COUNCIL REGULATION (EEC) No 3028/76

of 13 December 1976

opening, allocating and providing for the administration of a Community tariff quota for preserved pineapples, other than in slices, half slices or spirals, originating in developing countries

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,

Having regard to the opinion of the European Parliament (1),

Whereas in the Joint Declaration of Intent on the development of trade relations with Sri Lanka, India, Malaysia, Pakistan and Singapore (2), the Community declared its readiness to seek solutions to the problems which may arise in the field of trade with the countries referred to;

Whereas in respect of several Asian countries of the Commonwealth and particularly as regards Malaysia, preserved pineapples are an important export product and the flow of trade in such products is likely to be changed as a result of the enlargement of the Community; whereas the system of generalized tariff preferences may constitute a solution to problems of this nature; whereas certain forms of preserved pineapples should therefore be included in the system of generalized preferences;

Whereas, within the context of UNCTAD, the European Economic Community offered to grant tariff preferences on certain processed agricultural products of Chapters 1 to 24 of the Common Customs Tariff originating in developing countries; whereas the preferential treatment proposed in that offer consists, in respect of certain goods which are subject to the trade arrangements laid down in Regulation (EEC) No 1059/69, of a reduction in the fixed component of the charge applicable to such goods by virtue of that Regulation, and, in respect of products which are subject to the single customs duty, of a reduction in such duty; whereas preferential imports of the products concerned could be effected without quantitative restrictions; whereas it appears appropriate, however, in view of the sensitiveness of the preserved fruit and vegetable sector generally and of the need to safeguard the interests of the ACP States in this field, to lay down for preserved pineapples, other than in slices, half slices or spirals, special conditions consisting in a reduction of the customs duty applicable to that product within the limits of a Community tariff quota;

Whereas the offer made by the Community includes a clause stating that the Community drew up the offer on the assumption that all the main industrialized countries which are members of the OECD would participate in granting preferences and would make similar efforts in this direction; whereas, moreover, it is evident from the conclusions worked out in UNCTAD that this offer, while being of a temporary nature, does not constitute a binding commitment and, in particular, may be withdrawn wholly or in part at a later date; whereas this possibility may be adopted *inter alia* with a view to remedying any unfavourable situations which might arise in the ACP States following the implementation of the generalized preference scheme;

Whereas tariff preferences have been applied as from the second half of 1971; whereas it is expedient to continue to apply them throughout 1977;

Whereas it is expedient, therefore, that the Community should open for 1977 in respect of the said products, originating in the countries and territories listed in the Annex, a Community tariff quota limited to 45 000 metric tons and at a customs duty of 12%, increased by the levy on sugar where the sugar content exceeds 17 % by weight in the case of products falling within subheading ex 20.06 B II a) 5 aa), and 19% by weight in the case of products falling within subheading ex 20.06 B II b) 5 aa);

(1) OJ No C 259, 4. 11. 1976, p. 27.
(2) OJ No L 73, 27. 3. 1972, p. 195.

Whereas, in accordance with Protocol 23 to the Act of Accession (1), the generalized tariff preference scheme became fully applicable in the new Member States on 1 January 1974;

Whereas, for the said products, this scheme would, however, involve the application in the new Member States in 1977 of customs duties higher than or very close to those which will be applied by the new Member States to non-member countries in general on the basis of the provisions of the abovementioned Act; whereas this situation would comply neither with the spirit nor with the very nature of the generalized preference scheme; whereas, in order to maintain an equivalent preferential margin for these products also, reduced customs duties should be applied to them, in accordance with detailed rules based on the principle of maintaining, in the new Member States, a preference proportional to that which exists between the duties of the Common Customs Tariff and the duties given in Article 1 of this Regulation; whereas, with a view to granting the beneficiary developing countries the best possible treatment, in accordance with the objectives of the preference scheme, the duties given in the abovementioned Article 1 should also be applied wherever the duties calculated according to the abovementioned detailed rules prove to be higher than them;

Whereas the benefit of this tariff quota should be reserved for products originating in the countries and territories under consideration, the concept of 'originating products' being determined in accordance with the procedure laid down in Article 14 of Council Regulation (EEC) No 802/68 of 27 June 1968 on the common definition of the concept of the origin of goods (2);

Whereas it is necessary to ensure equal and continuous access for all Community importers to the abovementioned quota and the uninterrupted application of the rate laid down for this quota to all imports of the products concerned into all Member States until this quota is used up; whereas having regard to the principles set out above, the Community nature of the quota can be respected by allocating the Community tariff quota among Member States; whereas, moreover, to this end and in the context of the utilization system, the actual charges against the quota may relate only to products which have been entered for home use and which are accompanied by a certificate of origin;

Whereas, to take account of future import trends for the products in question in the various Member States, the quotas should be divided into two tranches, the first being allocated among Member States and the second held as a reserve to cover subsequently the requirements of Member States which have exhausted their initial shares; whereas, moreover, the reserve constituted in the manner described above tends to avoid making the system of utilization of the quota excessively rigid, to the detriment of the developing countries concerned and will contribute to achieving the aim already mentioned of improving the generalized preferences system; whereas, to give importers in each Member State some degree of certainty, the first tranche of the Community quota might in this case be fixed at 80% of the full quota.

Whereas the statistical data available cover only a relatively brief period, and they should be weighted on the basis of the estimates which may be made for the quota year; whereas the percentage of the shares in the first tranche may be drawn up as follows:

Germany	20·5%
Benelux	4·9%
France	0·5%
Italy	2·0%
Denmark	1·9%
Ireland	1·0%
United Kingdom	69·2%

Whereas Member States may exhaust their initial shares for the products in question at different rates; whereas to avoid disruption of supplies on this account it should be provided that any Member State which has almost used up its initial share should draw an additional share from the reserve; whereas this must be done by each Member State as and when each of its additional shares is almost entirely used up, and repeated as many times as the reserve allows; whereas the initial and additional shares must be available for use until the end of the quota period; whereas, however, it seems advisable to permit the Member States to limit the exercise of their total obligation to draw on the reserve amount to a level not exceeding 40% of their initial share; whereas this method of administration calls for close cooperation between Member States and the Commission which must, in particular, be able to observe the extent to which the quota amount is used and inform Member States thereof;

Whereas if, at a specified date in the quota period, a considerable balance remains in one or other Member State is essential that that Member State pays a large amount of it back into the reserve, in order to avoid a part of the Community quota

(1) OJ No L 73, 27. 3. 1972, p. 14.
(2) OJ No L 148, 28. 6. 1968, p. 1.

remaining unused in one Member State when it could be used in others;

Whereas since the Kingdom of Belgium, the Kingdom of the Netherlands and the Grand Duchy of Luxembourg are united in and represented by the Benelux Economic Union, all transactions concerning the administration of shares allocated to that economic union may be carried out by any one of its members,

HAS ADOPTED THIS REGULATION:

Article 1

1. From 1 January to 31 December 1977, a Community tariff quota of 45 000 metric tons shall be opened by the Community for the imports of preserved pineapples, other than in slices, half slices or spirals, falling within the following subheadings of the Common Customs Tariff: ex 20.06 B II a) 5, ex 20.06 B II b) 5, ex 20.06 B II c) 1 dd) and ex 20.06 B II c) 2 bb). Within this tariff quota the customs duty shall be suspended at 12%, increased by the levy on sugar where the sugar content exceeds 17% by weight in the case of products falling within subheading ex 20.06 B II a) 5 aa), and 19% by weight in the case of products falling within subheading ex 20.06 B II b) 5 aa).

On importation into Denmark, Ireland and the United Kingdom, there shall be applied to the abovementioned products the customs duty obtained by multiplying, by a coefficient equal to the margin of preferences existing between the duty of 12% given in paragraph 1 and the Common Customs Tariff duties applicable, the duties obtained by reducing by 80% the difference between the lowest duty applied on 1 January 1972 to the developing countries set out in the Annex and the Common Customs Tariff.

However, the duty of 12% given in the first subparagraph shall be applied when the customs duty resulting from the abovementioned calculation is higher than it.

2. The benefit of this tariff quota shall be reserved for the products originating in the countries and territories listed in the Annex. However, the imports already benefiting from exemption of customs duties under another preferential tariff scheme granted by the Community shall not be charged to this quota.

For the purposes of implementing this Regulation the concept of originating products shall be determined in accordance with the procedure laid down in Article 14 of Regulation (EEC) No 802/68.

Article 2

1. A first tranche of 36 000 metric tons shall be allocated among the Member States. The shares which, subject to Article 5, shall be valid until 31 December 1977, shall for each Member State be as follows:

Germany	7 380 metric tons
Benelux	1 764 metric tons
France	180 metric tons
Italy	720 metric tons
Denmark	684 metric tons
Ireland	360 metric tons
United Kingdom	24 912 metric tons

2. The second tranche of 9 000 metric tons shall constitute the reserve.

Article 3

1. If a Member State has used 90% or more of its initial share as fixed in Article 2 (1), or of that share minus any portion returned to the reserve pursuant to Article 5, it shall forthwith, by notifying the Commission, draw a second share, to the extent that the reserve so permits, equal to 10% of its initial share rounded up should the occasion arise to the nearest unit above.

2. If a Member State, after exhausting its initial shares, has used 90% or more of the second share drawn by it, that Member State shall forthwith, by notifying the Commission, draw a third share, equal to 5% of its initial share, rounded up should the occasion arise, to the nearest unit above.

3. If a Member State, after exhausting its second share, has used 90% or more of the third share drawn by it, that Member State shall, under the same conditions, draw a fourth share equal to the third. This process shall continue until the reserve has been exhausted.

4. By way of derogation from paragraphs 1, 2 and 3, a Member State may draw shares lower than those specified in those paragraphs if there are grounds for believing that those specified may not be used in

full. Any Member State applying this paragraph shall inform the Commission of its grounds for so doing.

5. Any Member State may limit the sum total of its additional shares to 40% of its initial share, informing the Commission that it is so doing.

Article 4

Additional shares drawn pursuant to Article 3 shall be valid until 31 December 1977.

Article 5

A Member State which on 15 September 1977 has not exhausted one of its initial shares shall, not later than 1 October 1977, return to the reserve any unused portion in excess of 20% of the initial amount. It may return a greater portion if there are grounds for believing that such portion may not be used in full.

Member States shall, not later than 1 October 1977, notify the Commission of the total quantities of the product in question imported up to and including 15 September 1977 and charged against the Community quotas and of any portion of their initial shares returned to the reserve.

Article 6

The Commission shall keep an account of the shares opened by the Member States pursuant to Articles 2 and 3 and shall, as soon as the information reaches it, inform each State of the extent to which the reserve has been used up.

It shall, not later than 15 October 1977, inform the Member State of the amount still in reserve following any return of shares pursuant to Article 5.

It shall ensure that when an amount exhausting the reserve is drawn the amount so drawn does not exceed the balance available, and to this end shall notify the amount of that balance to the Member State making the last drawing.

The Member States shall take all appropriate measures to ensure that additional shares drawn pursuant to Article 3 are opened in such a way that importations may be charged without interruption against their cumulative shares of the Community quota.

Article 7

1. The Member States shall ensure free access to the shares which have been allocated to them for importers of the said goods who are established in their territory.

2. The extent to which a Member State has used up its share shall be determined on the basis of imports of the said goods which have been entered for home use, on the basis of the customs value of the said goods, and which are accompanied by a certificate of origin in accordance with the rules referred to in Article 1 (2).

3. Goods shall qualify for a tariff quota only if the certificate of origin referred to in paragraph 2 is submitted before the date on which the levying of duties is re-introduced.

Article 8

Member States shall inform the Commission at monthly intervals of imports of the products in question charged against their shares. This information shall show both the value expressed in units of account and the quantity expressed in metric tons.

Article 9

If the Community finds that products benefiting from the treatment provided for in Article 1 are imported into the Community in such quantities or at such prices that Community producers of products similar to or in direct competition with them suffer or are likely to suffer from serious disadvantage, or that an unfavourable situation is created in the ACP States, the levying of customs duties may be re-introduced in whole or in part on the products in question in respect of the countries or territories which are the cause of the disadvantage. Such measures may also be taken in the case of actual or potential serious disadvantage in a single region of the Community.

Article 10

1. The Commission may decide, by means of a Regulation, to re-introduce the levying of customs duties for a specified period, in order to ensure that Article 9 is applied.

2. In the event of such action being requested by a Member State, the Commission shall decide within a period of not more than 10 working days after the request has been received and shall inform the Member States of this decision.

3. Any Member State may refer to the Council the measure taken by the Commission, within a period of not more than 10 working days after it has been informed thereof. The fact that the matter is referred to the Council shall not cause the measure to be suspended. The Council shall meet immediately. It may, by acting on a qualified majority, amend or rescind the measure in question.

Article 11

The provisions of Articles 9 and 10 shall not prejudice the application of the safeguard clauses drawn up in connection with the common agricultural policy pursuant to Article 43 of the Treaty or those drawn up in connection with the common commercial policy pursuant to Article 113 of the Treaty.

Article 12

Member States and the Commission shall collaborate closely to ensure that this Regulation is observed.

Article 13

This Regulation shall enter into force on 1 January 1977.

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

Done at Brussels, 13 December 1976.

For the Council

The President

M. van der STOEL

ANNEX

List of developing countries and territories enjoying generalized tariff preferences

I. INDEPENDENT COUNTRIES

Afghanistan
Algeria
Angola
Argentina
Bahamas
Bahrain
Bangladesh
Barbados
Bénin
Bhutan
Bolivia
Botswana
Brazil
Burma
Burundi
Cameroon
Cape Verde Islands
Central African Republic
Chad
Chile
Colombia
Comoros
Congo, People's Republic of
Costa Rica
Cuba
Cyprus
Dominican Republic
Ecuador
Egypt, Arab Republic of
El Salvador
Equatorial Guinea
Ethiopia
Fiji
Gabon
Gambia
Ghana
Grenada
Guatemala
Guinea
Guinea Bissau
Guyana
Haiti
Honduras
India
Indonesia
Iran
Iraq
Ivory Coast
Jamaica
Jordan
Kenya
Khmer Republic
Korea (South)
Kuwait
Laos
Lebanon
Lesotho
Liberia
Libya
Malagasy Republic
Malawi
Malaysia
Maldive Islands
Mali
Mauritania
Mauritius
Mexico
Morocco
Mozambique
Nauru
Nepal
Nicaragua
Niger
Nigeria
Oman
Pakistan
Panama
Papua New Guinea
Paraguay
Peru
Philippines
Qatar
Romania
Rwanda
Sao Tome and Principe
Saudi Arabia
Senegal
Seychelles
Sierra Leone
Singapore
Somalia
Sri Lanka
Sudan
Surinam
Swaziland
Syria
Tanzania
Thailand
Togo
Tonga
Trinidad and Tobago
Tunisia
Uganda
United Arab Emirates:
- Abu Dhabi
- Dubai
- Ras al Khaimah
- Fujairah
- Ajman
- Sharjah
- Ummal Qaiwain

Upper Volta
Uruguay
Venezuela
Vietnam
Western Samoa
Yemen, People's Democratic Republic of
Yemen Arab Republic
Yugoslavia
Zaire
Zambia

II. COUNTRIES AND TERRITORIES

dependent or administered, or for whose external relations Member States of the Community or third countries are wholly or partly responsible

Afars and Issas (Territory of the)
Australian Antarctic Territory
Belize
Bermuda
British Antarctic Territory
British Indian Ocean Territory (Aldabra, Farquhar, Chagos Archipelago, Desroches)
British Pacific Ocean (1)
Brunei
Cayman Islands and Dependencies
Christmas Island
Cocos (Keeling) Islands
Corn Islands and Swan Islands
Falkland Islands and Dependencies
French Polynesia
French Southern and Antarctic Territories
Gibraltar
Heard Island and McDonald Islands
Hong Kong
Leeward Islands (2)
Macao
Mayotte
Netherlands Antilles
New Caledonia and Dependencies
Norfolk Island
Pacific Islands administered by the United States of America or under United States trusteeship (3)
Portuguese Timor
St Helena (including Ascension, Gough Island, and Tristan da Cunha)
Spanish territories in Africa
Territories for which New Zealand is responsible (Cook Islands, Niue Island, Tokelau Islands and Ross Dependency)
Turks and Caicos Islands
Virgin Islands of the United States (St Croix, St Thomas, St John, etc.)
Wallis and Futuna Islands
Windward Islands (4)

Note: The above lists may be amended subsequently to take account of changes in the international status of countries or territories.

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(1) Gilbert Islands, Tuvalu, British Solomon Islands, New Hebrides Condominium, and Pitcairn Islands.
(2) Antigua, Montserrat, St Kitts-Nevis-Anguilla, British Virgin Islands.
(3) The Pacific Islands administered by the United States of America include: Guam, American Samoa (including Swain's Island), Midway Islands, Johnston and Sand Islands, Wake Island and the Trust Territory of the Pacific Islands (the Caroline, Marianas and Marshall Islands).
(4) Dominica, St Lucia, St Vincent.