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COMMISSION REGULATION (EC) No 2362/98

of 28 October 1998

laying down detailed rules for the implementation of Council Regulation (EEC) No 404/93 regarding imports of bananas into the Community

(Text with EEA relevance)

(OJ L 293, 31.10.1998, p. 32)

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►**M1**	Commission Regulation (EC) No 756/1999 of 12 April 1999	L 98	10	13.4.1999
►**M2**	Commission Regulation (EC) No 1632/2000 of 25 July 2000	L 187	27	26.7.2000

NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).

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(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organisation of the market in bananas [1], as last amended by Regulation (EC) No 1637/98 [2], and in particular Article 20 thereof,

(1) Whereas by Regulation (EC) No 1637/98 the Council amended the rules for the import of bananas introduced by Title IV of Regulation (EEC) No 404/93; whereas, in particular, that Regulation opened an autonomous tariff quota of 353 000 tonnes at ECU 75/tonne customs duty in addition to the 2 200 000 tonnes secured under the World Trade Organisation, and abolished the operator categories defined in Article 19 in its original form; whereas all the provisions necessary to implement those rules should be adopted, including such transitional measures as are justified by the speedy entry into force of this Regulation, as well as provisions concerning imports at the common customs tariff rate;

(2) Whereas Article 18(4) of Regulation (EEC) No 404/93 stipulates that if there is no possibility of securing the agreement of producer third countries with a substantial interest in the supply of bananas to the Community for the purposes of allocating tariff quotas and, where necessary, the traditional ACP quantity — hereinafter called 'traditional ACP bananas' — the Commission should be authorised to carry out that allocation using a single criterion; whereas the Commission's negotiations with third countries having a substantial interest in the supply of bananas to the Community in accordance with the Council's mandate have not achieved an agreement on the allocation of the tariff quotas; whereas the Commission is therefore obliged to allocate the tariff quotas on the basis of a single objective criterion, namely the exports to the Community by third countries having a substantial interest in that supply during the years 1994, 1995 and 1996 — these being the latest three-year period for which the Community holds firm data;

(3) Whereas Article 19 of Regulation (EEC) No 404/93 provides that tariff quotas for third-country bananas and imports of traditional ACP bananas are to be managed in accordance with the method based on taking account of traditional trade flows ('traditionals/newcomers'); whereas, however, where necessary other suitable methods may be adopted; whereas, for the purpose of implementing the new arrangements in 1999, it is advisable, in the light of available knowledge on the *de facto* patterns of importation, to determine the rights of traditional operators in accordance with their actual imports during the three-year period 1994 to 1996; whereas the choice of that reference period is in keeping with the general consensus within the Council;

(4) Whereas actual imports should be ascertained on the basis of the documents used for placing bananas in free circulation, namely import licences and the appropriate customs documents; whereas, however, in the case of the new Member States those operations

[1] OJ L 47, 25. 2. 1993, p. 1.
[2] OJ L 210, 28. 7. 1998, p. 28.

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must be established on the basis of the administrative documents valid prior to accession and, for the first three quarters of 1995, by means of the authorisations issued under the transitional measures in force during that period; whereas, in view of the large number of informal communications and transfers of import documents against payment which occurred during the final period of application of the initial arrangements established by Regulation (EEC) No 404/93, actual imports can justifiably be based on proof of payment of the customs duties applicable at the time at which the goods were imported;

(5) Whereas common administration of the tariff quotas and traditional ACP bananas seems likely to favour an increase in international trade and smoother trade flows and avoid unjustified distinctions; whereas, therefore, 'traditional operators' and 'newcomers' should be defined according to the single criteria regardless of the third country or ACP country from which they are importing; whereas the rights of 'traditional operators' should be determined on the basis of actual imports regardless of origin and supply source and should allow imports to be made from any origin; whereas that approach should be reflected in the method of administering imports by period without differentiation according to their different origins;

(6) Whereas a share of the tariff quotas and traditional ACP bananas must be reserved for 'newcomers'; whereas that overall allocation should be sufficient to allow operators to participate in that import trade and encourage healthy competition;

(7) Whereas the distribution of available quantities between 'traditional operators' and 'newcomers' is likely to undergo adjustments in future, to take account of changes in the number of operators in the two groups, their imports and the number of newcomers qualifying for re-classification as traditional operators as a result of their import activities; whereas adjustment should also be possible where necessary to permit satisfactory use of the quantities available during a given year;

(8) Whereas experience from several years of applying the Community banana import arrangements indicates the need to tighten the eligibility criteria for new operators so as to avoid the registration of purely fictitious agents and the grant of allocations in response to artificial or speculative applications; whereas, in particular, it is justifiable to demand a minimum of experience in importing comparable products — fresh products falling within Chapters 7, 8 and, under certain conditions, 9 of the Combined Nomenclature; whereas, also, to avoid applications for annual allocations which bear little relation to operators' actual capacities and which will not lead to applications for import licences for the corresponding quantities, submission of an application for an annual allocation should be subject to the requirement that a security in lieu of the import licence security be lodged; whereas that security should be released without delay in stages as operators actually use up their annual allocations; whereas, for the same purpose, the grant of an annual allocation in subsequent years should be made subject to a minimum rate of use of the previous annual allocation; whereas, lastly, the conditions under which 'newcomers' can gain access to the 'traditional operators' group should be determined;

(9) Whereas operators should be reminded that they may form mergers or groupings on terms and conditions defined in national legislation in order to meet their obligations and exercise the rights arising under this Regulation;

(10) Whereas the provisions applying to the registration of operators and the determination of their reference quantities or annual allocations, as the case may be, should be adopted; whereas the verifications and checks to be carried out by the competent national authorities should be specified; whereas, lastly, the action to be taken in the event that certain obligations are not fulfilled, in particular as regards registration and declarations made for the

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purpose of obtaining reference quantities or allocations under the import arrangements, should also be specified;

(11) Whereas, for the purposes of implementing the tariff quota and traditional ACP banana arrangements in 1999, the administrative rules based on periods as created by Commission Regulation (EEC) No 1442/93 of 10 June 1993 laying down detailed rules for the application of the arrangements for importing bananas into the Community [1], as last amended by Regulation (EC) No 1409/96 [2], should be maintained, with adjustments where necessary; whereas those rules relate in particular to fixing the indicative quantities for the first three quarters, the ceilings for individual applications, the frequency for the submission of licence applications and for the issue of licences, and the issue of licences for the re-use of unused quantities;

(12) Whereas, for the application of Article 18(7) and (8) of Regulation (EEC) No 404/93, there is a need to define the items making up the balance of production, consumption, imports and exports which has to be established before an increase in the autonomous quota can be made in the event of an increase in demand or of exceptional circumstances affecting supplies to the Community market;

(13) Whereas, except where derogations are explicitly provided for, Commission Regulation (EEC) No 3719/88 of 16 November 1988 laying down common detailed rules for the application of the system of import and export licences and advance-fixing certificates for agricultural products [3], as last amended by Regulation (EC) No 1044/98 [4], should apply; whereas, pursuant to Article 9 of that Regulation, rights resulting from licences may be transferred by the holder only once per licence or per extract from a licence during the term of validity thereof;

(14) Whereas the conditions for and the effects of transferring licences should be specified in the light of the definition of operator categories established by this Regulation; whereas a transfer restricted to a single transferee per licence or certificate or extract therefrom will allow trade relations to develop between the various registered operators; whereas, however, artificial trade, speculation or disturbance of normal trade should not be encouraged by permitting transfers from 'newcomers' in favour of 'traditional operators';

(15) Whereas all the necessary communications between operators, Member States and the Commission in pursuance of this Regulation should be specified, in particular as regards the establishment of operators' reference quantities and allocations, the administration of tariff quotas and traditional ACP bananas by period and market monitoring;

(16) Whereas, under the transitional measures necessitated by the application of the new arrangements on 1 January 1999, derogations should be provided for from the timetable for registering operators and from the transmission to the competent national authorities of the documentary evidence needed to establish their rights; whereas, however, applications submitted must contain a list of and precise references for all documentary evidence for the rights claimed;

(17) Whereas, further, the quantities which can be imported from the various origins for the first quarter of 1999 under the tariff quotas and as traditional ACP bananas should be determined and the ceiling for individual licence applications from operators and a strict timetable for the submission of those applications should be fixed;

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(1) OJ L 142, 12. 6. 1993, p. 6.
(2) OJ L 181, 20. 7. 1996, p. 13.
(3) OJ L 331, 2. 12. 1988, p. 1.
(4) OJ L 149, 20. 5. 1998, p. 11.

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(18) Whereas the changes made by this Regulation to the arrangements for the importation of bananas into the Community, and in particular the provisions regarding the definition of operators, call for verifications and checks by the competent national authorities, acting in cooperation with the Commission; whereas such operations can, if need be, lead to corrections of operators' reference quantities or annual allocations; whereas it follows *inter alia* that reference quantities and annual allocations may not be regarded as vested rights, nor be pleaded by operators as legitimate expectations;

(19) Whereas Regulation (EEC) No 1442/93 and Commission Regulation (EC) No 478/95 of 1 March 1995 on additional rules for the application of Council Regulation (EEC) No 404/93 as regards the tariff quota arrangements for imports of bananas into the Community and amending Regulation (EEC) No 1442/93 [1], as amended by Regulation (EC) No 702/95 [2], should be repealed;

(20) Whereas Regulation (EC) No 1637/98 applies from 1 January 1999; whereas, in order to enable operators to enjoy the benefit of the provisions set out in that Regulation from that date onwards, transitional measures should be enacted which allow the Member States and the Commission to assemble all the requisite material for ensuring that licences are used from 1 January 1999 onwards;

(21) Whereas the Management Committee for Bananas has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

TITLE I

Introductory provisions

Article 1

This Regulation lays down detailed rules for applying the arrangements for the importation of bananas under the tariff quotas provided for in Article 18(1) and (2) of Regulation (EEC) No 404/93 and for the importation of quantities of traditional ACP bananas as referred to in Article 16 of that Regulation, and also the arrangements outside those quotas.

The tariff quotas shall be divided up among the main supplier countries and other countries as shown in Annex I hereto.

Article 2

1. The tariff quotas and the traditional ACP quantities shall be made available as follows:

(a) 92 % to 'traditional operators' as defined in Article 3;

(b) 8 % to 'newcomers' as defined in Article 7.

2. The distribution given in paragraph 1 may be amended to make better use of the tariff quotas and traditional ACP quantities, in particular in line with changes in the numbers of 'traditional operators' and 'newcomers', the volumes of their imports, and the accession of 'newcomers' to the group of 'traditional operators' under Article 10 below.

3. Where the total provisional reference quantities of 'traditional operators', or the annual allocations requested by 'newcomers', is less than the total amount allowed for the relevant category of operator, the available quantity may be allotted to the other category.

[1] OJ L 49, 4. 3. 1995, p. 13.
[2] OJ L 71, 31. 3. 1995, p. 84.

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TITLE II

Administration of tariff quotas and traditional ACP bananas

CHAPTER 1

Definition of operators

Section I: Traditional operators

Article 3

For the purposes of this Regulation, 'traditional operators' shall mean economic agents established in the European Community during the period for determining their reference quantities, and also at the time of their registration under Article 5 below, who have actually imported a minimum quantity of third-country and/or ACP-country bananas on their own account for subsequent marketing in the Community during a set reference period.

The minimum quantity referred to in the first paragraph shall be 100 tonnes imported in any one year of the reference period. This minimum quantity shall be 20 tonnes where the imports consist entirely of bananas with a length of 10 centimetres or less.

Article 4

1. Each traditional operator registered in a Member State in accordance with Article 5 shall receive, for each year and for all the origins listed in Annex I, a single reference quantity based on the quantities of bananas actually imported during the reference period.

2. For imports carried out in 1999 under the tariff quotas or as traditional ACP bananas, the reference period shall be made up of the years 1994, 1995 and 1996.

Article 5

1. The registration of traditional operators and the determination of their reference quantity shall be conducted on the basis of a written application submitted by operators in any one Member State of their choice.

Applications for registration shall be submitted by 1 July.

The competent authorities in each Member State are listed in Annex II.

2. For the purposes of determining their reference quantity, each operator shall send to the competent authority by 1 July each year:

(a) a figure for the total quantity of bananas from the origins listed in Annex I actually imported during each of the years making up the reference period;

(b) the supporting documents detailed in paragraph 3.

3. Actual imports shall be attested by both of the following:

(a) by presenting copies of the import licences used either by the holder or, in the case of a transfer under Article 9 of Regulation (EEC) No 3719/88 duly endorsed by the competent authorities, by the transferee, in order to release the relevant quantities for free circulation; and

(b) by presenting proof of payment of the customs duties due on the day on which customs import formalities were completed. The payment shall be made either direct to the competent authorities or via a customs agent or representative.

Operators furnishing proof of payment of customs duties, either direct to the competent authorities or via a customs agent or representative, for the release into free circulation of a given quantity of bananas without being the holder or transferee holder of the relevant import licence used for this

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purpose — or, where appropriate, of the proper customs documents and import permits in accordance with paragraph 4 — shall be deemed to have actually imported the said quantity provided that they have registered in a Member State under Regulation (EEC) No 1442/93 and/or that they fulfil the requirements of this Regulation for registration as a traditional operator. Customs agents or representatives may not call for the application of this subparagraph.

4. For operators established in Austria, Finland or Sweden, proof of the quantities released into free circulation in those Member States in 1994, and in 1995 up to the third quarter thereof, shall be furnished by presenting copies of the relevant customs documents and import permits issued by the competent authorities and duly used.

Article 6

1. By 30 September at the latest each year, after making the necessary checks and verifications, the competent authorities shall determine, in accordance with Articles 3, 4 and 5, a single, provisional reference quantity for each traditional operator, on the basis of the average quantities of bananas actually imported by them from the origins listed in Annex I during the reference period.

The reference quantities shall be based on a three-year average even where the operator has not imported bananas for part of that period.

2. No later than 15 October of each year, the competent authorities shall notify the Commission of the list of traditional operators they have registered and the total provisional reference quantity determined. The same notification shall contain, for each operator, the quantities of their actual banana imports during the reference period, the serial numbers of the import licences or licence extracts used, and their provisional reference quantity.

As and when required, the Commission shall forward those lists to the other Member States with a view to facilitating the detection or prevention of false claims by operators.

The Commission may publish any of the details contained in the notifications from Member States.

3. Using the information received under paragraph 2, and in light of the total volume of tariff quotas and traditional ACP bananas as referred to in Article 2, the Commission shall, where appropriate, set a single adjustment coefficient to be applied to each operator's provisional reference quantity.

4. The competent authorities shall then determine the reference quantity for each operator, applying if need be the adjustment coefficient calculated under paragraph 3, and shall notify each operator of the reference quantity allocated to him, by 15 November at the latest.

Section II: Newcomers

Article 7

For the purposes of this Regulation and as regards imports under the tariff quotas and as traditional ACP bananas, 'newcomers' shall mean economic agents established in the European Community who, at the time of registration:

(a) have been engaged independently and on their own account in the commercial activity of importing fresh fruit and vegetables falling within Chapters 7 and 8, of the Tariff and Statistical Nomenclature and the Common Customs Tariff, or products under Chapter 9 thereof if they have also imported products falling within Chapters 7 and 8 in one of the three years immediately preceding the year in respect of which registration is sought; and

(b) by virtue of this activity, have undertaken imports to a declared customs value of ECU 400 000 or more during the period referred to in point (a).

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Article 8

1. For the purposes of registering as a newcomer in the Member State of their choice, operators shall send to the relevant competent authority as listed in Annex II the following supporting documents:

(a) proof of entry in a commercial register of the Member State or proof of any alternative registration acceptable to the said authorities;

(b) evidence of having imported the products of the sector referred to in point (a) of Article 7, by presenting the import licences used or, in cases where such a licence was not compulsory, the relevant customs documents;

(c) a copy of an attestation from an independent, professionally registered chartered accountant certifying imports to the value required in point (b) of Article 7, or a copy of the corresponding customs declarations stamped by the customs authorities.

2. Applications for registration shall be submitted by 1 July each year.

3. Operators may submit only one application for registration in only one Member State of their choice.

4. In order to have their registration renewed, operators shall provide the competent authorities with proof that they have actually imported on their own account at least 50 % of the quantity allocated to them for the current year.

Applications for renewal shall be submitted by 1 October each year and be accompanied by copies of import licences used, proof of payment of the customs duties due on the date of the completion of customs import formalities, and a copy of the licence(s) issued for the current quarter.

5. By 10 October each year, the Member States shall notify the Commission of the list of operators who have submitted requests for registration and for renewal of registration, and in the case of renewals the serial numbers of licences or any licence extracts, used and issued.

As and when required, the Commission shall forward those lists to the other Member States with a view to facilitating the detection or prevention of false claims by operators.

The Commission may publish any of the details contained in the notifications from Member States.

Article 9

1. At the same time as the operators concerned apply for registration or renewal of their registration, they shall also request their annual quota allocation.

To be accepted, such requests:

(a) shall not cover a quantity greater than 10 % of the total quantity allocated annually to newcomers; and

(b) shall be accompanied by proof that a security of ECU 18 per tonne requested has been lodged in accordance with Title III of Commission Regulation (EEC) No 2220/85 [1]. This security shall be lodged against an applicant's performance of his obligation to apply for import licences for the amount of the allocation granted and actually to import the quantity allocated.

The security shall be released in stages, in proportion to the quantities actually imported.

2. By 10 October each year, the competent authorities shall send the Commission a list of the newcomer operators registered, indicating for each one the annual allocation requested.

[1] OJ L 205, 3. 8. 1985, p. 5.

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3. The allocation requests received by the Commission shall be ranked in ascending order of quantity and an annual allocation shall then be determined for each 'newcomer' operator up to a maximum of the individual quantity requested, arrived at by a process of allocating to all operators the smallest requested quantity remaining in each round. The Commission shall determine without delay the quantities for which annual allocations are granted.

If the procedure in the first subparagraph results in an operator's receiving an annual allocation smaller than the amount requested, the security provided for in paragraph 1 shall be released in proportion to the reduction arrived at.

4. By 15 November each year, the competent authorities in the Member States shall determine and notify to each newcomer operator the quantity allocated to him for the following year.

Article 10

A newcomer operator shall obtain the status of traditional operators on applying for registration in accordance with Article 5, provided that he fulfils the conditions specified in Article 3 after three years of commercial activity following the date of first registration.

Applications shall be accompanied by the figures and supporting documents referred to in Article 5(2) and (3).

Article 11

1. The Member States shall be responsible for ensuring compliance with this Section.

In particular, they shall check that the operators concerned are commercially active for their own account as importers into the Community in the sector referred to in Article 7 and as independent economic units in terms of management, staffing and operations. Where there are grounds for suspecting that these conditions are not met, applications for registration and requests for annual allocations shall be accepted only subject to the operator's providing evidence of compliance which is considered satisfactory by the national competent authorities.

2. The Member States and the Commission shall exchange all information relevant to the application of this Article.

Section III: Common provisions

Article 12

1. The competent national authorities shall register as traditional operators and newcomers all economic agents who submit an appropriate application, whether physical persons or legal entities, and whether individual agents or groups thereof, provided that they are legally constituted under the national legislation governing the exercise of the commercial activities in question and that they satisfy the provisions of this Regulation.

A group of agents may be registered as either a traditional operator or a newcomer if its members jointly meet the requirements of this Regulation. The group shall stand for each of its members in exercising their rights and fulfilling their obligations.

2. Operators resulting from a merger of several other operators, each with their own rights under this Regulation, shall enjoy the same rights as those former operators.

Article 13

1. In the case of both traditional operators and newcomer operators, failure to comply with the obligation to register in only one Member State shall lead to the rejection of all applications for registration that have been submitted and the cancellation, as the case may be, of any

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reference quantity or of any annual allocation already granted. In addition, such failure shall result in a prohibition on the submission of any further applications in the year following detection of the irregularity.

2. Where fraudulent manipulations are undertaken or fraudulent documentation is supplied with a view to obtaining an unwarranted registration, reference quantity or, where relevant, annual allocation, such registration, reference quantity or allocation shall be cancelled, without prejudice to the application of any relevant national laws.

In addition, in such cases the operator shall be prohibited from applying for a new registration in any Member State during the two years following the year in which the irregularity is detected.

CHAPTER 2

Rules for issuing import licences

Article 14

1. For the first three quarters of the year, an indicative quantity expressed as the same percentage of available quantities from each of the origins listed in Annex I may be fixed for the purposes of issuing import licences.

2. For the first three quarters of the year, it may be decided that applications for licences submitted by a given operator may not in total exceed a set percentage of the reference quantity fixed under Article 6(4) or the annual allocation fixed under Article 9(4).

Article 15

1. For each quarter of the year, applications for import licences shall be submitted to the competent authorities of the Member State in which operators are registered during the first seven days of the month preceding the quarter in respect of which the licences are being issued.

2. Licence applications submitted:

(a) by traditional operators shall bear the wording ‘Licence application traditional operator — Regulation (EC) No 2362/98’;

(b) by newcomer operators shall bear the wording ‘Licence application newcomer — Regulation (EC) No 2362/98’.

3. Licence applications presented by an operator shall only be accepted where:

(a) they bear the wording shown in paragraph 2;

(b) they indicate, in Box 8, one of the origins listed in Annex I;

(c) they cover a quantity no greater than that available for the origin indicated, such quantity being published periodically before the start of the application period;

(d) they cover a total quantity no greater than the quantity resulting from applying Article 14(2) for the quarter concerned; or no greater than the operator’s remaining reference quantity or annual allocation, as the case may be.

4. Licences shall include:

(a) in Box 20, one of the statements shown in paragraph 2,

(b) in Box 8, an indication of the country of origin in accordance with point (b) of paragraph 3.

Receipt of a licence carries the obligation to import from the origin indicated.

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Article 16

Within two working days following either the closing date for the submission of import licence applications for the first period under Article 15(1) or the closing date fixed under point (a) of Article 18(1), the competent authorities shall notify the Commission of the quantities covered by licence applications.

This notification shall present the quantities requested, broken down according to the origins listed in Annex I and as between traditional operators and newcomers.

Article 17

Where, for a given quarter and for any one or more of the origins listed in Annex I, the quantities applied for appreciably exceed any indicative quantity fixed under Article 14, or exceed the quantities available, a percentage reduction to be applied to the amounts requested shall be fixed.

Article 18

1. Where a percentage reduction has been fixed for one or more given origins under Article 17, operators who have applied for import licences for the origin(s) concerned may:

(a) either renounce their use of the licence by informing the relevant issuing authority accordingly within 10 working days of publication of the Regulation fixing the reduction percentage, whereupon the security lodged against the licence shall be released immediately; or

(b) submit one or more fresh licence applications for the origins for which available quantities have been published by the Commission, up to an amount equal to or smaller than the quantity applied for but not covered by the original licence issued. Such requests shall be submitted within the time limit laid down in point (a) and shall be subject to all the conditions governing licence applications.

2. The Commission shall immediately determine the quantities for which licences can be issued for each of the origins concerned.

Article 19

1. The competent authorities shall issue import licences for the following quarter not later than the 23rd day of the last month of each quarter. Where that day is not a working day, licences shall be issued no later than the first working day following.

Where Article 18 is applied, licences shall be issued immediately after publication of the Decision referred to in Article 18(2).

2. By way of derogation from Article 21(1) of Regulation (EEC) No 3719/88, the term of validity of import licences shall run from the date on which they are actually issued and shall expire on the seventh day of the fourth month following the month in which they are issued. The date of actual issue shall be included in the term of validity of a licence.

Licences issued under Article 18 shall have a term of validity expiring on the seventh day of the month following the end of the quarter in which they have been issued.

Article 20

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1. Unused quantities covered by licences shall be re-allocated on application to the same operators, be they holders or transferees, for use in a subsequent quarter of the same year as that in which the original licences were issued. Re-allocation licences shall be used to import bananas of the same origin as that for which the original unused or partly used licences were issued.

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The securities for the original licences shall be forfeit in proportion to the quantities not used up.

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2. Applications for re-allocation shall be submitted within the time limit laid down in Article 15(1) and accompanied by the original or a certified copy of the unused or partly used licence(s), as well as proof that the security referred to in Article 25 has been lodged.

Applications for re-allocation and the re-allocation licences themselves shall bear the following wording in Box 20: 'Re-allocation licence — Article 20 of Regulation (EC) No 2362/98.'

3. Applications for re-allocation shall not be subject to any reduction percentage that may be set under Article 17.

4. The competent authorities shall notify the Commission of the quantities covered by any applications for re-allocation received, within the time limit laid down in Article 16.

Article 21

1. Rights arising under import licences issued in accordance with this chapter shall be transferable to a single transferee operator on the terms and conditions laid down in Article 9 of Regulation (EEC) No 3719/88, without prejudice to paragraph 2 of this Article.

2. Rights may be transferred:

(a) between traditional operators registered under Article 5;

(b) from traditional operators to newcomer operators registered under Article 8;

(c) between newcomer operators.

The transfer of rights from newcomers to traditional operators shall not be permitted.

3. In the event of a transfer of rights:

(a) between traditional operators, the quantity transferred shall be taken into account in calculating the reference quantities of the two operators for the purposes of Articles 4(1) and 6(1), in order to reduce the reference quantity of the transferor and increase that of the transferee;

(b) between a traditional operator and a newcomer, the quantity transferred shall be taken into account by reducing the reference quantity of the transferor for the purposes of the same provisions as referred to in (a);

(c) to newcomer operators in accordance with paragraph 2(b) or (c), the quantity transferred shall be taken into account when a newcomer applies to register as a traditional operator under Article 10.

Article 22

1. Operators shall immediately declare to the competent authorities all quantities of bananas which have been released for free circulation and then re-exported out of the Community before the term of validity of the import licence concerned expires. They shall return to the same authorities the originals of the import licences involved.

2. Within a month of the end of each quarter, the competent authorities shall notify the Commission of all quantities re-exported, specifying in each case the category of operators (traditional or newcomer) to whom the import licences had been issued and quoting the serial numbers of the relevant import licences or licence extracts.

3. One or more import licences shall be issued, up to the amount of quantities re-exported, either to the holder or to the transferee of the original licences, during a subsequent quarter but still within the year in which the original licence(s) was, or were, issued.

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4. The competent authorities shall check that the quantities declared under paragraph 1 have actually been re-exported from the Community.

5. The quantities of bananas re-exported shall not be taken into account in calculating the actual imports of traditional operators or of newcomers.

The first subparagraph shall also cover re-exports carried out in 1994 from Member States to Austria, Finland or Sweden, and re-exports from the latter countries to third countries, including the Community as constituted on 31 December 1994.

TITLE III

Rules for imports of bananas outside the tariff quotas and of traditional ACP bananas

Article 23

1. Import licence applications may be submitted in any Member State.

2. Licence applications and the licences themselves shall bear the following wording in Section 20: 'Non-quota imports and traditional ACP bananas — Regulation (EC) No 2362/98, Article 23'.

3. Licences shall be issued immediately, in accordance with Article 21(1) of Regulation (EEC) No 3719/88. The term of validity of licences shall be three months.

4. Within a month of the end of each quarter, Member States shall notify the Commission of the quantities covered by licences issued under this Article.

TITLE IV

General provisions

Article 24

For the purposes of Article 18(7) and (8) of Regulation (EEC) No 404/93, the balance showing Community production and consumption and its imports and exports shall be based on:

(a) available data on the quantities of bananas marketed in the Community during the preceding year, broken down by origin;

(b) forecast production and sales of Community bananas;

(c) forecast imports of bananas from all origins;

(d) forecast consumption on the basis, in particular, of recent consumption trends and movements in market prices.

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Article 25

1. Import licence applications shall be accompanied by proof that a security has been lodged in accordance with Title III of Regulation (EEC) No 2220/85. This security shall amount to EUR 18 per tonne. This provision shall not apply, however, to licence applications submitted by newcomer operators under the import arrangements laid down in Title II.

2. Where licences are issued for a quantity lower than that applied for, the security covering the quantity not allocated shall be released immediately.

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Article 26

Regulation (EEC) No 3719/88 shall apply, with the exception of the fourth indent of Article 5(1) and Article 8(4) and (5) thereof, regard being had to the derogations contained in this Regulation.

▼B

By way of derogation from Article 33(5) of Regulation (EEC) No 3719/88, proof of acceptance of an import declaration for the quantity concerned shall be furnished within 30 days of expiry of the validity of an import licence, except in cases of *force majeure*.

▼M2

Article 26a

1. The customs offices at which the import declarations are lodged with a view to the release into free circulation of bananas from the origins listed in Annex I, under the tariff quota and traditional ACP banana arrangements, shall:

(a) keep a copy of each import licence and extract therefrom issued on acceptance of a declaration of release into free circulation, and

(b) forward at the end of each fortnight a second copy of that import licence or extract therefrom to the Member State authorities listed in Annex II to this Regulation responsible for issuing the licences. Those authorities shall at the end of each fortnight forward a copy of the licences and extracts received to the competent authorities of the Member States listed in the abovementioned Annex which issued those documents.

2. Where there is doubt as to the authenticity of the licence, the extract, or any information in, or signatures on the documents presented, or as to the status of the operators completing the formalities for release into free circulation or for the account of whom those formalities are completed, and where irregularities are suspected, the customs offices at which those documents were presented shall immediately inform thereof by telecommunication the competent authorities of their Member State as indicated in paragraph 1. The latter shall immediately forward that information by telecommunication to the competent authorities which issued the documents and to the Commission, for the purposes of a thorough check.

The Commission shall forward to the Member States' customs authorities the list of operators registered in the Community for the import arrangements in question who may be holders or transferors of an import licence or extract therefrom.

3. On the basis of the information received pursuant to paragraphs 1 and 2, the Member States' competent authorities listed in Annex II shall carry out the additional checks needed to guarantee the correct application of the tariff quota arrangements, in particular verification of the quantities imported under those arrangements, by means of a precise comparison of the licences and extracts issued with the licences and extracts used. To that end, they shall in particular verify the authenticity and conformity of the documents used and that the documents have been used by operators registered pursuant to the provisions of Title I.

▼B

Article 27

The Member States shall send the Commission the following statistical and commercial data:

(a) every Wednesday: wholesale prices for yellow bananas, broken down by country of origin, as recorded the previous week on the representative markets listed in Article 3 of Commission Regulation (EC) No 3223/94 [1];

(b) on the 20th day of each month, in respect of the preceding month: figures for the volume and value of bananas which have been released for free circulation in their territory, broken down by country of origin;

(c) on the 10th day of the month following expiry of the validity of import licences for each quarter: the quantities covered by import

[1] OJ L 337, 24. 12. 1994, p. 66.

▼B

licences issued, the quantities covered by licences used and returned to the issuing body, and the quantities covered by unused licences;

(d) on request: forecasts of production and sales.

TITLE V

Transitional arrangements

Article 28

1. By way of derogation from Articles 5(1) and 8(2), operators shall submit their applications for registration for 1999 as either 'traditional operators' or as 'newcomers' in the Member State of their choice by 13 November 1998 at the latest.

To be accepted, applications shall include:

(a) in the case of 'traditional operators':

(i) a figure for the total quantity of bananas actually imported in each of the years of the reference period 1994 to 1996 and the serial numbers of all the import licences and licence extracts used for these imports, or, should Article 5(4) apply, the customs documents and import permits; and

(ii) a list, complete with references, summarising all the documentary evidence showing that duties have been paid, in accordance with point (b) of the first subparagraph of Article 5(3);

(b) in the case of 'newcomers':

(i) a request for an annual allocation under Article 9(1);

(ii) a list, complete with references, summarising all the documentary evidence required under Article 8(1).

Operators shall hold all the documentary evidence referred to in the second subparagraph at the disposal of the competent authorities so as to enable the checks and verifications required by them to be carried out.

2. By 30 November 1998 at the latest, the Member States shall send the Commission separate lists of the 'traditional operators' and 'newcomers' who have submitted applications for registration under the second subparagraph, together with their total provisional reference quantities and total requests for annual allocations, as appropriate. The following additional items shall be included:

(a) for each 'traditional operator': the quantity of bananas imported by them during each year in the period 1994 to 1996, their provisional reference quantity and the serial numbers of the licences and licence extracts used, or, should Article 5(4) apply, the customs documents and import licences;

(b) for each 'newcomer' operator: a figure for the annual allocation requested.

3. In the light of the notifications received in accordance with point (a) of paragraph 2, the Commission shall if necessary fix a single adjustment coefficient as provided for in Article 6(3).

4. By way of derogation from Article 6(4), the competent authorities shall determine the reference quantity of each operator and shall notify it to them by 10 December 1998.

Article 29

If the quantities covered by applications for licences in respect of the first quarter of 1999 covering imports from one or more of the origins listed in Annex I exceed 26 % of the quantities set out in that Annex, the Commission shall fix a percentage reduction to be applied to all applications in respect of the origin(s) concerned.

▼B

Article 30

1. By way of derogation from Article 15(1), operators shall submit applications for import licences between 14 and 16 December 1998 in the Member State where they have applied for registration.

To be accepted, applications for licences submitted by a single operator must not exceed a total quantity greater than:

(a) 26 % of the reference quantity of a 'traditional operator';

(b) 26 % of the annual allocation of a 'newcomer' operator.

2. Member States shall notify the Commission of the total quantities covered by applications for import licences, broken down by the origins listed in Annex I and separately for the two categories of operator, by 18 December 1998 at the latest.

3. The Commission shall determine immediately the quantities for which licences may be issued in respect of the origins concerned.

4. The competent national authorities shall issue import licences by 31 December 1998 at the latest.

Import licences shall be issued with a view to release for free circulation as from 1 January 1999.

Licence applications and the licences themselves shall bear the wording, in Box 24: 'Issued with a view to free circulation as from 1 January 1999'.

TITLE VI

Final provisions

Article 31

Regulations (EEC) No 1442/93 and (EC) No 478/95 are hereby repealed as from 1 January 1999.

Article 32

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

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

▼B

ANNEX I

Distribution of the tariff quotas and the traditional ACP quantity

Tariff quotas (Article 18(1) and (2) of Regulation (EC) No 404/93) — 2 200 000 t/353 000 t

Ecuador:	26,17 %
Costa Rica:	25,61 %
Colombia:	23,03 %
Panama:	15,76 %
Subtotal:	(90,57 %)
Other:	9,43 %

Traditional ACP quantity: 857 700 tonnes.

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ANNEX II

The authorities of the Member States competent for compiling the lists of operators and of quantities marketed are as follows:

— *Belgium*

Bureau d'Intervention et de Restitution belge/Belgisch Interventie- en Restitutiebureau
Rue de Trèves, 82/Trierstraat 82
B-1040 Bruxelles/Brussel

— *Denmark*

EU-Direktoratet
Kampmannsgade 3
DK-1780 København V

— *Germany*

Bundesanstalt für Landwirtschaft und Ernährung
Referat 322
Adickesallee, 40
D-60322 Frankfurt am Main

— *Greece*

Ministry of Agriculture
GEDIDAGEP
Directorate Fruits and Vegetables, Wine and Industrial Products
241, Acharnon
GR-10446

— *Spain*

Ministerio de Economía y Hacienda
Secretaría General de Comercio Exterior
Paseo de la Castellana, 162
E-28046 Madrid

— *France*

Office de Développement de l'économie agricole des Départements d'Outre-Mer (ODEADOM)
28, Boulevard de Grenelle
F-75737 Paris Cedex 15

— *Ireland*

Department of Agriculture and Food Horticulture Division
Agriculture House (7W)
Kildare Street
IRL-Dublin 2

— *Italy*

Ministero del Commercio con l'Estero
DG Politica Commerciale e Gestione Regime Scambi — Div. II
Viale Boston 25
I-00144 Roma

— *Luxembourg*

Ministère de l'Agriculture
Administration des Services Techniques de l'Agriculture
Service de l'Horticulture
16, Route d'Esch
Boîte Postale 1904
L-1014 Luxembourg

— *Netherlands*

Produktschap Tuinbouw
Bezuidenhoutseweg 153
Postbus 93099
NL-2594 AG Den Haag

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— *Austria*

Bundesministerium für Land- und Forstwirtschaft
Abteilung III A 5 — Handelspolitik und Außenhandel
Stubenring 12
A-1012 Wien

— *Portugal*

Ministério da Economia
Direcção-Geral das Relações Economicas Internacionais
Direcção de Serviços de Licenciamento do Comércio Externo
Avenida da República, 79
P-1094 Lisboa Codex

— *Finland*

Maa-ja Metsätalousministeriö
Mariankatu 23
P.O. Box 232
SF-00171 Helsinki

— *Sweden*

Jordbruksverket
Vallgatan 8
S-551 82 Jönköping

— *United Kingdom*

Intervention Board
External Trade Division
Lancaster House
Hampshire Court
UK-Newcastle Upon Tyne, NE4 7YE