

**COUNCIL REGULATION (EC) No 216/2001
of 29 January 2001**

amending Regulation (EEC) No 404/93 on the common organisation of the market in bananas

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas:

- (1) There have been numerous close contacts with supplier countries and other interested parties to settle the disputes arising from the import regime established by Regulation (EEC) No 404/93 ⁽⁴⁾ and to take account of the conclusions of the special group set up under the dispute settlement system of the World Trade Organisation (WTO).
- (2) Analysis of all the options presented by the Commission suggests that establishment in the medium term of an import system founded on the application of a customs duty at an appropriate rate and application of a preferential tariff to imports from ACP countries provides the best guarantees, firstly of achieving the objectives of the common organisation of the market as regards Community production and consumer demand, secondly of complying with the rules on international trade, and thirdly of preventing further disputes.
- (3) However, such a system must be introduced upon completion of negotiations with the Community's partners in accordance with WTO procedures, in particular Article XXVIII of the General Agreement on Tariffs and Trade (GATT). The result of these negotiations must be submitted for approval to the Council which must also, in accordance with the provisions of the Treaty, establish the applicable level of the Common Customs Tariffs.
- (4) Until the entry into force of that regime, the Community should be supplied under several tariff quotas open to imports from all origins and managed in line with the

recommendations made by the dispute settlement body. The first tariff quota of 2 200 000 tonnes at a rate of EUR 75 should be bound in the WTO. A second, additional tariff quota of 353 000 tonnes should be opened to cater for the increase in consumption resulting from enlargement of the Community in 1995, with the same rate applying. To ensure satisfactory supply to the Community, a third, autonomous tariff quota of 850 000 tonnes should be opened, also for all origins. Under this latter tariff quota, provision should be made for the possibility, in accordance with an appropriate procedure, of a reduction in the applicable customs duty in order to allow the effective importation of bananas originating in third countries which do not benefit from the tariff preferences granted in respect of bananas originating in ACP countries.

- (5) In view of the contractual obligations towards the ACP countries and the need to guarantee them proper conditions of competition, application to imports of bananas originating in those countries of a tariff preference of EUR 300 per tonne would allow the trade flows in question to be maintained. This will entail in particular the application to such imports of zero duty under the three tariff quotas.
- (6) The Commission should be authorised to open negotiations with supplier countries having a substantial interest in supplying the Community market to endeavour to achieve a negotiated allocation of the first two tariff quotas. The Commission should also be granted authority to lay down rules for the management of the tariff quotas established by this Regulation.
- (7) Provision should be made for the additional tariff quota of 353 000 tonnes to be modified to take account of any increased Community demand found when a supply balance is drawn up. Provision should also be made for suitable specific action to be taken in response to exceptional circumstances liable to affect supply of the Community market.
- (8) Accordingly, Regulation (EEC) No 404/93 should be amended,

⁽¹⁾ OJ C 177 E, 27.6.2000, p. 28.

⁽²⁾ Opinion delivered on 13.12.2000 (not yet published in the Official Journal).

⁽³⁾ OJ C 140, 18.5.2000, p. 6.

⁽⁴⁾ OJ L 47, 25.2.1993, p. 1. Regulation as last amended by Regulation (EC) No 1257/1999 (OJ L 160, 26.6.1999, p. 80).

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 404/93 is hereby amended as follows:

1. Articles 16 to 20 shall be replaced by the following:

Article 16

1. This Article and Articles 17 to 20 shall apply to imports of fresh products falling within CN code ex 0803 00 19 up to the entry into force of the rate of the common customs tariff for those products, no later than 1 January 2006, established under the procedure provided for in Article XXVIII of the General Agreement on Tariffs and Trade.

2. Until the entry into force of the rate referred to in paragraph 1, imports of the fresh products referred to in the said paragraph shall be under the tariff quotas opened by Article 18.

Article 17

To the extent necessary, importation of bananas into the Community shall be subject to submission of an import licence, to be issued by Member States to any interested parties irrespective of their place of establishment in the Community and without prejudice to specific provisions adopted for the application of Articles 18 and 19.

Such import licences shall be valid throughout the Community. Except where derogations are adopted under the procedure laid down in Article 27, the issue of licences shall be subject to lodging of a security against a commitment to import on the terms of this Regulation during the period of the licence's validity. Except in cases of *force majeure* the security shall be wholly or partly forfeit if the operation is not or is only partly carried out within the time allowed.

Article 18

1. Each year from 1 January the following tariff quotas shall be opened:

- (a) a tariff quota of 2 200 000 tonnes net weight, called "quota A";
- (b) an additional tariff quota of 353 000 tonnes net weight, called "quota B";
- (c) an autonomous tariff quota of 850 000 tonnes net weight, called "quota C".

These tariff quotas shall be open for imports of products originating in all third countries.

The Commission may, on the basis of an agreement with World Trade Organisation contracting parties with a

substantial interest in the supply of bananas, allocate tariff quotas "A" and "B" among supplier countries.

2. Imports under tariff quotas "A" and "B" shall be subject to customs duty of EUR 75 per tonne.

3. Imports under tariff quota "C" shall be subject to a customs duty of EUR 300 per tonne.

The customs duty set out in the first subparagraph may be reduced during the year by the Commission in so far as this is necessary to ensure the possibility of effective importation of bananas originating in third countries which do not benefit from the tariff preference of paragraph 4 of this Article.

The detailed arrangements for the application of this paragraph shall be adopted in accordance with the procedure laid down in Article 27.

4. A tariff preference of EUR 300 per tonne shall apply to imports originating in ACP countries both under and outside the tariff quotas.

5. The duty rates set in this Article shall be converted into national currency at the rates applicable for the products in question for the purposes of the common customs tariff.

6. The additional tariff quota provided for in paragraph 1(b) may be increased if demand in the Community increases as indicated by a balance sheet of production, consumption, imports and exports.

The balance sheet shall be adopted and the tariff quota increased under the procedure set out in Article 27.

7. Where supply of the Community market is subject to exceptional circumstances affecting production or importation, the Commission shall adopt the specific measures necessary under the procedure set out in Article 27.

In such cases the additional tariff quota "B" may be adjusted on the basis of the balance sheet referred to in paragraph 6. The specific measures may derogate from the rules adopted under Article 19(1). They must not discriminate between third countries.

8. Bananas re-exported from the Community shall not be counted against the corresponding tariff quotas.

Article 19

1. The tariff quotas may be managed in accordance with the method based on taking account of traditional trade flows ("traditional/newcomers") and/or other methods.

2. The method adopted shall take account as appropriate of the need to maintain the equilibrium of supply to the Community market.

Article 20

The Commission shall adopt provisions to implement this Title under the procedure set out in Article 27. Their scope shall include:

- (a) rules on the management of the tariff quotas referred to in Article 18;
 - (b) where required, guarantee of the nature and origin of the products;
 - (c) measures needed to ensure respect for obligations stemming from agreements concluded by the Community under Article 300 of the Treaty.
2. The seventh indent of Article 29 shall be replaced by the following:

‘— quantities of Community and ACP bananas and bananas from third countries other than ACP countries marketed in their territory.’

3. The Annex shall be deleted.

Article 2

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

It shall apply from 1 April 2001. However, the Commission may, according to the procedure laid down in Article 27, delay the date until 1 July 2001 at the latest, if this proves necessary for the implementation of the modifications in the management of the tariff quotas.

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

Done at Brussels, 29 January 2001.

For the Council
The President
M. WINBERG
