluctuate,

— the need to fix the buying-in price at such a level that, through the measures laid down in Articles 15, 18 and 19, it will help to stabilize market prices without leading to the formation of structural surpluses in the Community.

4. For a product with commercial characteristics different from those of the product by reference to which the basic price is fixed, the price at which the product is bought in pursuant to Article 19 shall be calculated by applying conversion factors to the buying-in price fixed by the Council.

The conversion factors shall be fixed in accordance with the procedure laid down in Article 33.

Article 17

1. On each market day during the period in which the basic and the buying-in prices are applied, Member States shall notify the Commission of the prices recorded on their representative producer markets for products having the same characteristics as those by reference to which the basic price is fixed.

2. Markets in Member States on which a substantial part of the national output of a given product is marketed throughout the marketing year or during one of the periods into which the year is subdivided shall be regarded as representative within the meaning of paragraph 1.

A list of these markets shall be drawn up in accordance with the procedure laid down in Article 33.

Article 18

1. Member States shall grant financial compensation to producers' organizations which intervene pursuant to the provisions of Article 15, provided that:

- (a) the withdrawal price does not exceed:
- the price referred to in the first indent of Article 19 (2) plus 10% of the basic price, in respect of products which have the characteristics laid down in the quality standards for Class II or higher classes,
 - the buying-in price referred to in the second indent of Article 19 (2) plus 10% of the basic price, in respect of products which have the characteristics laid down in the quality standards for Class III.
- (b) the indemnity granted to members in respect of quantities withdrawn from the market does not exceed the amount which results from applying the withdrawal price to those quantities.

2. The value of the financial compensation shall be equal to the indemnities paid by the producers' organizations, less net receipts from products withdrawn from the market.

3. The granting of financial compensation shall, in respect of products which the producers' organizations are unable to dispose of for use as stipulated in the first, second or third indent of Article 21 (1) (a), be subject to the products being used in a way which complies with directives issued by the Member States pursuant to Article 21.

Article 19

1. Where, for a given product on one of the representative markets referred to in Article 17 (2), the prices communicated to the Commission pursuant to Article 17 (1) remain below the buying-in price for three consecutive market days, the Commission shall without delay record that the market in the product in question is in a state of serious crisis.

2. Upon such finding the Member States shall, through the bodies or natural or legal persons appointed by them for the purpose, buy in products of Community origin offered to them, provided that these products satisfy the requirements of quality and sizing laid down by the quality standards and that they were not withdrawn from the market pursuant to Article 15 (1).

These products shall be bought in:

— at the buying-in price multiplied by the conversion factor for Class II and, as appropriate, by other conversion factors, where they satisfy the requirements of quality and size laid down in the quality standards for that class or for higher classes.

— at the buying-in price multiplied by the conversion factor for Class III and, as appropriate, by other conversion factors, where they satisfy the requirements of quality and sizing laid down in the quality standards for that class.

3. Buying-in operations shall be suspended when prices remain higher than the buying-in price for three consecutive market days; once this condition has been fulfilled, the Commission shall record the fact without delay.

4. Member States for whom the obligation laid down in paragraph 2 present serious difficulties may be exempted therefrom. In order to claim exemption, Member States shall inform the Commission of the existence of such difficulties.

Member States claiming such exemption shall take all appropriate steps to set up producers' organizations which will intervene on the market under Article 15.

5. The Commission shall submit to the Council, not later than 1 May 1971, a report on the operation of the intervention system, in particular with regard to the output covered by intervention measures taken by the producers' organizations.

Such measures as prove to be necessary in order to introduce a uniform intervention system shall be adopted by the Council acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission.

Article 20

1. The provisions of Articles 18 and 19 shall apply without prejudice to provisions adopted pursuant to Articles 4 and 5 (2).

2. In the case of products listed in Annex II for which no Class II exists, the words 'Class II' in the first indent of Article 18 (1) (a) and in the first indent of Article 19 (2) shall be construed as a reference to 'Class I'.

Article 21

1. Products withdrawn from the market under Article 18 or brought in under Article 19 shall be disposed of in one of the following ways:

(a) for all products:

- free distribution to charitable organizations and foundations and to persons whose right to public assistance is recognized by their national laws, in particular because they lack the necessary means of subsistence,
- use for non-food purposes,
- use when fresh for animal feed,
- use for animal feed after processing by the feedingstuffs industry,
- processing and free distribution of the processed products to the natural or legal persons referred to in the first indent,
- free distribution to children in schools, Member States ensuring that the quantities thus distributed are supplementary to the quantities normally bought by school canteens;

(b) alternatively for apples, pears and peaches:

processing into alcohol of a strength of more than 80° by direct distillation of the product.

Furthermore, it may be decided in accordance with the procedure laid down in Article 33, in the case of all products referred to in the first subparagraph to dispose of certain classes of such products to the processing industry provided that no distortion of competition is thereby caused within the Community for the industries concerned.

2. Where, in the case of withdrawals under Article 18 or of buying-in under Article 19, it is apparent that products liable to be withdrawn or bought in cannot be disposed of in time in one of the ways listed in the preceding paragraph, Member States may decide to apply the following arrangements: fruit and vegetable farmers who undertake not to dispose of a certain quantity of their products, in particular in order to use such products on their own holdings, shall be compensated for that quantity at a standard rate calculated by applying to the buying-in price fixed by the Council:

- conversion factors determined on the basis of those fixed by applying Article 16 (4) for products satisfying in whole or in part the requirements laid down in the quality standards,
- special conversion factors for products which do not satisfy the requirements of the quality standards.

3. It shall be the responsibility of Member States to organize the free distribution provided for in the first indent of paragraph 1 (a).

The disposal of products to the feedingstuffs industry shall be carried out by a tendering procedure by a body designated by the Member State concerned.

The processing referred to in the fifth indent of paragraph 1 (a) shall be entrusted to industry by a tendering procedure by a body designated by the Member State concerned.

The distillation referred to in paragraph 1 (b) shall be carried out by distilleries either on their own account or on behalf of the body designated by the Member State concerned. In the first case, the said body shall dispose of the products to the distilleries by a tendering procedure. In the second case, the body shall entrust the distilling operations to the distilleries by a tendering procedure.

4. Detailed rules for the application of this Article, in particular those for implementing and supervizing the arrangements laid down in paragraph 2, shall be adopted in accordance with the procedure laid down in Article 33. The conversion factors and the criteria for inviting tenders shall be laid down in accordance with the same procedure.

5. Member States shall take all appropriate measures to prevent and punish any abuse of the arrangements which they may decide to apply pursuant to paragraph 2.

They shall notify the Commission immediately of such measures.

TITLE IV

Trade with third countries

Article 22

1. Subject to Community provisions to the contrary and to exceptions decided upon by the Council acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission,

- the levying of any charge having an effect equivalent to a customs duty,
- the application of any quantitative restriction or measure having equivalent effect,

on imports from third countries of the products referred to in Article 1 shall be prohibited.

However, without prejudice to the second subparagraph of paragraph 2, the second indent of the first subparagraph shall not apply during the periods specified in Annex III in respect of the products listed therein.

2. The Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, shall, before 1 January 1973, decide upon the conditions under which the prohibition contained in the second indent of paragraph 1 shall be extended to the products listed in Annex III during the periods specified therein.

Until the entry into force of the measures decided upon pursuant to the first subparagraph, Member States shall apply no quantitative restrictions or measures having equivalent effect other than those which they applied during the marketing year preceding 1 January 1970; nor shall they make such measures more restrictive.

Member States which fulfil the conditions laid down for applying the measures referred to in the second subparagraph, and which propose to apply them, shall notify the Commission thereof before the beginning of the import year.

Article 23

1. In order to obviate disturbances caused by offers from third countries at abnormal prices, reference prices valid for the whole Community shall be fixed each year.

2. The reference price shall be equal to the arithmetic mean of producer prices in each Member State plus the amount defined in paragraph 4. These producer prices shall correspond to the average of the prices recorded during the three years prior to the date for fixing the reference price for a home-grown product with defined commercial characteristics, on the representative market or markets situated in the production areas where prices are lowest, for the products or varieties which represent a considerable proportion of production marketed for part of the year or throughout the whole year and which satisfy specified requirements as regards quality and market preparation. The reference price shall be fixed for one year. In order, however, to take seasonal price variations into account, each year may be divided into a number of periods within which prices remain relatively stable.

3. When the average of prices recorded on each representative market is being calculated, prices which could be considered excessively high or excessively low in relation to normal price fluctuations on the market shall be disregarded.

4. The amount referred to in the first sentence of paragraph 2, which may be calculated at a standard rate, shall be based on marketing costs for products of Community origin, estimated with a view to enabling the reference price and prices of products imported from third countries to be compared at the same marketing stage.

Article 24

1. The Commission shall, on the basis of information supplied by Member States or data gathered by the Commission itself, regularly follow the trend of average prices for products imported from third countries on the most representative import markets of the Member States, for a product with defined commercial characteristics, for each exporting country.

2. For each product subject to a reference price, an entry price shall be calculated each market day for each exporting country on the basis of prices recorded at, or converted to, the import/wholesale stage for a product of the quality class by reference to which the reference price is fixed or, where the conditions below are fulfilled, for a product marketed in a lower quality class.

Where the only prices available in respect of a given exporting country on a representative import market relate to products marketed in a quality class lower than that by reference to which the reference price is fixed, such prices shall be:

- multiplied by a conversion factor if, by reason of production conditions in the exporting country concerned, such products have not because of their quality been normally or traditionally marketed in the quality class by reference to which the reference price is fixed,
- used as they stand in calculating the entry price if the condition stated in the first indent is not fulfilled.

3. The entry price for a given exporting country shall be equal to the lowest price or to the arithmetic mean of the lowest prices recorded for at least 30% of the quantities from the exporting country concerned which are marketed on all representative markets for which prices are available, such price or prices being multiplied where appropriate by the conversion factor, following deduction of:

- the customs duties in the Common Customs Tariff,
- any countervailing charges,
- other import charges the incidence of which is included in the prices,
- the cost of transporting the products from Community frontier-crossing points to the representative import markets on which prices are recorded.

Article 25

1. If the entry price of a product imported from a third country remains at least 0.50 units of account below the reference price for two consecutive market days, a countervailing charge shall be introduced in respect of the exporting country concerned, save in exceptional circumstances. This charge shall be equal to the difference between the reference price and the arithmetic mean of the last two entry prices available for that exporting country (hereinafter called the 'average entry price'). This average entry price shall then be calculated each market day for each exporting country until, in respect of that exporting country, the charge is withdrawn.

2. Where it would be appropriate under the foregoing provisions to apply a countervailing charge in respect of a number of exporting countries for the same product and the same period, a single charge shall be applied in respect of those countries unless the entry prices for one or more of those countries are abnormally low in relation to entry prices

recorded for the other exporting country or countries concerned. Where the same charge is applied in respect of a number of exporting countries, the amount of the charge shall be equal to the difference between the reference price and the arithmetic mean of the average entry prices calculated for each exporting country concerned, in accordance with the provisions of the preceding paragraph.

3. The countervailing charge, which shall be the same for all Member States, shall be levied in addition to the customs duties in force.

Article 26

1. Once introduced, the charge shall not be altered so long as the conditions on import markets which justified its introduction have not so changed as to:

- make the amount of the charge inadequate,
- necessitate the regrouping of exporting countries.

2. A decision to withdraw the charge for an exporting country shall be taken when the entry price has been at least equal to the reference price for two consecutive market days. This decision shall also be taken if there are no prices in respect of that country for five consecutive market days.

Article 27

1. The following shall be determined in accordance with the procedure laid down in Article 33:

- detailed rules for the application of Articles 23 to 26, in particular the criteria to be adopted for altering the charges in force,
- the conversion factors,
- the reference prices.

2. A decision to introduce, alter or withdraw the charge shall be taken in accordance with the procedure laid down in Article 33.

However, between regular meetings of the Management Committee, these measures shall be adopted by the Commission. In that event they shall be valid until such time as any measures adopted in accordance with the procedure laid down in Article 33 enter into force.

Article 28

Where duties on products covered by this Regulation are bound in GATT, the Community shall ensure that the countervailing charge is levied in such a way

that the commitments undertaken by the Member States and the Community within GATT are respected.

Where the application of such a charge results in action within GATT by other contracting parties, the Council shall, on the basis of a proposal or a recommendation from the Commission made in the light of the situation thus created, decide on the steps to be taken in accordance with the procedure laid down in Article 113 of the Treaty. It shall, in particular, be for the Council to take any decision to unbind customs duties.

Article 29

1. If, by reason of imports or exports, the Community market in one or more of the products referred to in Article 1 experiences or is threatened with serious disturbances which may endanger the objectives set out in Article 39 of the Treaty, appropriate measures may be applied in trade with third countries until such disturbance or threat of disturbance has ceased.

The Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, shall adopt rules for the application of this paragraph and shall define the cases in which and the limits within which Member States may take protective measures.

2. If the situation mentioned in paragraph 1 arises, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the measures shall be communicated to the Member States and shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within twenty-four hours following receipt of the request.

3. The measures decided upon by the Commission may be referred to the Council by any Member State within three working days following the date on which they were communicated. The Council shall meet without delay. It may amend or repeal the measure in question in accordance with the voting procedure laid down in Article 43 (2) of the Treaty.

Article 30

1. To the extent necessary to enable the products referred to in Article 1 to be exported in economically significant quantity, on the basis of prices for those products on the world market, the difference between those prices and prices in the Community may be covered by an export refund.

2. The refund shall be the same for the whole Community. It may be varied according to use or destination.

The refund shall be granted on application.

3. The Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, shall adopt general rules for granting export refunds and criteria for fixing the amount of such refunds.

4. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 33. Refunds shall be fixed at regular intervals in accordance with the same procedure.

5. Where necessary, the Commission may, at the request of a Member State or on its own initiative, alter the refunds in the intervening period.

TITLE V

General provisions

Article 31

Save as otherwise provided in this Regulation, Article 92, 93 and 94 of the Treaty shall apply to the production of and trade in the products referred to in Article 1.

Article 32

1. A Management Committee for Fruit and Vegetables (hereinafter called the 'Committee') shall be established, consisting of representatives of Member States and presided over by a representative of the Commission.

2. Within the Committee the votes of Member States shall be weighted in accordance with Article 148 (2) of the Treaty. The Chairman shall not vote.

Article 33

1. Where reference is made to the procedure laid down in this Article, the Chairman shall refer the matter to the Committee either on his own initiative or at the request of the representative of a Member State.

2. The representative of the Commission shall submit a draft of the measures to be taken. The Committee shall deliver its Opinion on such

measures within a time limit to be set by the Chairman according to the urgency of the questions under consideration. An Opinion shall be adopted by a majority of twelve votes.

3. The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the Opinion of the Committee, they shall forthwith be communicated by the Commission to the Council. In that event the Commission may defer application of the measures which it has adopted for not more than one month from the date of such communication.

The Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty, may take a different decision within one month.

Article 34

The Committee may consider any other question referred to it by its Chairman either on his own initiative or at the request of the representative of a Member State.

Article 35

The Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, may add products to the list given in Annex II, change the percentages given in Articles 16 and 18, and take, for any of the products, measures in derogation from the provisions of Titles II and III.

Article 36

1. The provisions laid down by regulation on the financing of the common agricultural policy shall apply to the market in the products referred to in Article 1.

2. Fifty percent of the amount of aids granted by Member States in accordance with Article 14 (1) shall be reimbursed by the Guidance Section of the European Agricultural Guidance and Guarantee Fund.

The Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, shall adopt detailed rules for the application of this paragraph.

Article 37

This Regulation shall be so applied that appropriate account is taken, at the same time, of the objectives set out in Articles 39 and 110 of the Treaty.

Article 38

1. Member States and the Commission shall communicate to each other the information necessary for applying this Regulation. Detailed rules for the communication and distribution of such information shall be adopted in accordance with the procedure laid down in Article 33.

2. Member States shall notify the Commission of provisions laid down by law, regulation or administrative action pursuant to this Regulation not later than one month after adoption thereof.

Article 39

The following shall be substituted for Article 2 (3) of Regulation No 23¹ on the progressive establishment of a common organization of the market in fruit and vegetables, as last amended by Regulation (EEC) No 2727/71²:

'The quality standards relating to cauliflowers, lettuces, curled-leaved endives, broad-leaved (Batavian) endives, onions, tomatoes, apricots, peaches and plums are set out in Annex II.'

Article 40

On the date of entry into force of the Treaty concerning the Accession of the Kingdom of Denmark, Ireland, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland to the European Economic Community and the European Atomic Energy Community, Articles 4 and 33 shall be amended as follows:

1. The following subparagraph shall be added to Article 4 (2):

'However, a Class III for cauliflowers, tomatoes, apples and pears, peaches, citrus fruit, table grapes, lettuces, curled-leaved endives and broad-leaved (Batavian) endives, onions, whitloof chicory, cherries, strawberries, asparagus and cucumbers may be made applicable until 31 December 1977'.

2. In Article 33 (2) the words 'forty-three' shall be substituted for the word 'twelve'.

Article 41

1. The following regulations are hereby repealed:
— Regulation No 23, except for Article 2 (3) and Annex II,

¹ OJ No 30, 20.4.1962, p. 965/62.

² OJ No L 282, 23.12.1971, p. 8.

— Council Regulation No 158/66/EEC¹ of 25 October 1966 applying common quality standards to fruit and vegetables marketed within the Community, as last amended by Regulation (EEC) No 2423/70,

— Council Regulation No 159/66/EEC² of 25 October 1966, laying down additional provisions for the common organization of the market in fruit and vegetables, as last amended by Regulation (EEC) No 1425/71,³

— Council Regulation (EEC) No 2513/69⁴ of 9 December 1969 on the coordination and unification of the rules relating to imports of fruit

and vegetables applied by each Member State with regard to third countries.

2. References to regulations repealed under paragraph 1 shall be construed as references to this Regulation.

References to articles of those regulations are to be read in accordance with the correlation given in Annex IV.

Article 42

This Regulation shall enter into force on 1 June 1972.

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

Done at Brussels, 18 May 1972.

For the Council

The President

M. MART

¹ OJ No 192, 27.10.1966, p. 3282/66.

² OJ No 192, 27.10.1966, p. 3286/66.

³ OJ No L 151, 7.7.1971, p. 1.

⁴ OJ No L 318, 18.12.1969, p. 6.

ANNEX I

Products for delivery fresh to the consumer which are covered by quality standards

<i>Vegetables</i>	<i>Fruit</i>
Cauliflowers	Citrus fruit
White cabbages	Table grapes
Brussels sprouts	Dessert apples and pears
Spinach	Apricots
Lettuces, curled-leaved and, broad-leaved (Batavian) endives	Peaches
Witloof chicory	Cherries
Peas, unshelled	Plums
Beans (of the species Phaseolus)	Strawberries
Carrots	
Onions	
Garlic	
Asparagus	
Artichokes	
Tomatoes	
Cucumbers	
Ribbed celery	

ANNEX II

Products covered by the price and intervention system

Cauliflowers
Tomatoes
Sweet oranges
Mandarins
Lemons
Table grapes
Apples (other than cider apples)
Pears (other than perry pears)
Peaches (not including nectarines)

ANNEX III

List referred to in Article 22

CCT heading No	Products	Periods
ex 07.01 D	Lettuces, curled-leaved endives and broad-leaved (Batavian) endives	15 November — 15 June
ex 07.01 F II	Beans (of the species <i>Phaseolus</i>) (not including beans for shelling or shelled beans)	1 June — 30 September
ex 08.09	Melons	1 July — 15 October
08.04 A I	Table grapes	1 July — 31 January
07.01 M	Tomatoes	15 May — 31 December
07.01 L	Artichokes	15 March — 30 June
08.07 A	Apricots	5 June — 31 July

ANNEX IV

Table correlating this Regulation to repealed regulations

1. REGULATION No 23	THIS REGULATION
Article 2 (1)	Article 2 (1), first and third subparagraphs
Article 2 (2)	Article 11
Article 4	Article 2 (2), first subparagraph
Article 5 (1)	Article 2 (2), second subparagraph
Article 5 (2)	Article 2 (3), second subparagraph
Article 7	Article 1 (2) (as regards the scope of the Regulation), Article 31 (as regards the application of Articles 92, 93 and 94 of the Treaty)
Article 11 (2), first to fourth subparagraphs	Article 23
Article 11 (2), fifth, sixth, seventh and eighth subparagraphs	Article 24
Article 11 (2), ninth, tenth and eleventh subparagraphs	Article 25
Article 11 (2), twelfth and thirteenth subparagraphs	Article 26
Article 11 (2), fourteenth subparagraph	Article 27 (1)

Article 11 (2), fifteenth subparagraph	Article 27 (2)
Article 11 (2), sixteenth and seventeenth subparagraphs	Article 28
Article 12	Article 32
Article 13	Article 33
Article 14	Article 34
Article 16a	Article 37
Annexes IA, IB, IC, ID and IE	Annex I

2. REGULATION No 158/66/EEC

THIS REGULATION

Article 1 (1)	Article 3 (1)
Article 1 (2)	Article 3 (2)
Article 1 (3)	Article 3 (3)
Article 1 (4)	Article 3 (4)
Article 1 (5)	Article 3 (5)
Article 2 (1), first subparagraph	Article 2 (2), second subparagraph
Article 2 (1), second subparagraph	Article 2 (1), second subparagraph
Article 2 (1), third subparagraph	Article 2 (3), second subparagraph
Article 2 (2)	Article 4 (1)
Article 2 (3)	Article 4 (2)
Article 3	Article 6
Article 4	Article 7
Article 5	Article 8
Article 6 (1)	Article 11
Article 6 (2)	Article 9
Article 7	Article 5
Article 8, second and third paragraphs	Article 10 (2)
Article 10	Article 10 (1)

3. REGULATION No 159/66/EEC

THIS REGULATION

Article 1	Article 13
Article 2	Article 14
Article 3	Article 15
Article 4	Article 16
Article 5	Article 17
Article 6	Article 18
Article 7	Article 19
Article 7a	Article 20

Article 7b	Article 21
Article 10	Article 12
Article 11a	Article 30
Article 12 (1)	Article 36 (1)
Article 12 (3)	Article 36 (2)
Article 14	Article 35
Article 16, second sentence	Article 38 (2)
Annex I	Annex II
4. REGULATION (EEC) No 2513/69	THIS REGULATION
Article 1	Article 22
Article 2	Article 29
Annex	Annex III
