COMMISSION REGULATION (EC) No 1439/2003

of 12 August 2003

amending Regulation (EC) No 896/2001 laying down detailed rules for applying Council Regulation (EEC) No 404/93 as regards the arrangements for importing bananas into the Community

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 2587/2001 [2], and in particular Article 20 thereof,

Whereas:

(1) Commission Regulation (EC) No 896/2001 [3], as last amended by Regulation (EC) No 1303/2003 [4], lays down detailed rules for applying Regulation (EEC) No 404/93, applicable from 1 July 2001, as regards the management of the import tariff quotas provided for in Article 18(1) of that Regulation.

(2) Article 4 of Regulation (EC) No 896/2001 lays down, in particular, the method for establishing the reference quantity for each traditional operator A/B and C on the basis of the average of primary imports carried out by them during 1994, 1995 and 1996 taken into account for the purposes of administering the tariff quota opened for 1998.

(3) To update the data and simplify administration of the regime, for the tariff quotas A/B and C opened for 2004 and, subsequently, for 2005, the reference quantity for traditional operators should be calculated on the basis of the extent to which they used the import licences issued to them under Article 4(1) and (2) of Regulation (EC) No 896/2001 and/or transferred to them under Article 20 of that Regulation in the course of 2002 and 2003, respectively.

(4) The competent national authorities are responsible for making the documentary checks required to verify that import licences are used by their holder, or by the transferee where licences are transferred under Article 20 of Regulation (EC) No 896/2001 and the relevant provisions of Commission Regulation (EC) No 1291/2000 of 9 June 2000 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products [5], as last amended by Regulation (EC) No 325/2003 [6].

(5) Account should be taken of the special situation of traditional operators to whom an exceptionally low reference quantity would be allocated in 2004 and/or 2005 as a result of hardship affecting their activities in the course of the reference year, and provision made for a procedure for taking appropriate measures if they prove necessary, within the limits of the quantities under tariff quotas A/B and C.

(6) Regulation (EC) No 896/2001 should be amended accordingly.

(7) The provisions of the import regime do not give rise to acquired rights nor may they be invoked as legitimate expectations by operators.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Bananas,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 896/2001 is hereby amended as follows:

1. Article 3(1) is replaced by the following:

'1. "traditional operators" means economic agents, whether natural persons or entities having legal personality, individual agents or groups, established in the Community, who, for their own account, purchased a minimum quantity of bananas originating in third countries from the producers or, where applicable, produced, consigned and sold such products in the Community during one of the years of the reference period used up to 31 December 2003.

Operations as defined in the previous subparagraph shall hereinafter be called "primary imports".

The minimum quantity referred to in the first subparagraph shall be 250 tonnes, or 20 tonnes where marketing or import concerns only bananas with a length of 10 centimetres or less.'

[1] OJ L 47, 25.2.1993, p. 1.
[2] OJ L 345, 29.12.2001, p. 13.
[3] OJ L 126, 8.5.2001, p. 6.
[4] OJ L 185, 24.7.2003, p. 5.
[5] OJ L 152, 24.6.2000, p. 1.
[6] OJ L 47, 21.2.2003, p. 21.

2. Articles 4 and 5 are replaced by the following:

'*Article 4*

1. The reference quantity for each traditional operator A/B and C who submits a written application shall be established on the basis of the extent to which they used the import licences issued to them or transferred to them under Article 20 for 2002 (in the case of imports to be carried out in 2004) and 2003 (in the case of imports to be carried out in 2005), respectively.

2. Each traditional operator shall submit an application for a reference quantity to the competent national authority no later than 15 September of the year preceding the year for which the tariff quota is opened.

Applications shall include details of the quantities of bananas for which the import licences issued for the year determining the reference quantity in accordance with paragraph 1 have been used by the applicant. They shall be accompanied by copies of the import licences used by the applicant traditional operators.

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

Article 5

1. The competent national authorities shall make the checks required to determine the reference quantity of traditional operators for each of the years 2004 and 2005. The extent to which licences have been used shall be verified on the basis of copies of the licences issued and used by applicant operators.

Where licences are transferred under Article 20, the competent national authorities of the Member States concerned shall exchange the necessary information.

2. The competent national authorities shall notify the Commission of the sum of the reference quantities separately for tariff quotas A/B and C no later than 15 October of the year preceding the year for which the tariff quota is opened.

3. Using the information received under paragraph 2, and in the light of the total quantities available under tariff quotas A/B and C, the Commission shall, where appropriate, set a single adjustment coefficient to be applied to each traditional operator's reference quantity.

4. The competent national authorities shall notify each traditional operator of their reference quantity, adjusted where applicable by the coefficient laid down in accordance with paragraph 3, no later than 15 November.

5. Where the reference quantity allocated to an operator is exceptionally low as a result of hardship affecting their activity during the reference year, a request for recognition of hardship may be submitted to the Commission by the competent national authority, accompanied by the necessary supporting documents. Where required, the Commission shall take appropriate measures in accordance with Article 20 of Regulation (EC) No 404/93, within the limits of the quantities under tariff quotas A/B and C.

6. The competent authorities in each Member State shall be as listed in the Annex. That list shall be amended by the Commission on the basis of changes notified by the Member States.'

Article 2

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

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

Done at Brussels, 12 August 2003.

For the Commission

Franz FISCHLER

Member of the Commission