COUNCIL REGULATION (EEC) 4099/88

of 16 December 1988

opening, allocating and providing for the administration of Community tariff quotas for certain kinds of prepared or preserved fish coming from Portugal (1989)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal, and in particular Article 362 thereof,

Having regard to the proposal from the Commission,

Whereas Article 362 of the Act of Accession provides that during the period of progressive elimination of customs duties between the Community as constituted at 31 December 1985 and Portugal, certain kinds of sardines, tunas, fish of the genus *Euthynnus*, certain kinds of mackerel and fish of the species *Orcynopsis unicolor*, prepared or preserved, falling within CN codes ex 1604 13 10, ex 1604 20 50, 1604 14 10, 1604 19 30, 1604 20 70, 1604 15 10, 1604 19 50 and ex 1604 20 50 and coming from Portugal, may be imported free of duty into the Community as constituted at 31 December 1985 within the limits of annual Community tariff quotas of 5 000 tonnes, 1 000 tonnes and 1 000 tonnes respectively; whereas these quotas should be opened for 1981;

Whereas, by virtue of Regulations (EEC) No 3482/88 [1] and (EEC) No 839/88 [2], the customs duty applicable on import into the Community, excluding Spain, of certain sardines of the species *Sardina pilchardus*, coming from Portugal is zero; whereas, therefore, the Community tariff quota for the sardines in question should not be opened in 1989;

Whereas it is in particular necessary to ensure for all importers of the Community as constituted at 31 December 1985 equal and uninterrupted access to the abovementioned quotas and uninterrupted application of the rates laid down for these quotas to all imports of the products concerned into all the Member States until the quotas have been used up; whereas, having regard to the above principles, the Community nature of the quotas can be respected by allocating the Community tariff quotas among the Member States; whereas, in order to reflect as accurately as possible the true trend of the market in the products concerned, such allocation should be in proportion to the requirements of the Member States, assessed by reference to the statistics of each State's imports from Portugal over a representative reference period and also to the economic outlook for the quota period concerned;

Whereas during the last three years for which statistics are available imports into the Member States were as follows:

Tunas and fish of the genus *Euthynnus*

(tonnes)

Member States	1985	1986	1987
Benelux	1	13	3
Denmark	—	—	—
Germany	18,2	22	12
Greece	54	—	—
France	55	16	58
Ireland	—	—	—
Italy	2 456,5	2 141	2 371
United Kingdom	—	9	28

Mackerel of the species *Scomber scombrus* and *Scomber japonicus* and fish of the species *Orcynopsis unicolor*

(tonnes)

Member States	1985	1986	1987
Benelux	135	176	222
Denmark	—	—	—
Germany	—	21	—
Greece	—	—	—
France	—	3	1
Ireland	—	—	—
Italy	2 216,7	1 463	1 903
United Kingdom	—	—	—

Whereas, for 1989, maintenance of quotas for the Member States is necessary, bearing in mind that it is impossible for the administration concerned in each Member State to introduce, in 1989, the administrative and technical basis for Community administration of the quota; whereas it is, however, possible, bearing in mind the way in which trade had developed in recent years, to provide for a Community reserve of a significantly large amount;

Whereas in view of these factors and of the estimates submitted by certain Member States, initial quota shares may be set approximately at the following percentages:

(1) OJ No L 306, 11. 11. 1988, p. 1.
(2) OJ No L 87, 31. 3. 1988, p. 1.

Member States	Tunas	Mackerel
Benelux	—	9,02
Denmark	—	—
Germany	—	—
Greece	—	—
France	2,78	—
Ireland	—	—
Italy	97,22	90,98
United Kingdom	—	—

Whereas in the last three years the products in question were imported regularly by certain Member States only, and not at all or only occasionally by the other Member States; whereas in these circumstances initial shares should be allocated to the genuine importing Member States and the other Member States should be guaranteed access to the tariff quotas when imports into these Member States are notified; whereas these arrangements for allocation will equally ensure the uniform application of the combined nomenclature;

Whereas, in order to take into account import trends for the products concerned in the various Member States, each quota should be divided into two parts, the first being shared among certain Member States and the second constituting a reserve to cover the subsequent requirements of the Member States where they have used up their initial shares and also any requirements which might arise in the other Member States; whereas, in order to give importers in each Member State a certain degree of security, the first part of the Community quotas could be set at 54% of the quota volumes;

Whereas the initial quota shares of the Member States may be used up at different times; whereas, in order to take this fact into account and avoid any break in continuity, any Member State which has almost used up its initial quota share should draw an additional quota share from the corresponding reserve; whereas this must be done by each Member State as and when each of its initial shares is totally used up and repeated as many times as the corresponding reserve allows; whereas the initial quota shares must be valid until the end of the quota period; whereas this method of administration requires close cooperation between Member States and the Commission and the latter must, in particular, be able to monitor the extent to which the quota volumes have been used up and to inform the Member States accordingly;

Whereas if, during the quota period, the Community reserve is almost totally used up, it is essential that Member States return to the said reserve the whole of the unused proportion of their initial quota and of any drawings made, in order to avoid one part of the Community tariff quotas 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 within and jointly represented by the Benelux Economic Union any operations relating to the administration of the quota shares allocated to that economic union may be carried out by any one of its members,

HAS ADOPTED THIS REGULATION:

Article 1

From 1 January to 31 December 1989 the customs duties on imports from Portugal into the Community as constituted on 31 December 1985 for the following products shall be totally suspended within the limits of Community tariff quotas as shown herewith:

Order No	CN code	Description	Quantities (tonnes)	Quota duties
	1604	Prepared or preserved fish: caviar and caviar subsitutes prepared from fish eggs:		
09.0502	1604 14 10	– Tunas and skipjack	1 000	free
	1604 19 30	– Fish of the genus *Euthynnus*, other than skipjack		
	1604 20 70	– Tunas, skipjack and other fish of the genus *Euthynnus*		
09.0503	1604 15 10	– Mackerel of the species *Scomber scombrus* and *Scomber japonicus*	1 000	free
	1604 19 50	– Fish of the species *Orcynopsis unicolor*		
	ex 1604 20 50	– Mackerel of the species *Scomber scombrus* and *Scomber japonicus* and fish of the species *Orcynopsis unicolor*		

Article 2

1. Each of the tariff quotas referred to in Article 1 shall be divided into two parts.

2. The first part of each quota, namely 540 and 540 tonnes respectively, shall be allocated among certain Member States; the respective shares shall, subject to Article 5, be valid until 31 December 1989, and shall be as follows:

(tonnes)

Member States	Prepared or preserved	
	Tunas	Mackerel
Benelux	—	50
Denmark	—	—
Germany	—	—
Greece	—	—
France	15	—
Ireland	—	—
Italy	525	490
United Kingdom	—	—
Total	540	540

3. The second part of each quota, namely 460 and 460 tonnes respectively, shall constitute the corresponding reserve.

4. If an importer notifies a Member State not privy to the initial allocation that a consignment of the products in question is to be imported and applies to use the quota, the Member State concerned shall inform the Commission and draw an amount corresponding to its requirement to the extent that the available balance of the quota so permits.

5. Without prejudice to Article 3, shares drawn pursuant to paragraph 4 shall be valid until the end of the quota period.

Article 3

1. Once at least 80 % of the reserve of one of the tariff quotas, as defined in Article 2 (3), has been used up, the Commission shall inform the Member States thereof.

2. It shall also notify Member States in this case of the date from which drawings on the Community reserve must be made according to the following provisions.

If an importer presents in a Member State a declaration of entry into free circulation including a request for preferential benefit for a product covered by this Regulation, and if this declaration is accepted by the customs authorities, the Member State concerned shall draw, from the Community reserve, by means of notification to the Commission, a quantity corresponding to these needs.

The requests for drawing, with the indication of the date of acceptance of the said declarations, must be communicated to the Commission without delay.

The drawings are granted by the Commission on the basis of the date of acceptance of the declaration of entry into free circulation by the customs authorities of the Member State concerned, to the extent that the available balance so permits.

If a Member State does not use the quantities drawn, it shall return them as soon as possible to the reserve.

If the quantities requested are greater than the available balance of the reserve, allocation shall be made on a *pro rata* basis with respect to the requests. Member States shall be informed by the Commission in accordance with the same procedures.

Within a time limit fixed by the Commission as from the date referred to in the first subparagraph of paragraph 2, Member States shall be required to return to the reserve all the quantities which have not been used on that date, within the meaning of Article 5 (3) and (4).

Article 4

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

It shall inform the Member States of the amounts still in reserve after amounts have been returned thereto pursuant to Article 3.

It shall ensure that the drawing which uses up a reserve 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.

Article 5

1. The Member State shall take all measures necessary to ensure that drawings of shares pursuant to Articles 2 (4) and 3 are carried out in such a way that imports may be charged without interruption against their accumulated shares in the Community tariff quotas.

2. The Member States shall ensure that importers of the products in question have free access to the shares allocated to them.

3. The Member States shall charge imports of the products against their shares as and when they are entered with the customs authorities for free circulation.

4. The extent to which a Member State has used up its share shall be determined on the basis of imports charged in accordance with paragraph 3.

Article 6

At the request of the Commission, Member States shall inform it of imports of the products concerned actually charged against their shares.

Article 7

The Member States and the Commission shall cooperate closely in order to ensure that this Regulation is complied with.

Article 8

This Regulation shall enter into force on 1 January 1989.

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

Done at Brussels, 16 December 1988.

For the Council

The President

G. GENNIMATAS