

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organization of the market in bananas⁽¹⁾, and in particular the second and third subparagraphs of Article 19 (1), the second subparagraph of Article 20 thereof,

Whereas Title IV of Regulation (EEC) No 404/93 lays down the arrangements for importing fresh bananas from third countries, whereas the detailed rules for the application of those arrangements should be laid down;

Whereas, for the purposes of applying the tariff quota arrangements provided for in Articles 18 and 19 of the abovementioned Regulation, the types of operators who may submit import licence applications should be determined; whereas the criteria to be applied must take account of the diversity and complexity of the supply and marketing structures existing in the various Member States at the date of entry into force of the arrangements; whereas they must also ensure that the various types of operators whose specialized business activity is directly dependant on access to the quota enjoy such access without any consequent disruption to normal trade between the various actors in the marketing chain; whereas the economic agents who have assumed on their own account the greatest commercial burdens and risks connected with the purchasing of fresh products from the producers in third countries, with supplies to the Community market and with ripening should thus be considered 'operators'; whereas, in this respect, the wholesale trade, which is less highly specialized, does not take on the same commercial risks and is not dependent for its continuing business activity on direct access to the tariff quota;

Whereas, for the same reasons and with a view to determining importing rights, the quantities marketed by the above 'operators' should be multiplied by a weighting coefficient to take account of the scale of business concerned and of the commercial risks incurred, whereas

such weighting ensures greater equality of treatment for the various types of operators in the Community and corrects the negative effects of counting the same quantities of products at various stages of marketing more than once over;

Whereas the rules governing the registration of operators and the notifications required for administering the tariff quota should be laid down and the supporting documents for operators' importing rights should be specified;

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⁽²⁾, as last amended by Regulation (EEC) No 2101/92⁽³⁾, should apply; whereas, pursuant to Article 9 of that Regulation, rights arising from licences may be transferred by the holder only once per licence or per extract from a licence during the term of validity thereof;

Whereas the conditions for and the effects of transferring licences should be specified in the light of the definition of the categories of operators and of Article 19 of Regulation (EEC) No 404/93; whereas, in order to encourage the continuation and development of trade between the various economic agents in the industry, transfers must be permitted on the one hand between operators in the same category and on the other hand between operators in Categories A and B or to the new operators in Category C; whereas, however, artificial trade, speculation or disturbance of normal trade should not be encouraged by permitting transfers from new operators to those in Categories A and B;

Whereas, as a result of Article 19 (1) and (2) of Regulation (EEC) No 404/93 regarding the use of operators' reference quantities to determine their rights to import the effects of licence are necessarily limited; whereas Category B operators' rights to import depend exclusively on the quantities of traditional ACP or Community bananas which they have marketed;

(1) OJ No L 47, 25. 2. 1993, p. 1.

(2) OJ No L 331, 2. 12. 1988, p. 1.

(3) OJ No L 210, 25. 7. 1992, p. 18.

Whereas import licences should only be issued on presentation of certificates of origin issued by the countries concerned in order to check the origin of traditional ACP bananas;

Whereas, with a view to management of the banana market and in order to assist in drawing up the annual forecast supply balance provided for in Article 16 of Regulation (EEC) No 404/93, the Member States must provide the Commission with statistical data on the banana market;

Whereas the Management Committee for Bananas, failed to deliver an opinion within the time allowed by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down detailed rules for the application of the arrangements for importing bananas under the tariff quota provided for in Articles 18 and 19 of Regulation (EEC) No 404/93, for importing bananas outside that quota and for importing bananas originating in the ACP States.

TITLE 1

DETAILED RULES FOR THE APPLICATION OF THE TARIFF QUOTA ARRANGEMENTS

Article 2

The following tariff quota is hereby opened for the second half of 1993:

- (a) 665 000 tonnes for the category of operators who prior to 1992 marketed third-country bananas and/or non-traditional ACP bananas within the meaning of Article 15 of the abovementioned Regulation, hereinafter referred to as 'Category A';
- (b) 300 000 tonnes for the category of operators who have marketed Community bananas and/or traditional ACP bananas, hereinafter referred to as 'Category B';
- (c) 35 000 tonnes for the category of operators who commenced marketing bananas other than Community bananas and/or traditional ACP bananas as from 1992 or thereafter, hereinafter referred to as 'Category C'.

Article 3

1. Economic agents, whether natural or legal persons, individual agents or groups, established in the Community during the period determining their reference quantities and at the time of their registration pursuant to Article 4 shall be deemed 'operators' in Category A and/or Category B for the purposes of Articles 18 and 19 of Regulation (EEC) No 404/93 and may hold import licences where they have engaged in one or more of the following activities on their own account:

- (a) the purchase of green third-country and/or ACP bananas from the producers, or where applicable, the production, consignment and sale of such products in the Community;
- (b) as owners, the supply and release for free circulation of green bananas and sale with a view to their subsequent marketing in the Community; the risks of spoilage or loss of the product shall be equated with the risk taken on by the owner;
- (c) as owners, the ripening of green bananas and their marketing within the Community.

As far as bananas harvested in the Community are concerned, economic agents, whether natural or legal persons, individual agents or groups, who have purchased the products from the producers or, where applicable, have produced and consigned them and who subsequently sell them for marketing shall be treated in the same way as economic agents who engage in the activity described in (a).

Operators who were granted the option, under the previous arrangements applying in Portugal, of importing bananas shall be treated in the same way as the economic agents who engage in the activity described in (a); the quantity concerned may not be taken into account for the purposes of determining the reference quantity of another operator in respect of the activity described in (a).

2. Wholesalers and retailers shall not be considered operators by virtue solely of such activities.

3. The minimum quantity referred to in the second subparagraph of Article 18 (1) of Regulation (EEC) No 404/93 in respect of the economic activities mentioned in paragraph 1 shall be 250 tonnes marketed in any one of the three years of the reference period.

The minimum quantity shall be 20 tonnes where only bananas less than or equal to 10 cm in length are marketed.

4. Operators who are formed as a result of mergers of operators each of whom holds importing rights pursuant to this Article shall enjoy the same rights as the operators from which they are formed.

Article 4

1. The competent authorities of the Member States shall draw up separate lists of operators in Categories A and B and the quantities which each operator has marketed in each of the three years prior to that preceding the year for which the tariff quota is opened, broken down according to economic activity as described in Article 3 (1).

Operators shall register themselves and shall establish the quantities they have marketed by submitting individual written applications on their own initiative in a single Member State of their choice.

The competent authorities in each Member State shall be as listed in Annex I.

2. The operators concerned shall notify the competent authorities at the latest by 1 September 1993 as regards 1994, by 1 April each year thereafter of the overall quantities of bananas marketed in each of the years referred to in paragraph 1, breaking them down clearly:

(a) according to origin, pursuant to the definition laid down in Article 15 of Regulation (EEC) No 404/93, as follows:

- of imports from non-ACP third countries and non-traditional imports from ACP States,
- traditional imports from ACP States within the quantities set out in the Annex to Regulation (EEC) No 404/93, specifying the quantity by State,
- Community bananas, specifying the region of production;

(b) according to economic activity as described in Article 3 (1).

3. The operators concerned shall make the supporting documents specified in Article 7 available to the authorities.

4. By 1 October each year Category C operators established in the Community must submit their applications for the allocation of annual quantities to the competent authority in any one Member State. Before 10 October each year the competent authorities shall inform the Commission on the total quantity covered by applications from the operators registered with them and shall transmit to it a list of those operators. If the total quantity covered by applications exceeds the quantities fixed pursuant to Article 19 (1) (c) of Regulation (EEC) No 404/93, the quantities in applications shall be reduced by a percentage determined by the Commission. Before

1 November each year the competent authorities shall inform Category C operators of the quantities allocated to them.

5. At the latest by 20 September 1993 as regards 1994 and by 1 May each year thereafter, the competent authorities shall forward to the Commission the lists of operators referred to in Article 4 with the quantities marketed by each.

As and when required, the Commission shall forward these lists to the other Member States with a view to detecting or preventing inaccurate declarations by operators.

Article 5

1. At the latest by 1 October 1993 as regards 1994 and by 1 July each year thereafter, the competent authorities shall establish for each Category A and Category B operator registered with them the average quantities marketed during the three years prior to the year preceding that for which the quota is opened, broken down by economic activity in accordance with Article 3 (1). That average shall be termed the operator's 'reference quantity'.

The reference quantities for Category A operators shall be determined on the basis of their trade in third-country and non-traditional ACP bananas, excluding bananas imported under licences issued to operators in Categories B and/or C. The reference quantities of Category B operators shall be determined on the basis of their trade in Community and traditional ACP bananas.

2. The quantities marketed shall be multiplied by the following weighting coefficients depending on the economic activity as referred to in Article 3 (1):

- activity (a): 57 %,
- activity (b): 15 %,
- activity (c): 28 %.

Reference quantities as referred to in the first subparagraph of paragraph shall be established on the basis of an average over a three-year period even where the operator has not marketed bananas for one or two years of that period.

3. The competent authorities shall notify the Commission at the latest by 15 October 1993 as regards 1994 and by 15 July each year thereafter of the total reference quantities weighted pursuant to paragraph 2 and the total quantities of bananas marketed in respect of each activity by operators registered with them.

Article 6

Depending on the annual tariff quota and the total reference quantities of operators as referred to in Article 5, the Commission shall fix, where appropriate, a single reduction coefficient for each category of operators to be applied to operators' reference quantities to determine the quantity to be allocated to each.

The Member States shall determine the quantities for each operator in Categories A and/or B registered with them and shall notify the latter thereof individually at the latest by 1 November 1993 as regards 1994 and by 1 August each year thereafter.

Article 7

At the request of the competent authorities of the Member States, the following documents may be submitted to establish the quantities marketed by each operator in Categories A and B registered with them:

- the copy delivered to the importer of the Single Administrative Document (SAD) or, where applicable, his copy of the document for simplified declarations,
- a copy of the T2 declaration issued pursuant to Article 37 of Regulation (EEC) No 2726/90⁽¹⁾ and Article 18 (2) of Commission Regulation (EEC) No 1214/92⁽²⁾ for transactions effected during the reference period,
- original sales invoices or certified copies thereof,
- any relevant supporting documents such as national import documents issued and used before the entry into force of these arrangements,
- import licences issued pursuant to this Regulation and documents testifying to the marketing of bananas produced in the Community.

Article 8

The competent authorities shall conduct all necessary checks to verify the validity of applications and supporting documents submitted by operators. To that end they may in particular take account of expert opinions and reports drawn up by internal and independent auditors.

Article 9

1. Indicative quantities shall be fixed for each quarter for the purposes of issuing import licences using data and forecasts relating to the Community market, on the basis of the forecast supply balance for production and

consumption in the Community and of imports and exports as referred to in Article 16 of Regulation (EEC) No 404/93.

2. During the first week of the last month of each quarter, operators shall submit their import licence applications in respect of the following quarter for up to the quantity which may be allowed in the quarter in question of the total annual quantity allocated to them, to the competent authorities of the Member State in which they submitted their applications for registration as referred to in Article 4. For the second half of 1993 those quantities shall be determined using the percentages set out in Annex II.

3. Where the quantities covered by import licence applications from one or more of the categories of operators appreciably exceed the indicative quantity fixed, a single percentage shall be set, to be applied to applications before paragraph 5 is applied, to reduce the quantities allocated. That reduction shall not apply to applications relating to 150 tonnes or less.

4. Licence applications submitted:

- by operators in Category A shall bear the words 'Licence application — "Category A" — Regulation (EEC) No 1442/93',
- by operators in Category B shall bear the words 'Licence application — "Category B" — Regulation (EEC) No 1442/93',
- by operators in Category C shall bear the words 'Licence application — "Category C" — Regulation (EEC) No 1442/93'.

5. The competent authorities shall issue import licences to each operator in each separate category on the basis of the annual quantity allocated to him pursuant to Article 6.

Article 10

1. Withing the two working days following the closing date for the submission of applications the competent authorities shall notify the Commission of the individual quantities of bananas covered by import licence applications in respect of each category defined in Article 1, stating separately the total quantity covered by individual applications for 150 tonnes or less.

2. The Member States shall notify the Commission of the quantities covered by unused or partly used import licences, corresponding to the difference between the quantities attributed on the back of licences and the quantities for which the latter were issued.

3. Quantities unused shall be reallocated on application to the same operators the following quarter.

⁽¹⁾ OJ No L 262, 26. 9. 1990, p. 1.

⁽²⁾ OJ No L 132, 16. 5. 1992, p. 1.

Article 11

1. Import licences shall be issued not later than the 21st day of the last month of each quarter in respect of the following quarter. Where that day is not a working day, licences shall be issued not later than the first following working day.

2. The term of validity of import licences shall expire on the seventh day of the fourth month following the month of issue.

Article 12

1. Before the expiry of the term of validity of import licences, the operators concerned shall declare forthwith to the competent national authorities the quantities of third-country bananas and of non-traditional ACP bananas released for free circulation and intended for re-export outside the Community. They shall return the originals of attributed import licences to the authorities.

2. The competent authorities shall notify the Commission at the end of each quarter of the quantities intended for re-export, specifying in each case the category of operators to whom the import licences have been issued.

3. Quantities which become available as a result of re-export shall be reallocated during the marketing year in question to the operators who released for free circulation the quantities to be re-exported.

4. The competent authorities shall ensure that the quantities declared pursuant to paragraph 1 are actually re-exported from the Community.

Article 13

Rights accruing from import licences issued pursuant to this Title may be transferred by the holder during their term of validity to a single transfer per licence and per extract from a licence in accordance with the conditions set out below.

1. Rights may be transferred:

- (a) between operators belonging to the same category;
- (b) from Category A operators to Category B operators and *vice versa*;
- (c) from operators in Category A or B to the new operators in Category C.

2. Transfers of rights by Category C operators to operators in Categories A and/or B shall not be permitted.

3. In the event of a transfer of rights from a Category A operator to another operator in Category A or C, the

quantity transferred shall be taken into account when the reference quantities as referred to in Article 5 are calculated for the two operators, in order to reduce the reference quantity of the transferor and to increase that of the transferee.

4. Obligations arising from licences shall not be transferred.

TITLE II

DETAILED RULES APPLICABLE TO IMPORTS OF TRADITIONAL ACP BANANAS

Article 14

1. Quarterly indicative quantities shall be fixed for the purposes of issuing import licences for bananas originating in the ACP States on the basis of the criteria laid down in Article 9 (1).

As regards the second half of 1993, those quantities shall be as set out in Annex II.

2. Import licence applications shall be lodged with the competent authorities of any Member State during the first week of the last month of each quarter.

3. Licence applications for traditional ACP bananas within the meaning of Article 15 of Regulation (EEC) No 404/93 may not cover a quantity higher than that set out in the Annex to that Regulation for any particular country of origin.

4. Import licence applications shall only be admissible where:

- (a) they are accompanied by the original of a certificate drawn up by the competent authorities of the country concerned testifying to the origin of the bananas in accordance with the model in Annex III and bearing the words 'Traditional ACP bananas — Regulation (EEC) No 404/93' under the heading 'Notes' and in Section 5;
- (b) they are accompanied by proof, in the form of a copy of the bill of lading, that the bananas were loaded in the country of origin which issued the certificate referred to in (a) and, where that country has the goods loaded for export in a port in a neighbouring country, by a transport document certifying the transfer of the goods from the country of origin to the port of shipment. Where the copy of the bill of lading is not presented, a security of ECU 5/tonne shall be lodged. That security shall be released immediately on presentation of the said document;

(c) they do not relate to a quantity in excess of that set out in the documents referred to in (a) and (b).

Article 15

Licence applications and licences shall show:

1. the words 'Traditional ACP bananas — Regulation (EEC) No 404/93' under the heading 'Notes' and in Section 24;
2. the ACP country of origin in Section 8.

Licences shall carry with them an obligation to import from the ACP State specified.

Article 16

1. Within the two working days following the closing date for the submission of applications, the competent national authorities shall notify the Commission of the quantities covered by licence applications with details of the ACP country of origin.

The Commission shall determine forthwith the quantities for which licences may be issued.

2. Where quantities applied for and originating in one and the same ACP State listed in the Annex to Regulation (EEC) No 404/93 exceed the traditional quantities fixed in that Annex and, in the case of the second half of 1993, half of those quantities, or, where applicable, the indicative quantities fixed for the period in question, the Commission shall set a single percentage to be applied to all licence applications mentioning that country of origin, to reduce the quantities allocated.

3. Where import licences are issued for all the traditional quantities from the same country of origin, the Commission shall notify the Member States and operators forthwith that any further imports from that country during the year in question shall be considered non-traditional.

Article 17

1. The competent national authority shall issue the licences not later than the 21st day of the last month of each quarter. Where that day is not a working day, the licences shall be issued on the first following working day at the latest.

2. The term of validity of import licences shall expire on the seventh day of the fourth month following the month of issue.

3. The Member States shall notify the Commission of the quantities covered by unused or partly used import licences.

4. Unused quantities shall be re-allocated on application to the same operators the following quarter.

TITLE III

DETAILED RULES APPLICABLE TO IMPORTS OF BANANAS OUTSIDE THE QUOTA

Article 18

1. Import licences shall be required for imports of third-country bananas and of non-traditional ACP bananas into the Community outside the tariff quota.
2. Import licence applications may be submitted in any Member State. Section 20 of licence applications and of licences shall bear the words 'Imported outside tariff quota — Regulation (EEC) No 404/93'.
3. The licences shall be issued forthwith. Licences shall be valid for three months.
4. The Member States shall notify the Commission on the second and fourth Wednesdays of each month of the quantities covered by licences issued.

TITLE IV

GENERAL PROVISIONS

Article 19

Import licence applications shall be accompanied by proof that a security has been lodged pursuant to Title III of Commission Regulation (EEC) No 2220/85⁽¹⁾. The security shall amount to ECU 15 per tonne.

Where licences are issued for quantities lower than those applied for, the security shall be released forthwith in respect of the quantity not allocated.

Article 20

The provisions of Regulation (EEC) No 3719/88 shall apply with the exception of Article 8 (4) and (5) thereof and save as otherwise provided for in this Regulation.

Article 33 (5) of the abovementioned Regulation shall apply.

Article 21

The Member States shall forward the following statistical and economic data at the intervals indicated:

- each Wednesday, the wholesale prices, broken down by the country of origin, for yellow bananas recorded the preceding week on the representative markets listed in Article 4 of Commission Regulation (EEC) No 2118/74⁽²⁾,

⁽¹⁾ OJ No L 205, 3. 8. 1985, p. 5.

⁽²⁾ OJ No L 220, 10. 8. 1974, p. 20.

- each Wednesday, in respect of the preceding week, the quantities released for free circulation, broken down according to the category of licence as set out in Article 9 (4),
- on Wednesdays in the second and fourth weeks of each month, the quantity of Community bananas covered by T 2 documents applied for to the competent authorities,
- on the 20th day of each month in respect of the preceding month, data on the quantity and value of bananas, broken down by country of origin, which

have been released for free circulation in their territory,

- on request, forecasts for production and consumption.

Article 22

This Regulation shall enter into force on the day 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.

Done at Brussels, 10 June 1993.

For the Commission

René STEICHEN

Member of the Commission

ANNEX I

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

- *Belgium* :
Office central des contingents et licences
Rue de Mot 24/26
B-1040 Bruxelles
- *Denmark* :
EF-Direktoratet
Frederiksberggade 18
DK-1360 København K
- *Germany* :
Bundesamt für Ernährung und Forstwirtschaft
Referat 35
until 30 June 1993 :
Adickesallee 40
D-6000 Frankfurt am Main
from 1 July 1993 :
Postfach 180203
D-60083 Frankfurt am Main
Adickesallee
D-60322 Frankfurt am Main
- *Spain* :
Dirección General de Comercio Exterior
Pº de la Castellana 162 — planta 4º
E-28071 Madrid
- *Greece* :
Ministère de l'agriculture
DG de la production végétale
Direction 'Dentrokiptikis'
2, rue Acharnon
GR-10176 Athènes
- *France* :
Ministère de l'agriculture
Direction de la production et des échanges (DPE)
Sous-direction des productions végétales
Bureau des fruits, des légumes et de l'horticulture
3, rue Barbet de Jouy
F-75007 Paris
- *Ireland* :
Department of Agriculture, Food and Forestry
Horticulture Division
Agriculture House (7W)
Kildare Street
IRL-Dublin 2
- *Italy* :
Ministero del commercio con l'estero
DG Import/Export — Div. IV
Viale Boston
I-00144 Roma
- *Luxembourg* :
Ministère de l'agriculture
Administration des services techniques de l'agriculture
Service de l'horticulture
16, route d'Esch
BP 1904
L-1019 Luxembourg
- *Netherlands* :
Produktschap voor Groenten en Fruit
Bezuidenhoutseweg 153
NL-2594 AG Den Haag
Postbus 90403
NL-2509 LK Den Haag
- *Portugal* :
Ministério do Comércio e Turismo
Direcção-Geral do Comércio
Avenida da República, nº 79
P-1000 Lisboa
- *United Kingdom* :
Intervention Board
External Trade Division
Lancaster House
Hampshire Court
UK-Newcastle NE4 7YE

*ANNEX II***Indicative quantities for 1993**

1. The percentages for 1993 pursuant to Article 9 (2) are :
 - July to September : the special transitional measures provided for in Regulation (EEC) No 1442/93 apply,
 - October to December : 64 %.
 2. The indicative quantities for 1993 pursuant to Article 14 (1), expressed as a percentage of the volumes determined for each origin in the Annex to Regulation (EEC) No 404/93, are :
 - July to September : 23 %,
 - October to December : 27 %.
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ANNEX III

1. Consignor	CERTIFICATE OF ORIGIN for imports of agricultural products into the European Economic Community	
2. Consignee (optional)	No	ORIGINAL
	3. ISSUING AUTHORITY	
NOTES A. The certificate must be completed in typescript or by means of a mechanical data-processing system, or similar procedure. B. The original of the certificate must be lodged together with the declaration of release for free circulation with the relevant customs office in the Community.	4. Country of origin	
	5. Remarks	
6. Item number — Markings and numbers — Number and kind of packages — Description of goods	7. Gross and net mass (kg)	
8. THIS IS TO CERTIFY THAT THE ABOVE PRODUCTS ORIGINATE IN THE COUNTRY INDICATED IN BOX 4 AND THAT THE INDICATIONS IN BOX 5 ARE CORRECT.		
Place and date of issue	Signature	Issuing authority's stamp
9. RESERVED FOR THE CUSTOMS AUTHORITIES IN THE COMMUNITY		