

COMMISSION REGULATION (EC) No 1892/2004**of 29 October 2004****on transitional measures for 2005 for imports of bananas into the Community by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Article 18(1) of Regulation (EEC) No 404/93 on the same terms as regards tariffs, for the period from 1 May to 31 December 2004.

Having regard to the Treaty establishing the European Community,

Having regard to the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia,

Having regard to the Act of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, and in particular the first paragraph of Article 41 thereof,

Having regard to Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organisation of the market in bananas ⁽¹⁾,

Whereas:

(1) Commission Regulation (EC) No 896/2001 ⁽²⁾ laid down detailed rules for applying Regulation (EEC) No 404/93 as regards the arrangements for importing bananas into the Community.

(2) Commission Regulation (EC) No 838/2004 of 28 April 2004 ⁽³⁾ adopted the transitional measures needed to facilitate the transition from the arrangements in force in the new Member States prior to accession to the import arrangements in force under the common organisation of the markets in the banana sector for the period from 1 May to 31 December 2004. In order to ensure market supply, in particular in the new Member States, that Regulation fixed an additional quantity on a transitional basis over and above the quotas opened for imports of products originating in all third countries by

(3) To this end, the necessary transitional measures should also be adopted for 2005 in order to facilitate the transition towards application of the import arrangements in force under the common organisation of the market in the new Member States, and in preparation for the transition to a tariff-only arrangement applicable to imports, no later than 1 January 2006, in accordance with Article 16 of Regulation (EEC) No 404/93.

(4) In order to ensure market supply, in particular in the new Member States, an additional quantity should be fixed over and above the quotas opened for imports of products originating in all third countries by Article 18(1) of Regulation (EEC) No 404/93 on the same terms as regards tariffs. Such fixing must be transitional and may not prejudice the outcome of the negotiations under way in the context of the World Trade Organisation (WTO) as a result of the accession of the new members. In addition, it should not preclude the possibility of an increase if need be to meet requirements justified by demand.

(5) This additional quantity must be managed using the mechanisms and instruments put in place by Regulation (EC) No 896/2001 to manage the existing tariff quotas. However, because these arrangements are transitional, this additional quantity must be managed separately from the tariff quotas.

(6) Under the mechanisms introduced by Regulation (EC) No 896/2001, the additional quantity must be distributed between the two categories of operators defined in Article 2 of that Regulation and rules must be adopted for determining a specific reference quantity for each traditional operator and a specific allocation for each non-traditional operator. It should be specified that the distribution referred to above and the determination of the reference quantities and allocations concern operators who have supplied the markets of the new Member States during the years prior to accession.

⁽¹⁾ OJ L 47, 25.2.1993, p. 1. Regulation as last amended by the 2003 Act of Accession.

⁽²⁾ OJ L 126, 8.5.2001, p. 6. Regulation as last amended by Regulation (EC) No 838/2004 (OJ L 127, 29.4.2004, p. 52).

⁽³⁾ OJ L 127, 29.4.2004, p. 52. Regulation as amended by Regulation (EC) No 1260/2004 (OJ L 239, 9.7.2004, p. 16).

- (7) For the purposes of determining the reference quantities of traditional operators, the three-year reference period 2000, 2001 and 2002 laid down in Article 6(1) of Regulation (EC) No 838/2004 should be retained, as should the average of primary imports carried out during that period by each traditional operator registered in accordance with the transitional measures adopted in 2004, following checks carried out by the competent authorities. The provisions to be adopted must, however, allow applications submitted by traditional operators who were not registered in 2004 to be taken into account, provided that these applications meet the conditions laid down for the registration of these operators in Commission Regulations (EC) No 414/2004⁽¹⁾ and (EC) No 838/2004, in particular as regards the definition of primary imports and the proof that such operations have supplied the markets of the new Member States during the period concerned.
- (8) As regards new non-traditional operators, provision should be made for their registration on the basis of their having been engaged in the commercial activity of importing bananas, in one of the years 2002, 2003 and 2004, in accordance with Articles 6, 7 and 8 of Regulation (EC) No 896/2001.
- (9) With a view to managing this available quantity, adjustment coefficients to be applied to the quantities notified by the Member States should be fixed.
- (10) In order to ensure satisfactory market supply, and in particular to ensure a continual flow of imports into the new Member States, the transitional measures should include the issue of licences with a view to release for free circulation in a new Member State. Accordingly, securities lodged should be released in proportion to the quantities released for free circulation in a new Member State.
- (11) 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

Definitions

For the purposes of this Regulation:

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

- (b) 'new Member States' means the Czech Republic, Estonia, Cyprus, Hungary, Latvia, Lithuania, 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 with a view to sale in one or more new Member States;
- (e) 'minimum quantity' means the minimum quantity defined in the third subparagraph of Article 3(1) of Regulation (EC) No 896/2001 established on the basis of all primary imports carried out with a view to supplying the markets of the new Member States;
- (f) 'competent authorities' means the competent authorities listed in the Annex to Regulation (EC) No 896/2001.

Article 2

Purpose

This Regulation adopts, for 2005, the transitional measures needed to facilitate the transition from the arrangements in force in the new Member States prior to their accession to the Community of Fifteen to the tariff quota import arrangements introduced by Regulations (EEC) No 404/93 and (EC) No 896/2001.

Regulation (EC) No 896/2001 shall apply subject to this Regulation.

Article 3

Additional quantity

1. A quantity of 460 000 tonnes, net weight, shall be available for imports of bananas into the new Member States in 2005.

This quantity shall be available for imports of products from the origins referred to in Article 18(1) of Regulation (EEC) No 404/93.

Imports covered by that quantity shall be subject to the duties fixed in Article 18(2) of the above Regulation.

2. The quantity fixed in paragraph 1 may be increased if a growth in demand is observed in the new Member States.

⁽¹⁾ OJ L 68, 6.3.2004, p. 6. Regulation as amended by Regulation (EC) No 689/2004 (OJ L 106, 15.4.2004, p. 17).

*Article 4***Access to the additional quantity**

1. Access to the additional quantity fixed in Article 3 shall be open to traditional operators and non-traditional operators established in the enlarged Community who meet the requirements of Article 5 or Article 6, as the case may be.
2. Quantities of 381 800 tonnes shall be available to traditional operators and 78 200 tonnes to non-traditional operators.

*Article 5***Specific reference quantity for traditional operators for 2005**

1. Without prejudice to paragraph 4, for 2005 the specific reference quantity of each traditional operator referred to in Article 6(1) of Regulation (EC) No 838/2004 and registered in 2004 in accordance with that Regulation, shall be determined, on written application submitted by the operator no later than 12 November 2004, on the basis of the average of primary imports of bananas carried out in the three-year period 2000-2002 established on the basis of the supporting documents provided for in Article 6(2) and the first subparagraph of Article 6(4) of Regulation (EC) No 414/2004.
2. Non-registered operators in accordance with Regulation (EC) No 838/2004 meeting the requirements laid down in Article 6(1) thereof shall send the competent authorities of the Member State of their choice a written application for allocation of a specific reference quantity for 2005. This application, submitted no later than 12 November 2004, 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; and
 - (b) the respective quantities released for free circulation in the various new Member States for each of the years concerned.

To be accepted, this application shall be accompanied by the supporting documents referred to in Article 6(2) and (4), first subparagraph, of Regulation (EC) No 414/2004.

The competent authorities shall give a specific reference quantity based on the average of primary imports carried out during the above period.

3. The Member States shall notify the Commission no later than 26 November 2004 of the sum of the specific reference quantities for traditional operators established in accordance with paragraphs 1 and 2.
4. In the light of the notifications under paragraph 3 and the available quantity fixed in Article 4(2), the Commission shall, if necessary, set an adjustment coefficient to be applied to the specific reference quantity of each traditional operator.

5. The competent authorities shall inform each operator of its reference quantity, as adjusted where necessary by the adjustment coefficient referred to in paragraph 4, no later than 10 December 2004.

*Article 6***Specific allocation to non-traditional operators**

1. Operators 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 with a declared customs value of EUR 1 200 000 or more during either 2002, 2003 or 2004 may submit an application for registration in the Member State of their choice with a view to the issue of import licences under the additional quantity.

The application for registration shall be accompanied by the supporting documents referred to in Article 7(2) of Regulation (EC) No 896/2001.

2. In order to have their registration renewed, non-traditional operators registered in 2004 in accordance with Regulation (EC) No 838/2004 shall provide the competent authorities of the Member State of registration with proof that they have actually imported on their own account at least 50% of the quantity allocated to them for the period 1 May to 31 December 2004.

To be accepted, applications for renewal of the registration shall be accompanied by copies of import licences used and proof of payment of the customs duties due on the date of the completion of customs import formalities.

3. Operators shall address their application for registration or application for renewal of a registration to the competent authorities of the Member State of their choice.

To be accepted, applications for registration or for renewal of the registration shall be accompanied by an application for a specific allocation, as well as proof that the security referred to in Article 8(1) of Regulation (EC) No 896/2001 has been lodged.

To be accepted, applications for a specific allocation may not cover a quantity greater than 12,5% of the total quantity allocated to non-traditional operators fixed in Article 4(2).

Applications shall be submitted no later than 12 November 2004.

4. By 26 November 2004, the Member States shall notify the Commission of:

— the total quantity covered by applications for specific allocations submitted by non-traditional operators,

— 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.

5. In the light of the Member States' notifications under paragraph 4 and the quantity fixed in Article 4(2), the Commission shall, if necessary, set an adjustment coefficient to be applied to the application for a specific allocation made by each non-traditional operator.

6. The competent authorities shall inform each non-traditional operator of its specific allocation no later than 10 December 2004.

Article 7

Rules for issuing import licences

1. Import licences, hereinafter referred to as 'accession licences', shall be issued only for the release for free circulation in a new Member State.

2. Licence applications shall bear the words: 'accession licence', 'traditional operator' or 'non-traditional operator', as the case may be, and 'Regulation (EC) No 1892/2004. Licence only valid in a new Member State'.

These entries shall appear in Box 20 of the licence.

Article 8

Submission and issue of import licences in the first quarter of 2005

1. Notwithstanding Article 15 of Regulation (EC) No 896/2001, for the first quarter of 2005 licence applications shall be submitted no later than 17 December 2004.

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

(a) 27% of the specific reference quantity notified in accordance with Article 5(5), in the case of traditional operators;

(b) 27% of the specific allocation notified in accordance with Article 6(6), in the case of non-traditional operators.

The competent national authorities shall issue import licences immediately.

3. Import licences issued under this Article shall be valid from the day of issue and shall expire on 7 April 2005.

Article 9

Release of securities

1. Securities against the import licences of traditional operators as provided for in Article 24 of Regulation (EC) No 896/2001 shall be released in proportion to the quantities released for free circulation in a new Member State.

2. Securities against the allocations of non-traditional operators as provided for in Article 8(2) of Regulation (EC) No 896/2001 shall be released in proportion to the quantities actually released for free circulation in a new Member State on the terms laid down in that Article.

*Article 10***Reallocation licences**

Notwithstanding Article 19 of Regulation (EC) No 896/2001:

1. Unused quantities covered by an accession licence may be reallocated to the same operator — whether holder or transferee — upon application, for use in a subsequent period. Such reallocation shall apply to bananas imported under the additional quantity.
2. Reallocation licence applications and licences shall bear the following words in Box 20: 'Reallocation licence', 'traditional operator' or 'non-traditional operator', as the case may be, and 'Article 10 of Regulation (EC) No 1892/2004. Licence only valid in a new Member State'.

*Article 11***Transfer of accession licences**

Rights arising under accession licences covered by the additional quantity shall be transferable to a single transferee operator.

Rights may be transferred only:

- between traditional operators as referred to in Article 5,
- from a traditional operator as referred to in Article 5 to a non-traditional operator as referred to in Article 6, or
- between non-traditional operators as referred to in Article 6.

*Article 12***Entry into force**

This Regulation shall enter into force on the day following that of 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, 29 October 2004.

For the Commission
Franz FISCHLER
Member of the Commission
