COUNCIL REGULATION (EC) No 1637/98

of 20 July 1998

amending Regulation (EEC) No 404/93 on the common organisation of the market in bananas

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the European Parliament [2],

Having regard to the opinion of the Economic and Social Committee [3],

(1) Whereas a number of changes are required in the provisions on trade with third countries contained in Title IV of Regulation (EEC) No 404/93 [4];

(2) Whereas the Community's international commitments under the World Trade Organisation (WTO) and to the other signatories of the Fourth ACP-EC Convention should be met, whilst achieving at the same time the purposes of the common organisation of the market in bananas;

(3) Whereas a basic tariff quota of 2 200 000 tonnes at the reduced duty of ECU 75 per tonne is bound in the WTO;

(4) Whereas the increase in consumption resulting from enlargement of the Community warrants opening of an autonomous tariff quota of 353 000 tonnes; whereas this autonomous tariff quota should involve reduction to ECU 75 per tonne of the customs duty applicable beyond the above bound tariff quota; whereas this reduction is warranted by the need to guarantee adequate supply of the Community;

(5) Whereas for traditional ACP bananas retention of the total quantity of 857 700 tonnes that may be imported at nil duty preserves access to the Community market for the supplier States of the traditional quantities, in line with Protocol 5 annexed to the Fourth ACP-EC Convention and with WTO rules;

(6) Whereas in view of the obligations under the Fourth ACP-EC Convention, particularly Article 168 thereof, and of the need to guarantee proper conditions of competition for non-traditional ACP bananas, application to imports of these bananas of an ECU 200 preference will allow the trade flows in question to be maintained under the new import arrangements introduced by this Regulation;

(7) Whereas for the purpose of subdividing the tariff quotas and, if the situation arises, the traditional ACP quantity, a single criterion should be used for determining those producer States with a substantial interest in the supply of bananas; whereas should there be no reasonable possibility of reaching agreement with those States, the Commission, assisted by a committee of representatives of the Member States, must have the authority to carry out allocation using that criterion;

(8) Whereas provision should be made for the autonomous tariff quota to be modified to take account of any increased Community demand found when a supply balance is drawn up; whereas provision should also be made for suitable specific action to be taken in response to exceptional circumstances liable to affect supply of the Community market;

(9) Whereas operation of this Regulation should be reviewed at the end of an adequate trial period;

(10) Whereas appropriate amendments should therefore be made to Title IV of Regulation (EEC) No 404/93,

HAS ADOPTED THIS REGULATION:

Article 1

Council Regulation (EEC) No 404/93 is amended as follows:

1. Articles 16 to 20 of Title IV shall be replaced by the following:

'Article 16

Articles 16 to 20 of this Title shall apply only to fresh products of CN code ex 0803 00 19.

For the purposes of this Title:

[1] OJ C 75, 11. 3. 1998, p. 6.
[2] OJ C 210, 6. 7. 1998.
[3] OJ C 235, 27. 7. 1998.
[4] OJ L 47, 25. 2. 1993, p. 1. Regulation as last amended by Regulation (EEC) No 3290/94 (OJ L 349, 31. 12. 1994, p. 105).

1. "traditional imports from ACP States" means imports into the Community of bananas originating in the States listed in the Annex hereto up to a limit of 857 700 tonnes (net weight) per year; these are termed "traditional ACP bananas";

2. "non-traditional imports from ACP States" means imports into the Community of bananas originating in ACP States but not covered by definition 1; these are termed "non-traditional ACP bananas";

3. "imports from non-ACP third States" means bananas imported into the Community originating in third States other than the ACP States; these are termed "third State bananas".

Article 17

All importation of bananas into the Community shall be subject to submission of an import licence issued by Member States to any interested party irrespective of his place of establishment in the Community without prejudice to specific provisions adopted for the application of Articles 18 and 19.

Import licences shall be valid throughout the Community. Except where derogations are adopted under the procedure laid down in Article 27, the issue of such licences shall be subject to lodging of a security against a commitment to import on the terms of this Regulation during the period of the licence's validity. Except in cases of *force majeure* the security shall be wholly or partly forfeit if the operation is not or is only partly carried out within the time allowed.

Article 18

1. A tariff quota of 2 200 000 tonnes (net weight) shall be opened each year for imports of third State and non-traditional ACP bananas.

Imports of third State bananas under the tariff quota shall be subject to duty of ECU 75 per tonne, while imports of non-traditional ACP bananas shall be free of duty.

2. An additional tariff quota of 353 000 tonnes (net weight) shall be opened each year for imports of third State and of non-traditional ACP bananas.

Imports of third State bananas under this tariff quota shall be subject to duty of ECU 75 per tonne while imports of non-traditional ACP bananas shall be free of duty.

3. No duty shall be payable on imports of traditional ACP bananas.

4. Should there be no reasonable possibility of securing agreement of all WTO contracting parties with a substantial interest in the supply of bananas, the Commission may under the procedure set out in Article 27 allocate the tariff quotas provided for in paragraphs 1 and 2 and the traditional ACP quantity between those States with a substantial interest in the supply.

5. By way of derogation from Article 15 non-traditional ACP bananas imported outside the tariff quotas indicated in paragraphs 1 and 2 shall be subject to duty per tonne equal to the duty indicated in Article 15 less ECU 200.

6. The duty rates set in this Article shall be converted into national currency at the rates applicable for the products in question for the purposes of the common customs tariff.

7. The additional tariff quota provided for in paragraph 2 may be increased if demand in the Community increases as indicated by a balance sheet of production, consumption, imports and exports.

Determination of the elements of the balance sheet, its adoption and increase of the additional tariff quota shall be effected under the procedure set out in Article 27.

8. Should supply of the Community market be affected by exceptional circumstances affecting production or importation, the Commission shall adopt the specific measures necessary under the procedure set out in Article 27.

In such cases the additional tariff quota provided for in paragraph 2 may be adjusted on the basis of the balance sheet indicated in paragraph 7. The specific measures may derogate from the rules adopted under Article 19(1). They must not discriminate between supply origins.

9. Third State, traditional ACP and non-traditional ACP bananas re-exported from the Community shall not be counted against the corresponding tariff quotas.

Article 19

1. The tariff quotas indicated in Article 18(1) and (2) and imports of traditional ACP bananas shall be managed in accordance with the method based on taking account of traditional trade flows ("traditionals/newcomers").

The Commission shall adopt the implementing arrangements required under the procedures set out in Article 27.

Where necessary, other suitable methods may be adopted.

2. The method adopted shall as appropriate take account of the supply requirements of the Community market and of the need to safeguard its equilibrium.

Article 20

The Commission shall adopt provisions to apply this Title under the procedure set out in Article 27. Their scope shall include:

(a) guarantee of the nature, provenance and origin of the product;

(b) recognition of the document serving to verify these guarantees;

(c) terms of issue and period of validity of import licences;

(d) any specific provisions needed to facilitate the switch from the import arrangements applying on and after 1 July 1993 to the present arrangements of this Title;

(e) measures needed to ensure respect for obligations stemming from agreements concluded by the Community under Article 228 of the Treaty.';

2. Article 32 shall be replaced by:

'Article 32

1. At the latest by 31 December 2004, the Commission shall submit to the European Parliament and the Council a report, accompanied if appropriate by proposals, on the operation of this Regulation and of possible alternatives, in particular as regards the import arrangements.

2. The report shall in particular analyse the marketing trends for Community, ACP and third State bananas and assess how the import arrangements have worked. In this context, special attention shall be paid to the extent to which the most vulnerable ACP suppliers have been able to maintain their position on the Community market.';

3. Article 15a shall be deleted;

4. the Annex shall be replaced by the Annex hereto.

Article 2

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Communities*.

It shall apply from 1 January 1999.

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

Done at Brussels, 20 July 1998.

For the Council

The President

W. MOLTERER

ANNEX

'ANNEX

Traditional imports from the ACP States

Imports originating in the following supplying States, up to a limit of 857 700 tonnes (net weight) annually:

Côte d'Ivoire

Cameroon

Suriname

Somalia

Jamaica

St Lucia

St Vincent and the Grenadines

Dominica

Belize

Cape Verde

Grenada

Madagascar'.