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COMMISSION REGULATION (EC) No 414/2004

of 5 March 2004

adopting specific measures with a view to adapting the arrangements for administering tariff quotas on banana imports as a result of the accession of new Member States on 1 May 2004

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adopting specific measures with a view to adapting the arrangements for administering tariff quotas on banana imports as a result of the accession of new Member States on 1 May 2004

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], and in particular Article 20 thereof,

Whereas:

(1) Commission Regulation (EC) No 896/2001 [2] lays down detailed rules for applying Council Regulation (EEC) No 404/93 as regards the arrangements for importing bananas into the Community. Titles I and II of that Regulation define the categories of traditional and non-traditional operators who may supply the Community under the tariff quotas opened each year.

(2) In view of the accession to the Community of 10 new Member States on 1 May 2004, it is necessary to identify the operators established in the Community as constituted on 30 April 2004, whether or not already registered, who have supplied the markets of the countries acceding on 1 May 2004 and who meet the conditions laid down in Articles 3 and 4 of Regulation (EC) No 896/2001, in the case of traditional operators, and Articles 6 to 12 of that Regulation, in the case of non-traditional operators.

(3) In order to draw up a list of operators who qualify to participate in the tariff quota arrangements for banana imports in accordance with the criteria laid down by Community law, reference periods should be adopted which are representative of developments in trade. To that end, the three-year period 2000 to 2002, for which import statistics are available, should be used for traditional operators. For non-traditional operators, 2002 and 2003, which immediately precede the year of registration, may be used for the purposes of Article 6 of Regulation (EC) No 896/2001.

(4) In the case of traditional importers, it should be made clear that only primary imports within the meaning of Article 3(1) of Regulation (EC) No 896/2001 which have actually been used to supply accession countries and which have resulted in quantities of bananas being released for free circulation in an accession country may be taken into account for determining a specific additional reference quantity. Such operators should therefore be required to produce the customs documents attesting to release for free circulation in the accession countries.

(5) In the case of non-traditional operators, in order to avoid excessive applications for allocations bearing no relation to their actual capacity, a maximum limit should be set for each application for an allocation, expressed as a percentage of the quantities actually released for free circulation during one of the years preceding registration and for which the operator must produce the appropriate supporting documents.

(6) In order to facilitate the scrutiny of operators' applications and harmonise how they are processed, the main supporting documents which may be produced as evidence that the requirements have been met for admission to each of the two categories of operators should be specified.

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[1] OJ L 47, 25.2.1993, p. 1. Regulation as last amended by Regulation (EC) No 2587/2001 (OJ L 345, 29.12.2001, p. 13).

[2] OJ L 126, 8.5.2001, p. 6. Regulation as last amended by Regulation (EC) No 1439/2003 (OJ L 204, 13.8.2003, p. 30).

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(7) The necessary provisions should also be laid down to ensure adequate communication between the Member States and the Commission and to organise the additional verifications and checks needed to detect and prevent false claims, prevent irregularities and ensure the smooth functioning of the arrangements for administering tariff quotas for banana imports.

(8) This Regulation will apply without prejudice to any rules which the Commission might subsequently adopt with a view to full application of the arrangements introduced by Regulations (EEC) No 404/93 and (EC) No 896/2001 in the enlarged Community.

(9) The Management Committee for Bananas has not issued an opinion by the time limit laid down by its Chairman,

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation:

(a) 'Community of 15' means the Community as constituted on 30 April 2004;

(b) 'new Member States' means the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia;

(c) 'the enlarged Community' means the Community as constituted on 1 May 2004;

(d) 'primary import' means the economic operation defined in the first subparagraph of Article 3(1) of Regulation (EC) No 896/2001;

(e) 'minimum quantity' means the minimum quantity defined in the third subparagraph of Article 3(1) of Regulation (EC) No 896/2001;

(f) 'competent authorities' means the competent authorities listed in the Annex to Regulation (EC) No 896/2001.

Article 2

This Regulation determines the operators established in the Community as constituted on 30 April 2004 who may be given access to participate in the tariff quota arrangements for banana imports on the basis of their activities in supplying the markets of the new Member States prior to their accession.

Article 3

Traditional operators

1. Traditional operators established in the Community of 15 during the years referred to below and meeting the requirements laid down in Article 3(1) of Regulation (EC) No 896/2001 who have carried out a minimum quantity of primary imports of bananas with a view to their sale in one or more of the new Member States during either 2000, 2001 or 2002 may submit a written application for allocation of a specific reference quantity with a view to the issue of import licences from 1 May 2004 under the tariff quota arrangements for banana imports.

Compliance with the minimum quantity requirement shall be established on the basis of all primary imports carried out with a view to supplying the markets of the new Member States.

2. For the purposes of paragraph 1:

— traditional operators registered in a Member State shall submit a written application for allocation of a specific reference quantity to the competent authorities of that Member State;

— operators not registered in a Member State shall submit a written application for registration and allocation of a specific reference

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quantity to the competent authorities of the Member State of their choice.

Applications shall be submitted no later than 15 March 2004.

3. Applications as referred to in paragraph 2 shall indicate:

(a) for 2000, 2001 and 2002, the quantities of primary imports of bananas carried out and followed by release for free circulation in the new Member States,

(b) the respective quantities released for free circulation in the different new Member States for each of the years concerned.

Article 4

Non-traditional operators

1. Non-traditional operators established in the Community of 15 at the time of registration and meeting the requirements laid down in Article 6 of Regulation (EC) No 896/2001 who have been engaged in the commercial activity of importing fresh bananas falling within CN code 0803 00 19 into one or more of the new Member States to a declared customs value of EUR 1 200 000 or more during either 2002 or 2003 may submit an application for registration in the Member State of their choice with a view to the issue of import licences from 1 May 2004 under the tariff quota arrangements for imports of bananas.

To that end, operators shall address their application for registration together with an application for a specific allocation to the competent authorities of the Member State of their choice.

Applications shall be submitted no later than 15 March 2004.

2. To be accepted, applications for registration as referred to in paragraph 1:

(a) may not cover a quantity greater than 70 % of the quantity for which proof of import has been supplied under Article 6(3);

(b) shall be accompanied by proof that a security of EUR 150 per tonne requested has been lodged in accordance with title III of Commission Regulation (EEC) No 2220/85 ([1]), together with the appropriate supporting documents.

Article 5

1. Operators may not apply to be registered as both a traditional and a non-traditional operator under this Regulation.

2. Bananas re-exported outside the new Member States shall not be taken into account for the purposes of this Regulation.

Article 6

Supporting documents

1. Operators shall provide the necessary supporting documents along with their applications as referred to in Articles 3 and 4.

2. For primary imports, operators must provide proof that they have, on their own account, purchased bananas from the producers, dispatched and sold them with a view to their release for free circulation in one of the new Member States. To that end, the following documents in particular may be supplied in support of applications as referred to in Article 3:

(a) the purchase contract in the producer country;

(b) the bill of lading and the ship's manifest;

(c) the insurance policy covering sea transport;

(d) the invoices and proof of payment for the purchase of the goods;

([1]) OJ L 205, 3.8.1985, p. 5.

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(e) the invoices and proof of payment of sea transport;

(f) the proof of payment of the insurance policy covering sea transport;

(g) the invoices and/or sales documents relating to the supply of the new Member States;

and any other document attesting to the performance of a primary import.

Proof of release for free circulation in the new Member States shall take the form of import declarations or other appropriate customs documents.

The supporting documents to be produced shall be original documents or certified copies thereof.

3. The supporting documents to be provided for applications as referred to in Article 4 shall be those referred to in Article 7(2) of Regulation (EC) No 896/2001.

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4. If the operator concerned is not able to provide the proofs of release for free circulation referred to in the second subparagraph of paragraph 2, he or she must provide proof that the products have been dispatched to a new Member State and present the documents referred to in point (g) of the first subparagraph of paragraph 2, accompanied by proofs of payment. In such cases, the duly annotated Community transit document may be accepted as proof that the products have been dispatched to the new Member State. These additional proofs must be submitted by 21 April 2004 at the latest.

The above subparagraph shall apply for the purposes of fixing a provisional specific reference quantity for the issuing of licences for imports of bananas in the months of May and June 2004.

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Article 7

Checks and verifications by the Member States

1. The Member States shall make the necessary checks to ensure that operators meet all the necessary conditions for recognition as either a traditional or a non-traditional operator in accordance with Regulation (EC) No 896/2001 and this Regulation.

2. Following the checks referred to in paragraph 1, the Member States shall draw up a list of traditional operators within the meaning of Article 3(1) of Regulation (EC) No 896/2001 who have carried out primary imports followed by release for free circulation in the new Member States during 2000, 2001 and 2002, and a list of non-traditional operators.

3. The Member States shall forward the lists referred to in paragraph 2 to the Commission no later than ►M1 23 April 2004 ◄, together with the following information:

(a) for each traditional operator, the average of primary imports during 2000 to 2002 as referred to in Article 3(1);

(b) for each operator, the quantities actually released for free circulation in the new Member States each year during 2000, 2001 and 2002, in the case of traditional operators, and during 2002 and 2003 in the case of non-traditional operators.

Article 8

Additional notifications and checks

The Commission shall notify the lists of traditional and non-traditional operators to all the Member States.

The Commission shall request that the Member States make any necessary additional verifications and, as and when required, organise the

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appropriate checks in collaboration with the competent national authorities with a view to detecting and preventing false claims by operators.

Article 9

Articles 3 to 10 in title II of Regulation (EC) No 896/2001 shall apply subject to this Regulation.

For the purposes of this Regulation, Articles 11 and 12 of Regulation (EC) No 896/2001 shall apply to operators as referred to in Articles 3 and 4.

Article 10

Entry into force

This Regulation shall enter into force on the 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.