COUNCIL REGULATION (EEC) No 4238/88

of 21 December 1988

repealing and replacing Regulation (EEC) No 3589/88 opening, allocating and providing for the administration of a Community tariff quota for fillets of certain cod and of fish of the species *Boreogadus saida*, originating in Norway (1989)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to the proposal from the Commission,

Whereas an Agreement between the European Economic Community and the Kingdom of Norway was concluded on 14 May 1973; whereas, following the accession of Spain and Portugal to the Community, an Agreement in the form of an Exchange of Letters, was concluded and approved by Decision 86/557/EEC (1);

Whereas the said Agreement provides in particular for the opening of a Community tariff quota at zero duty for fillets of certain cod and of fish of the species *Boreogadus saida*, originating in Norway; whereas, therefore, the tariff quota in question should be opened for the period 1 January to 31 December 1989;

Whereas the system of administering the tariff quota should be adjusted and therefore Regulation (EEC) No 3589/88 (2) should be repealed and replaced by this Regulation;

Whereas equal and continuous access to the quota should be ensured for all importers and the rate laid down for the quota should be applied consistently to all imports until the quota is used up; whereas, in the light of these principles, allocation of the tariff quota among the Member States would seem to preserve the Community nature of the quota; whereas, in order to correspond as closely as possible to the actual development of the market in the said product, the allocation should reflect proportionately the requirements of the Member States calculated with reference to statistics of imports from Norway during a representative reference period and to the economic outlook for the quota year in question;

Whereas during the latest years for which statistics are available, imports into each of the Member States were as follows:

(tonnes)

Member States	1984	1985	1986	1987
Benelux	0	0	1	0
Denmark	72	10	2	21
Germany	0	0	0	0
Greece	0	11	0	0
Spain	37	0	0	14
France	58	8	19	24
Ireland	0	0	0	0
Italy	4 589	2 691	2 354	1 390
Portugal	0	0	0	0
United Kingdom	0	0	0	0
	4 756	2 720	2 376	1 449

Whereas, during the years under consideration, the products in question were imported only by certain Member States and not at all by the other Member States; whereas in these circumstances initial shares should be allocated to the importing Member States and the other Member States should be guaranteed access to the tariff quota when imports into those States of the products concerned are notified; whereas these arrangements for allocation will equally ensure the uniform application of the Common Customs Tariff;

Whereas, for 1989, maintenance of the 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 in view of these factors, of market forecasts for the products in question, and of the effective use of the quotas opened for 1986 to 1988, the initial percentage shares of the quota volume can be expresses approximately as follows:

Denmark	0,50
Greece	0,18
Spain	0,21
France	0,79
Italy	98,32

Whereas, to allow for import trends for the products concerned, the quota volume should be divided into two

(1) OJ No L 328, 22. 11. 1986, p. 76.
(2) OJ No L 314, 22. 11. 1988, p. 15.

parts, the first being allocated among the Member States and the second held as a reserve to cover any subsequent requirements of Member States which have used up their initial share; whereas, to afford importers some degree of certainty, the first part of the tariff quota should be set at a high level, which in this case could be 54 % of the quota volume;

Whereas initial shares may be used up at different rates; whereas, in order to avoid any break in the continuity 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, each time its additional share is almost used up, a Member State should draw a further share and so on as many times as the reserve allows; whereas the initial and additional shares must be valid until the end of the quota period; whereas this form of administration requires close cooperation between the Member States and the Commission and the latter must be able to monitor the extent to which the quota volume has been used up and 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 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 within and jointly represented by the Benelux Economic Union, any measure concerning the administration of the 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 1989 the customs duty applicable to imports of the following product shall be suspended at the level indicated and within the limits of a Community tariff quota as shown herewith:

Order No	CN code	Description	Quota volume (tonnes)	Rate of duty (%)
09.0709	ex 0305 30 19	Fillets of cod of the species *Gadus morhua* and *Gadus ogac*, and fish fillets of the species *Boreogadus saida*, dried, salted or in brine, originating in Norway	3 000	0

Within the limits of this tariff quota, the Kingdom of Spain and the Portuguese Republic shall apply duties of 3,4 % and 0 % respectively.

2. Imports of the products in question shall not be eligible under the tariff quota referred to in paragraph 1 unless the free-at-frontier-price, which is determined by the Member States in accordance with Article 21 of Regulation (EEC) No 3796/81 [1], as last amended by Regulation (EEC) No 3759/87 [2], is at least equal to the reference price set or to be set by the Community for the product or categories of products under consideration.

3. The Protocol on the definition of the concept of originating products and on methods of administrative cooperation, annexed to the Agreement between the European Economic Community and the Kingdom of Norway, shall apply.

Article 2

1. The tariff quota referred to in Article 1 (1) shall be divided into two parts.

2. The first part of this quota shall be allocated among certain Member States. The quota shares shall, subject to Article 5, be valid until 31 December 1989, and shall be as follows:

	(in tonnes)
Denmark	8
Greece	3
Spain	3
France	13
Italy	1 593

3. The second part of the quota, amounting to 1 380 tonnes, shall constitute the reserve.

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

Article 3

1. If a Member State has used 90 % or more of its initial share as specified in Article 2 (2), it shall forthwith,

(1) OJ No L 379, 31. 12. 1981, p. 1.
(2) OJ No L 359, 21. 12. 1987, p. 1.

by notifying the Commission and to the extent that the reserve so permits, draw a second share equal to 10 % of its initial share, rounded up where necessary to the next whole number.

2. If, after one of its initial quota shares has been used up, a Member State has used 90 % or more of its second share as well, it shall forthwith, using the procedure provided for in paragraph 1, draw a third share equal to 5 % of the initial share.

3. If, after one of its second shares has been used up, a Member State has used 90 % or more of its third share, it shall, using the procedure provided for in paragraph 1, draw a fourth share equal to the third.

4. By way of derogation from paragraphs 1, 2 and 3, Member States may draw smaller shares that those specified in the said paragraphs if there is reason to believe that they might not be used in full. Member States shall inform the Commission of their reasons for applying this paragraph.

Article 4

Without prejudice to Article 5, additional shares drawn pursuant to Article 3 shall be valid until 31 December 1989

Article 5

1. Once at least 80 % of the reserve of the tariff quota, 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 request 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.

3. Within a period laid down 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 the whole of the quantities which have not been used, by that date, within the meaning of Article 7 (3) and (4).

Article 6

The Commission shall keep account of the shares drawn by Member States pursuant to Articles 2, 3 and 5 and shall inform each Member State of the extent to which the reserves have been used up as soon as it has been notified.

Article 7

1. Member States shall take all appropriate measures to ensure that additional drawings of shares pursuant to Articles 3 and 5 enable imports to be charged without interruption against their accumulated share of the Community tariff quota.

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

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

4. The extent to which a Member State has used up its shares shall be determined on the basis of the imports of the products in question entered with the customs authorities for free circulation.

Article 8

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

Article 9

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

Article 10

Regulation (EEC) No 3589/88 is hereby repealed.

Article 11

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, 21 December 1988.

For the Council
The President
V. PAPANDREOU