

**COMMISSION REGULATION (EC) No 3223/94****of 21 December 1994****on detailed rules for the application of the import arrangements for fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 2753/94 ⁽²⁾, and in particular Article 23 (2) thereof,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy ⁽³⁾, as amended by Regulation (EC) No 3528/93 ⁽⁴⁾, and in particular Article 3 (3) thereof,

Whereas the results of the multilateral trade negotiations in the Uruguay Round make it necessary to introduce a new system for the importation of the fresh fruit and vegetables listed in the Annex; whereas that system is based on a comparison of the value of the products imported and the entry prices referred to in the Customs Tariff of the European Communities;

Whereas it is necessary to define the term 'lot';

Whereas most of the perishable fruit and vegetables listed in the Annex to this Regulation are supplied on consignment and this creates special difficulties for determining their value;

Whereas the entry price on the basis of which imported products are classified in the Common Customs Tariff must be equal to either the fob price of the products in question, plus the costs of insurance and freight to the frontier of the customs territory of the Community, the customs value referred to in Article 30 (2) (c) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽⁵⁾ or the standard import value; whereas a system of standard import values makes it possible to implement the results of the Uruguay Round;

Whereas those standard import values must be established on the basis of the weighted average of the average prices for the products, listed in the Annex imported from third countries onto the representative import markets of the Member States, less the amounts given in Article 173 (3) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽⁶⁾, as last amended by Regulation (EC) No 2193/94 ⁽⁷⁾; whereas those values must be fixed each working day by the Commission, for each origin and for the periods given in the Annex;

Whereas, to that end, the Member States will have to provide, regularly and in sufficient time, the Commission departments responsible with all the information required by this Regulation, in order to enable the standard import values to be calculated;

Whereas special provision must be made for cases in which no prices are available for products of a given origin;

⁽¹⁾ OJ No L 118, 20.5.1972, p. 1.

⁽²⁾ OJ No L 292, 12.11.1994, p. 3.

⁽³⁾ OJ No L 387, 31.12.1992, p. 1.

⁽⁴⁾ OJ No L 320, 22.12.1993, p. 32.

⁽⁵⁾ OJ No L 302, 19.10.1992, p. 1.

⁽⁶⁾ OJ No L 253, 11.10.1993, p. 1.

⁽⁷⁾ OJ No L 235, 9.9.1994, p. 6.

▼B

Whereas the importer may choose a tariff classification for imported products which is different from that determined on the basis of the standard import value; whereas, however, in that case and under certain conditions, including fluctuations in market prices, there should be provision for the lodging of a security equal to the amount of duty which he would have paid if the tariff classification of the lot had been determined on the basis of the standard import value; whereas the security will be reimbursed if, within a certain time-limit, proof is provided that the conditions for the disposal of the lot have been met; whereas, as part of a posteriori checks, duty due will be recovered pursuant to Article 220 of Regulation (EEC) No 2913/92; whereas it is only fair that, within the framework of such checks, interest will be added to the duty due;

Whereas Commission Regulation (EEC) No 2118/74 of 9 August 1974 laying down detailed rules for the application of the system of reference prices for fruit and vegetables ⁽¹⁾, as last amended by Regulation (EEC) No 249/93 ⁽²⁾, will remain in force for each of the products listed in the Annex until the beginning of their respective marketing years;

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

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of this Regulation 'lot' means the goods presented under a declaration of release for free circulation. Each declaration may cover only goods of one and the same origin falling within one single combined nomenclature code.

▼M1

For the purposes of this Regulation 'importer' means the declarant within the meaning of Article 4 (18) of Regulation (EEC) No 2913/92.

▼B*Article 2*

1. For each product and for the periods set out in ►**M2** Part A of the Annex ◀, for each market day and each origin, the Member States shall communicate to the Commission, by 12 noon (Brussels time) the following working day at the latest:

- (a) the average representative prices of the products imported from third countries sold on the representative import markets referred to in Article 3 (1), and significant prices recorded on other markets for large quantities of imported products, or, where no prices for the representative markets are available, significant prices for imported products recorded on other markets; and
- (b) the total quantities relating to the prices referred to at (a).

▼M6

Where the total quantities referred to in (b) are less than one tonne, the corresponding prices shall not be communicated to the Commission.

▼B

2. The prices referred to in paragraph 1 (a) shall be recorded:

- for each of the products listed in ►**M2** Part A of the Annex ◀,
- for all of the available varieties and sizes,

⁽¹⁾ OJ No L 220, 10.8.1974, p. 20.

⁽²⁾ OJ No L 28, 5.2.1993, p. 45.

▼B

— at the importer/wholesaler stage or the wholesaler/retailer stage where no prices at the importer/wholesaler stage are available.

▼M13

They shall be reduced by the following amounts:

- (a) a marketing margin of 15 % for the marketing centres of London, Milan and Rungis and of 8 % for other marketing centres, and
- (b) costs of transport and insurance within the customs territory.

For the costs of freight and insurance to be deducted pursuant to the third subparagraph, the Member States may fix standard amounts for deduction. Such standard amounts and the methods for calculating them shall be made known to the Commission immediately.

▼B

3. The prices recorded in accordance with paragraph 2 shall, where they are established at the wholesaler/retailer stage, first be reduced by an amount equal to 9 % to take account of the wholesaler's trade margin, and by an amount equal to ►**M3** ECU 0,7245 ◀ per 100 kilograms to take account of the costs of handling and market taxes and charges.

4. The following shall be deemed to be representative:

- the prices of Class I products, provided that the quantities in that class account for at least 50 % of the total quantities marketed,
- the prices of Class I products plus, where products in that class account for less than 50 % of the total quantities, the prices as established of Class II products for quantities enabling 50 % of the total quantities marketed to be covered,
- the prices as established of Class II products, where Class I products are not available, unless it is decided to apply an adjustment coefficient to them if, as a result of the production conditions for products of the origin in question, those products are not normally and traditionally marketed in Class I as a result of their quality characteristics.

The adjustment coefficient referred to in the third indent shall be applied to prices after deduction of the amounts referred to in paragraph 2.

*Article 3***▼M13**

1. The following shall be deemed to be representative markets:

- Belgium and Luxemburg: Brussels,
- Bulgaria: Sofia,
- Czech Republic: Prague,
- Denmark: Copenhagen,
- Germany: Hamburg, Munich, Frankfurt, Cologne, Berlin,
- Estonia: Tallinn,
- Ireland: Dublin,
- Greece: Athens, Thessaloniki,
- Spain: Madrid, Barcelona, Seville, Bilbao, Zaragoza, Valencia,
- France: Paris-Rungis, Marseille, Rouen, Dieppe, Perpignan, Nantes, Bordeaux, Lyon, Toulouse,
- Italy: Milan,
- Cyprus: Nicosia,
- Latvia: Riga,

▼ M13

- Lithuania: Vilnius,
- Hungary: Budapest,
- Malta: Attard,
- Netherlands: Rotterdam,
- Austria: Vienna-Inzersdorf,
- Poland: Ożarów Mazowiecki-Bronisze, Poznan,
- Portugal: Lisbon, Porto,
- Romania: Bucharest, Constanța,
- Slovenia: Ljubljana,
- Slovakia: Bratislava,
- Finland: Helsinki,
- Sweden: Helsingborg, Stockholm,
- United Kingdom: London.

▼ B

2. Member States shall inform the Commission of the customary market days for the aforementioned markets.

Article 4

1. For each product and for the periods set out in ► M2 Part A of the Annex, ◀ the Commission shall fix, each working day and for each origin, a standard import value equal to the weighted average of the representative prices referred to in Article 2, less a standard amount of ECU 5/100 kg and the *ad valorem* customs duties.

▼ M1

This standard amount is expressed without taking account of the correction factor of 1,207509 which was applied to the agricultural conversion rate until 31 January 1995

▼ M13

2. Where a standard value is established for the products and for the periods of application given in Part A of the Annex, in accordance with this Regulation, the unit price within the meaning of Article 152(1)(a) of Regulation (EEC) No 2454/93 shall not apply. It shall be replaced by the standard import value referred to in paragraph 1.

▼ B

3. Where no standard import value is in force for a product for a given origin, the average of standard import values in force for that product shall apply.

▼ M7

4. During the periods of application set out in Part A of the Annex, the standard import values shall remain applicable until they are changed. They shall cease to apply, however, where no average representative price has been communicated to the Commission for seven consecutive market days.

Where, pursuant to the first subparagraph, no standard import value applies to a given product, the standard import value applicable to that product shall be equal to the last average standard import value.

▼ M13

5. Notwithstanding paragraph 1, with effect from the first day of the periods of application set out in Part A of the Annex, where it has not been possible to calculate a standard import value, no standard import value shall be applicable.

▼B

6. The representative prices in ecus shall be converted using the representative market rate calculated for the day in question.
7. The standard import values expressed in ecus shall be published by the Commission in the *Official Journal of the European Communities*.

Article 5

1. The entry price on the basis of which the products listed in ►**M2** Part A of the Annex ◀ are classified in the Customs Tariff of the European Communities must be equal, as the importer chooses:

- (a) either to the fob price of the products in their country of origin plus the costs of insurance and freight up to the borders of the Community customs territory, where that price and those costs are known at the time the declaration of release of the products for free circulation is made.

▼M1

Where the aforementioned prices are greater by more than 8 % than the standard value applicable to the product in question at the time the declaration of release (SIC! release) for free circulation is made, the importer must lodge the security referred to in Article 248 (1) of Regulation (EEC) No 2454/93. For this purpose, the amount of import duty for which the products may finally be liable shall be the amount of duty which he would have paid if the product in question had been classified on the basis of the standard value concerned;

▼B

- (b) or to the customs value calculated in accordance with Article 30 (2) (c) of Regulation (EEC) No 2913/92 applied only to the imported products in question. In that case, the duty shall be deducted as provided for in Article 4 (1).

In that case the importer must lodge the security referred to in Article 248 (1) of Regulation (EEC) No 2454/93, equal to the amount of duty which he would have paid if the classification of the products had been made on the basis of the standard import value applicable to the lot in question;

- (c) or to the standard import value calculated in accordance with Article 4 of this Regulation.

▼M2

1a. The entry price on the basis of which the products listed in part B of the Annex are classified in the customs tariff of the European Communities must be equal, as the importer chooses:

- (a) either to the fob price of the products in their country of origin plus the costs in insurance and freight up to the borders of the Community customs territory, where that price and those costs are known at the time the customs declaration is made.

If the customs authorities deem that a security is required pursuant to Article 248 of Regulation (EEC) No 2454/93, the importer must lodge a security equal to the maximum amount of duty applicable to the product in question;

- (b) or to the customs value calculated in accordance with Article 30 (2) (c) of Regulation (EEC) No 2913/92 applied only to the imported products in question. In that case, the duty shall be deducted as provided for in Article 4 (1).

In that case the importer must lodge the security referred to in Article 248 of Regulation (EEC) No 2454/93, equal to the maximum amount of duty applicable to the product in question.

▼M8

1b. Where the entry price is calculated on the basis of the price fob of the products in the country of origin, the customs value shall be calculated on the basis of the relevant sale at that price.

When the entry price is calculated in accordance with one of the procedures provided for in paragraph 1(b) or (c) or paragraph 1a(b), the customs value shall be calculated on the same basis as the entry price.

▼M2

2. The importer shall have one month from the sale of the products in question, subject to a limit of four months from the date of acceptances of the declaration of release for free circulation, to prove that the lot was disposed of under conditions confirming the correctness of the prices referred to in the second subparagraph of paragraph 1 (a) or paragraph 1a (a), or to determine the customs value referred to in paragraph 1 (b) and paragraph 1a (a). Failure to meet one or other of these deadlines shall entail the loss of the security lodged, without prejudice to the application of paragraph 3.

▼B

The security lodged shall be released to the extent that proof of the conditions of disposal is provided to the satisfaction of the customs authorities.

Otherwise the security shall be forfeit by way of payment of the import duties.

3. The time limit of four months referred to in paragraph 2 may be extended by the competent authorities by a maximum of three months at the request of the importer, which must be duly substantiated.

4. If on verification the competent authorities establish that the requirements of this Article have not been met, they shall recover the duty due in accordance with Article 220 of Regulation (EEC) No 2913/92. The amount of the duty to be recovered or remaining to be recovered shall include interest from the date the goods were released for free circulation up to the date of recovery. The interest rate applied shall be that in force for recovery operations under national law.

Article 6

Regulation (EEC) No 2118/74 shall continue to apply to each of the products listed in ►M2 Part A of the Annex ◀ up to the beginning of their respective 1995/96 marketing years.

Article 7

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

It shall apply, for each of the products listed in the Annex, from the beginning of the 1995/96 marketing year.

▼ **M9**

ANNEX

Without prejudice to the rules for the interpretation of the Combined Nomenclature, the description of the products is deemed to be indicative only. The scope of the arrangements provided for in this Regulation is, for the purposes of this Annex, determined by the scope of the CN codes as they exist at the time of the adoption of the latest amendment of this Regulation. Where 'ex' appears before the CN code, the scope of the additional duties is determined both by the scope of the CN code and that of the description of the products, and the corresponding period of application.

PART A

CN codes	Description	Period of application
ex 0702 00 00	Tomatoes	From 1 January to 31 December
ex 0707 00 05	Cucumbers ⁽¹⁾	From 1 January to 31 December
► M14 ex 0709 90 80 ◀	Artichokes	From 1 November to 30 June
0709 90 70	Courgettes	From 1 January to 31 December
► M12 ex 0805 10 20 ◀	Sweet oranges, fresh	From 1 December to 31 May
ex 0805 20 10	Clementines	From 1 November to end of February
ex 0805 20 30 ex 0805 20 50 ex 0805 20 70 ex 0805 20 90	Mandarins (including tangerines and satsumas); wilking and similar citrus hybrids	From 1 November to end of February
ex 0805 50 10	Lemons (<i>Citrus limon</i> , <i>Citrus limonum</i>)	From 1 June to 31 May
ex 0806 10 10	Table grapes	From 21 July to 20 November
► M12 ex 0808 10 80 ◀	Apples	From 1 July to 30 June
ex 0808 20 50	Pears	From 1 July to 30 April
ex 0809 10 00	Apricots	From 1 June to 31 July
ex 0809 20 95	Cherries, other than sour cherries	From 21 May to 10 August
ex 0809 30 10 ex 0809 30 90	Peaches, including nectarines	From 11 June to 30 September
ex 0809 40 05	Plums	From 11 June to 30 September

(¹) Other than cucumbers referred to in Part B of this Annex.

PART B

CN codes	Description	Period of application
ex 0707 00 05	Cucumbers intended for processing	From 1 May to 31 October
ex 0809 20 05	Sour cherries (<i>Prunus cerasus</i>)	From 21 May to 10 August