COUNCIL REGULATION (EEC) No 1799/90

of 27 June 1990

opening, allocating and providing for the administration of a Community tariff quota for rum, tafia and arrack originating in the African, Caribbean and Pacific (ACP) States (1990/91)

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 proposal from the Commission,

Whereas the Community signed the Fourth ACP-EEC Convention at Lomé on 15 December 1989 ; whereas the Community decided, by Council Regulation (EEC) No 714/90 of 5 March 1990 concerning the application of Decision No 2/90 of the ACP-EEC Council of Ministers on transitional measures valid from 1 March 1990 [1], to apply Protocol 6 annexed to the Convention autonomously in advance ;

Whereas Protocol 6 provides that products originating in the African, Caribbean and Pacific (ACP) States which fall within CN codes 2208 40 10, 2208 40 90, 2208 90 11 and 2208 90 19 shall, until the entry into force of a common organization of the market in spirits, be allowed into the Community free of customs duties under conditions such as to permit the development of traditional trade flows between the ACP States and the Community and between the Member States ; whereas the Community shall until 31 December 1993 fix each year the quantities which may be imported free of customs duties on the basis of the largest quantities imported annually from the ACP States into the Community in the past three years for which statistics are available, increased by an annual growth rate of 37 % on the market of the United Kingdom and 27 % on the other markets of the Community ; and whereas the volume of the annual quantity can in no case be less than 172 000 hectolitres of pure alcohol ;

Whereas by virtue of Council Regulation (EEC) No 1820/87 of 25 June 1987 concerning the application of Decision No 2/87 of the ACP-EEC Council of Ministers on the advance implementation of the Protocol to the Third ACP-EEC Convention consequent on the Accession of the Kingdom of Spain and the Portuguese Republic to the European Communities [2], provision is made for special arrangements for the quota dutes to be applied by those two Member States ; whereas by reason of the particularities peculiar to the market in rum the quota period ranges from 1 July to 30 June ;

Whereas, having regard to the levels reached by imports of the products concerned into the Community during the past three years for which statistics are available, the annual quota volume for the period from 1 July 1990 to 30 June 1991 must be fixed at 193 668 hectolitres of pure alcohol ;

Whereas it is in particular necessary to ensure to all Community importers equal and uninterrupted access to the abovementioned quota and uninterrupted application of the rate laid down for that quota to all imports of the products concerned into all Member States until the quota has been used up ;

Whereas, following the case law of the Court of Justice, it is unlawful to allocate the Community quotas between the Member States, unless overriding circumstances of an administrative, technical or economic nature, prevent acting otherwise ; whereas, in addition, in cases where it is decided to allocate quotas, a mechanism should be set up whereby the integrity of the Common Customs Tariff may be protected ;

Whereas the economic difficulties which could result for the French Overseas Departments (FOD) from the sudden change in the arrangements for importing rum from the African, Caribbean and Pacific (ACP) States constitute circumstances having a binding effect which justify the temporary and partial maintenance of these arrangements ; whereas, however, the arrangements for allocation of the quota into national shares should be phased out and can only be justified on a transitional basis ; whereas the arrangements should in any event definitively disappear with the prospect of the establishment of the internal market ;

Whereas, in these circumstances, it is advisable to increase to 40 % the volume of the Community reserve by means of a system for the automatic transfer of Member State share to the reserve as soon as 80 % of the latter has been used up ;

Whereas, during the past three years for which statistical data are available, imports from Member States have been as follows :

(in hectolitres of pure alcohol)

Member State	1987	1988	1989
Benelux	6 264	7 389	7 621
Denmark	1 884	2 038	1 748
Germany	33 570	42 523	48 591
Greece	50	—	586
Spain	244	—	156
France	1 929	1 216	19
Ireland	2 060	2 989	2 973
Italy	800	806	431
Portugal	7	—	—
United Kingdom	72 040	63 525	83 773
Total	118 848	119 686	145 898

[1] OJ No L 84, 30. 3. 1990, p. 1.
[2] OJ No L 172, 30. 6. 1987, p. 1.

Whereas, in view of these factors, of market forecasts for the products in question and of the estimates submitted by certain Member States, quota shares may be fixed approximately at the following percentages:

Benelux	5,53,
Denmark	1,47,
Germany	32,43,
Greece	0,17,
Spain	0,10,
France	0,83
Ireland	1,88,
Italy	0,53,
Portugal	0,00,
United Kingdom	57,06;

Whereas provision should be made for a mechanism to prevent, when the Community quota is not exhausted, goods from being imported into a Member State which has exhausted its share only after the full application of customs duties, or after having been diverted to another Member State which has not yet exhausted its share; whereas, in these circumstances, if, during the quota period, the Community reserve were to be almost entirely used up, Member States should return to the said reserve all of the unused portion of their initial shares so as to avoid part of the Community tariff quota from remaining unused in one Member State, when it could be used in others;

Whereas measures should be laid down to ensure that Protocol 5 is implemented under conditions such as to permit the development of traditional trade flows between the ACP States and the Community, on the one hand, and between the Member States on the other;

Whereas this form of administration requires close collaboration between the Member States and the Commission, and the Commission must be able to keep account of quota utilization rates and inform the Member States accordingly;

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 operation concerning the administration of the quotas may be carried out by any one of its members,

HAS ADOPTED THIS REGULATION:

Article 1

1. From 1 July 1990 to 30 June 1991, the following products originating in the ACP States shall be imported duty free into the Community within the limits of the relevant Community tariff quota mentioned:

Order No	CN code	Description	Quota Volume (in hl of pure alcohol)	Quota duty
09.1606	2208 40 10 2208 40 90 2208 90 11 2208 90 19	Rum, tafia and arrak	193 668	Free

2. Within the limit of this quota, the Kingdom of Spain and the Portuguese Republic shall apply customs duties calculated in accordance with the 1985 Act of Accession and Regulation (EEC) No 1820/87.

Article 2

1. The tariff quota referred to in Article 1 shall be divided into two instalments.

2. A frist instalment of 116 200 hectolitres of pure alcohol shall be allocated amongst the Member States; the shares which, subject to Article 3, shall apply until 30 June 1991, amount to the following quantities:

	(hectolitres of pure alcohol)
Benelux	6 425,
Denmark	1 710,
Germany	37 685,
Greece	200,
Spain	115,
France	955,
Ireland	2 185,
Italy	615,
Portugal	10,
United Kingdom	66 300.

3. A second instalment of 77 468 hectolitres of pure alcohol shall constitute the Community reserve.

Article 3

If a Member State's initial share a specified in Article 2 (2), has been used up entirely, the following provisional shall apply.

If an importer presents, in a Member State, a declaration as to entry into free circulation comprising a request for preferential treatment for a product covered by this Regulation, and this declaration is accepted by the customs authorities, the Member State concerned shall, by

notifying the Commission, draw an amount corresponding to its requirements from the reserve referred to in Article 2 (3).

Requests to draw on the reserve together with the date of acceptance of the said declaration must be forwarded to the Commission without delay.

Drawings shall be granted by the Commission on the basis of the date of acceptance of goods for entry into free circulation by the customs authorities of the Member State concerned, provided a sufficient amount remains in the reserve.
If a Member State does not use the quantities drawn, it shall return them to the reserve as soon as possible.

If requests for drawings exceed the amount remaining in the reserve, an allocation shall be made pro rata. The Member States shall be so informed by the Commission.

Article 4

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

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 provisions laid down in Article 3, if these provisions ar not already in effect.

Within a time limit fixed by the Commission as from the date referred to in paragraph 2, Member States shall be required to return to the reserve all their initial shares which have not been used on that date.

Article 5

The Commission shall keep an account of the shares opened to 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 volume of the reserve following any return of quota shares pursuant to Article 4.

Article 6

Each Member States shall ensure that importers of the products concerned have free access to the quota for such time as the residual balance of the quota volumes so permits.

Article 7

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

Article 8

Council Regulation (EEC) No 1316/87 of 11 May 1987 on the safeguard measures provided for in the Third ACP-EEC Convention [1] and the provisions that will replace it under the Fourth ACP-EEC Convention shall apply to the products referred to in this Regulation.

Article 9

This Regulation shall enter into force on 1 July 1990.

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

Done at Luxembourg, 27 June 1990.

For the Council
The President
J. P. WILSON

[1] OJ No L 125, 14. 5. 1987, p. 1.