COUNCIL REGULATION (EEC) No 2708/77

of 28 November 1977

opening, allocating and providing for the administration of a Community tariff quota for raw or unmanufactured Virginia type tobaccos 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),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas in the Joint Declaration of Intent, on the development of trade relations with Sri Lanka, India, Malaysia, Pakistan and Singapore (3), 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, on the one hand, for several Asian countries of the Commonwealth and particularly India, the types of unmanufactured tobaccos concerned 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 and, on the other hand, these countries are among the worst hit by the present economic crisis; whereas the system of generalized tariff preferences may constitute a solution to the problems of this nature; whereas these types of tobaccos should be included in the generalized preferences scheme;

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 to the Common Customs Tariff which originate 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 tobacco sector generally and of the need to safeguard the interests of the associated countries and of the ACP States in this field, to lay down for raw or unmanufactured Virginia type tobacco special conditions consisting in a reduction of the customs duty applicable to these products 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, moreover, the conference of Heads of State or of Government of the Member States and the States acceding to the European Communities held in Paris from 19 to 21 October 1972, invited the Community institutions and the Member States progressively to adopt an overall policy of development cooperation on a world-wide scale comprising in particular the improvement of generalized preferences with the aim of achieving a steady increase in imports of manufactures from the developing countries;

Whereas tariff preferences have been applied as from the second half of 1971; whereas, however, for the flue-cured Virginia type tobacco, the said system of tariff preferences has been made applicable from 1974 and it is appropriate to apply this system henceforth for all Virginia type tobaccos;

Whereas it is expedient, therefore, that the Community should open for 1978 for these raw or unmanufactured tobaccos, originating in the countries and territories listed in the Annex, a Community tariff quota limited to 60 000 tonnes, at a customs duty rate of 7% with a minimum charge of 15 units of account per 100 kilograms net weight for Virginia type tobaccos falling

(1) OJ No C 266, 7. 11. 1977, p. 16.
(2) Opinion delivered on 26/27 October 1977 (not yet published in the Official Journal).
(3) OJ No L 73, 27. 3. 1972, p. 195.

within subheading 24.01 ex B and with a maximum charge of 45 units of account per 100 kilograms net weight for the Virginia type tobaccos falling within subheadings 24.01 A ex I and 24.01 A ex II;

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 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 be fixed at a relatively high level, in this case 98% of the full quota;

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

Germany	10 315 tonnes,
Benelux	5 586 tonnes,
France	980 tonnes,
Italy	3 920 tonnes,
Denmark	1 862 tonnes,
Ireland	1 935 tonnes,
United Kingdom	34 202 tonnes;

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 it 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 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 1978, a Community tariff quota of 60 000 tonnes shall be opened in the

(1) OJ No L 73, 27. 3. 1972, p. 178.
(2) OJ No L 148, 28. 6. 1968, p. 1.

Community for the imports of raw or unmanufactured Virginia type tobaccos falling within subheadings 24.01 A ex I, 24.01 A ex II and 24.01 ex B of the Common Customs Tariff. Within this tariff quota the customs duty shall be suspended at 7% with a minimum charge of 15 units of account per 100 kilograms net weight for Virginia type tobaccos falling within subheading 24.01 ex B and a maximum charge of 45 units of account per 100 kilograms net weight for Virginia type tobaccos falling within subheadings 24.01 A ex I and 24.01 A ex II.

2. This tariff quota shall apply solely to products originating in the countries and territories listed in the Annex. However, those imports which enjoy exemption from customs duties under other preferential tariff arrangements granted by the Community may not be charged against this tariff quota.

For the purposes of the application of 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.

Entry to this tariff quota shall be subject to the production of a certificate of authenticity appearing in the certificate of origin and made out in accordance with the procedure referred to in the second subparagraph.

Article 2

1. A first tranche of 58 800 tonnes shall be allocated among the Member States. The shares which, subject to Article 5, shall be valid until 31 December 1978, shall for each Member State be as follows:

Germany	10 315 tonnes,
Benelux	5 586 tonnes,
France	980 tonnes,
Italy	3 920 tonnes,
Denmark	1 862 tonnes,
Ireland	1 935 tonnes,
United Kingdom	34 202 tonnes.

2. The second tranche of 1 200 tonnes 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 1978.

Article 5

A Member State which on 25 October 1978 has not exhausted one of its initial shares shall, not later than 7 November 1978, return to the reserve any unused portion in excess of 15% 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 7 November 1978, notify the Commission of the total quantities of the product in question imported up to and including 25 October 1978 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 21 November 1978, 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 tonnes.

Article 9

Should imports of the products benefiting under the arrangements provided for in Article 1 be imported into the Community at prices such as to put or be likely to put Community producers of similar or directly competitive products at a serious disadvantage or create an unfavourable situation in the ACP States, the customs duties applied within the Community may be re-introduced in part or in full for imports of the products in question from the country or countries or territory or territories which are the cause of such disadvantage. Such measures may also be taken in the event of a serious disadvantage, either actual or foreseeable, which is confined to a single region of the Community.

Article 10

1. In order to ensure that Article 9 is applied, the Commission may, by way of a Regulation, re-introduce normal duties for a fixed period.

2. If the Commission has acted at the request of a Member State, the former shall give its decision within a maximum period of 10 working days from the date of receipt of the request and shall inform the Member State of the action it has taken.

3. Each Member State may refer the measure taken by the Commission to the Council within a period of 10 working days following the date it was notified. The fact that the matter has been referred to the Council shall not constitute the suspension of the measure. The Council shall meet without delay. Acting on a qualified majority, it may amend or repeal the measure in question.

Article 11

Articles 9 and 10 shall not prejudice the application of the protective clauses drawn up in connection with the common agricultural policy pursuant to Article 43 of the Treaty nor 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 cooperate closely to ensure that the above Articles are observed.

Article 13

This Regulation shall enter into force on 1 January 1978.

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

Done at Brussels, 28 November 1977.

For the Council

The President

L. OUTERS

ANNEX

List of developing countries and territories enjoying generalized tariff preferences (1)

I. INDEPENDENT COUNTRIES

660 Afghanistan
208 Algeria
330 Angola
528 Argentina
453 Bahamas
640 Bahrain
666 Bangladesh
469 Barbados
284 Benin
675 Bhutan
516 Bolivia
391 Botswana
508 Brazil
676 Burma
328 Burundi
302 Cameroon
247 Cape Verde Islands
306 Central African Empire
244 Chad
512 Chile
480 Colombia
375 Comoros
318 Congo, People's Republic of
436 Costa Rica
448 Cuba
600 Cyprus
338 Djibouti
456 Dominican Republic
500 Ecuador
220 Egypt
428 El Salvador
310 Equatorial Guinea
334 Ethiopia
815 Fiji
314 Gabon
252 Gambia
276 Ghana
473 Grenada
416 Guatemala
260 Guinea
257 Guinea Bissau
488 Guyana
452 Haiti
424 Honduras
664 India
700 Indonesia
616 Iran
612 Iraq
272 Ivory Coast
464 Jamaica
628 Jordan
696 Kampuchea, Democratic
346 Kenya
728 Korea, Republic of
636 Kuwait
684 Laos
604 Lebanon
395 Lesotho
268 Liberia
216 Libya
370 Madagascar
386 Malawi
701 Malaysia
667 Maldive Islands
232 Mali
228 Mauritania
373 Mauritius
412 Mexico
204 Morocco
366 Mozambique
803 Nauru
672 Nepal
432 Nicaragua
240 Niger
288 Nigeria
649 Oman
662 Pakistan
440 Panama
801 Papua New Guinea
520 Paraguay
504 Peru
708 Philippines
644 Qatar
066 Romania
324 Rwanda
819 Samoa
311 Sao Tome and Principe
632 Saudi Arabia
248 Senegal
355 Seychelles and Dependencies
264 Sierra Leone
706 Singapore
342 Somalia
669 Sri Lanka
224 Sudan
492 Surinam
393 Swaziland
608 Syria
352 Tanzania
680 Thailand
280 Togo
817 Tonga
472 Trinidad and Tobago
212 Tunisia
350 Uganda
647 United Arab Emirates
236 Upper Volta
524 Uruguay
484 Venezuela
690 Vietnam
652 Yemen
656 Yemen, Democratic
048 Yugoslavia
322 Zaire
378 Zambia

(1) The code number preceding the name of each beneficiary country or territory is that given in 'Geonomenclature 1977', published by the Statistical Office of the European Communities.

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

890 Australian Antarctic Territory

421 Belize

413 Bermuda

890 British Antarctic Territory

357 British Indian Ocean Territory

812 British Pacific Ocean

703 Brunei

202 Canary Islands

463 Cayman Islands and Dependencies

205 Ceuta and Melilla

802 Christmas Island, Cocos (Keeling) Islands, Heard Island and McDonald Islands, Norfolk Island

529 Falkland Islands and Dependencies

822 French Polynesia

890 French Southern and Antarctic Territories

044 Gibraltar

740 Hong Kong

743 Macao

377 Mayotte

476 Netherlands Antilles

809 New Caledonia and Dependencies

808 Pacific Islands administered by the United States of America or under United States trusteeship (1)

329 St Helena and Dependencies

814 Territories for which New Zealand is responsible (Cook Islands, Niue Island, Tokelau Islands)

454 Turks and Caicos Islands

457 Virgin Islands of the United States

811 Wallis and Futuna Islands

471 West Indies

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

(1) 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).