

Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors

TITLE IV

TRADE WITH THIRD COUNTRIES

CHAPTER I

Import duties and entry price system

Section 1

Entry price system

Article 133

Scope and definitions

1 This Section lays down the rules for the application of Article 140a of Regulation (EC) No 1234/2007.

2 For the purposes of this Section:

- a 'lot' means the goods presented under a declaration of release for free circulation, covering only goods of the same origin falling within one single CN code; and
- b 'importer' means the declarant within the meaning of Article 4(18) of Council Regulation (EEC) No 2913/92⁽¹⁾.

Article 134

Notification of prices and quantities of products imported

1 For each product and for the periods set out in Part A of Annex XVI, for each market day and each origin, the Member States shall notify the Commission, by 12 noon (Brussels time) the following working day, of:

- a the average representative prices of the products imported from third countries sold on the representative import markets referred to in Article 135, 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 in point (a).

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

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

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- a for each of the products listed in Part A of Annex XVI;
- b for all of the available varieties and sizes; and
- c at the importer/wholesaler stage or the wholesaler/retailer stage where no prices at the importer/wholesaler stage are available.

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 of the Union.

For the costs of freight and insurance to be deducted pursuant to the second subparagraph, the Member States may fix standard amounts for deduction. Such standard amounts and the methods for calculating them shall be notified to the Commission without delay.

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 then by an amount equal to EUR 0,7245 per 100 kilograms to take account of the costs of handling and market taxes and charges.

4 For products listed in Part A of Annex XVI covered by a specific marketing standard, the following shall be deemed to be representative:

- a the prices of Class I products, provided that the quantities in that class account for at least 50 % of the total quantities marketed;
- b 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;
- c the prices as established for 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 point (c) of the first subparagraph shall be applied to prices after deduction of the amounts referred to in paragraph 2.

For products listed in Part A of Annex XVI that are not covered by a specific marketing standard, prices of products complying with the general marketing standard shall be deemed to be representative.

Article 135

Representative markets

Member States shall inform the Commission of the customary market days for the markets listed in Annex XVII which shall be deemed to be representative markets.

Article 136

Standard import values

1 For each product and for the periods set out in Part A of Annex XVI, 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 134, less a standard amount of EUR 5/100 kg and the ad valorem customs duties.

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

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

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

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

6 The representative prices in euro shall be converted using the representative market rate calculated for the day in question.

7 The standard import values expressed in euro shall be made publicly available by the Commission by the methods it considers appropriate.

Article 137

Entry price basis

1 The entry price on the basis of which the products listed in Part A of Annex XVI are classified in the Common Customs Tariff shall be equal to, as the importer chooses:

- a the fob price of the products in their country of origin plus the costs of insurance and freight up to the borders of the customs territory of the Union, where that price and those costs are known at the time the declaration of release of the products for free circulation is made. Where those prices are higher by more than 8 % than the standard value applicable to the product in question at the time the declaration of 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; or
- b 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 136(1) of this Regulation. In that case the importer shall 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; or
- c the standard import value calculated in accordance with Article 136 of this Regulation.

2 The entry price on the basis of which the products listed in Part B of Annex XVI are classified in the Common Customs Tariff shall be equal to, as the importer chooses:

- a the fob price of the products in their country of origin plus the costs of insurance and freight up to the borders of the customs territory of the Union, 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; or
- b 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 136(1) of this Regulation. 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.

3 Where the entry price is calculated on the basis of the fob price 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 2(b), the customs value shall be calculated on the same basis as the entry price.

4 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 acceptance of the declaration of release for free circulation, to prove that the lot was disposed of under the conditions confirming the correctness of the prices referred to in paragraph 1(a) or paragraph 2(a), or to determine the customs value referred to in paragraph 1(b) and paragraph 2(b). Failure to meet one of these deadlines shall entail the loss of the security lodged, without prejudice to the application of paragraph 5.

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.

5 The time limit of four months referred to in paragraph 4 may be extended by the competent authorities of the Member State by a maximum of three months at the request of the importer, which must be duly justified.

6 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.

Section 2

Additional import duties

Article 138

Scope and definitions

1 An additional import duty as referred to in Article 141(1) of Regulation (EC) No 1234/2007, hereinafter ‘additional duty’, may be applied to the products and during the periods listed in Annex XVIII on the conditions set out in this Section.

2 Trigger levels for the additional duties are listed in Annex XVIII.

Article 139

Notification of volumes

1 For each of the products listed in Annex XVIII and during the periods indicated, Member States shall notify the Commission of details of the volumes put into free circulation using the method for the surveillance of preferential imports set out in Article 308d of Regulation (EEC) No 2454/93.

Such notification shall take place no later than 12 noon Brussels time each Wednesday for the volumes put into free circulation during the preceding week.

2 Declarations for release for free circulation of products covered by this Section which the customs authorities may accept at the importer’s request without their containing certain particulars referred to in Annex 37 to Regulation (EEC) No 2454/93 shall contain, in addition to the particulars referred to in Article 254 of that Regulation, an indication of the net mass (kg) of the products concerned.

Where the simplified declaration procedure referred to in Article 260 of Regulation (EEC) No 2454/93 is used to put into free circulation products covered by this Section, the simplified declarations shall contain, in addition to other requirements, an indication of the net mass (kg) of the products concerned.

Where the local clearance procedure referred to in Article 263 of Regulation (EEC) No 2454/93 is used to put into free circulation products covered by this Section, the notification to the customs authorities referred to in Article 266(1) of that Regulation shall contain all necessary data for the identification of the goods, as well as an indication of the net mass (kg) of the products concerned.

Article 266(2)(b) of Regulation (EEC) No 2454/93 shall not apply to imports of the products covered by this Section.

Article 140

Levying of additional duty

1 If it is found that, for one of the products and one of the periods listed in Annex XVIII, the quantity put into free circulation exceeds the corresponding triggering volume the

Commission shall levy an additional duty unless the imports are unlikely to disturb the Union market, or the effects would be disproportionate to the intended objective.

2 The additional duty shall be levied on quantities put into free circulation after the date of application of that duty, provided that:

- a their tariff classification determined in accordance with Article 137 entails application of the highest specific duties applicable to imports of the origin in question;
- b importation is effected during the period of application of the additional duty.

Article 141

Amount of additional duty

The additional duty imposed under Article 140 shall be one third of the customs duty applicable to the given product in accordance with the Common Customs Tariff.

However, for imports benefiting from a tariff preference as to ad valorem duty the additional duty shall be one third of the specific duty on the product in so far as Article 140(2) applies.

Article 142

Exemptions from additional duty

1 The following goods are exempt from the additional duty:

- a goods imported against the tariff quotas listed in Annex 7 to Council Regulation (EEC) No 2658/87⁽³⁾ (hereinafter referred to as ‘Combined Nomenclature’);
- b goods en route to the Union as defined in paragraph 2.

2 Goods shall be considered to be en route to the Union if they:

- a left the country of origin before the decision to impose the additional duty; and
- b are being transported under cover of a transport document valid from the place of loading in the country of origin to the place of unloading in the Union, drawn up before imposition of the additional duty.

3 Interested parties shall provide evidence to the satisfaction of the customs authorities that the requirements of paragraph 2 are met.

However, the customs authorities may deem that goods left their country of origin before the date of imposition of the additional duty if one of the following documents is provided:

- a for sea transport, the bill of lading showing that loading took place before that date;
- b for rail transport, the waybill accepted by the rail authorities of the country of origin before that date;
- c for road transport, the road carriage contract (CMR) or another transit document made out in the country of origin before that date, if the conditions laid down in bilateral or multilateral arrangements concluded in the context of Union transit or common transit are observed;
- d for air transport, the air way bill showing that the airline accepted the goods before that date.

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- (1) OJ L 302, 19.10.1992, p. 1.
- (2) OJ L 253, 11.10.1993, p. 1.
- (3) OJ L 256, 7.9.1987, p. 1.