



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 04.04.1995
COM(95) 114 final

95/ 0084 (CNS)

Proposal for a

COUNCIL REGULATION (EC)

amending Regulation (EEC) No 404/93 on
the common organization of the market in bananas, Regulation (EEC) No 1035/72 on
the common organization of the market in fruit and vegetables, and Regulation (EEC)
No 2658/87 on the tariff and statistical nomenclature and on the Common Customs
Tariff

(presented by the Commission)

EXPLANATORY MEMORANDUM

Subject: Proposal for a Council Regulation No .../94 amending Regulation (EEC) No 404/93 on bananas, Regulation (EEC) No 1035/72 on fruit and vegetables, and Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff.

1. Regulation (EEC) No 404/93 at present covers fig bananas. However, careful consideration of the characteristics of these products and the way they are marketed shows that they are quite different from the bananas most commonly marketed in the Community. Consequently, they should be excluded from the scope of Regulation (EEC) No 404/93 and included, along with other tropical fruits, in Regulation (EEC) No 1035/72 on the common organization of the market in fruit and vegetables. Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff should be amended accordingly.
2. The concept of "quantities marketed" was established at the time of the adoption of Regulation (EEC) No 404/93 for determining the reference quantities of banana traders, with the dual objective of not disrupting normal trade relations between operators at different stages of the banana marketing chain while also allowing room for trading structures to evolve. However, the experience indicates a need to make cooperation of the arrangements more simple and more transparent and that, in future, allocation and administration of the tariff quota should be based on actual imports of bananas.
3. Article 16(3) of Regulation (EEC) No 404/93 provides that, in exceptional circumstances affecting production or import conditions, the tariff quota may be adapted in accordance with an adjustment of the forecast supply balance.

Experience shows that this arrangement must be defined in greater detail and developed in order to ensure that Community supplies are maintained and to enable any damage suffered by Community producers or certain categories of banana traders to be remedied.

4. It would appear necessary, in cases of force majeure, to permit ACP producer countries to supply the Community market with bananas of other origins.



The proposed amendments to Regulation (EEC) No 404/93 also provide for reallocation of traditional and non-traditional quantities for reasons other than force majeure. Such transfers may only be temporary and between ACP countries listed in the Annex to the proposal and located in the same geographical zone.

The detailed rules for applying these two mechanism will be adopted under the Management Committee procedure. Similar mechanisms were introduced for application of the Framework Agreement on Bananas referred to above.

Proposal for a Council Regulation No ... amending Regulation (EEC) No 404/93 on the common organization of the market in bananas, Regulation (EEC) No 1035/72 on the common organization of the market in fruit and vegetables, and Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the Economic and Social Committee³,

Whereas Regulation (EEC) No 404/93 on the common organization of the market in bananas⁴, as amended by Regulation (EC) No 3290/94⁵, covers fresh and dried fig bananas; whereas detailed consideration of such bananas shows that they present characteristics quite different from those of the bananas most commonly marketed in the Community of the Cavendish and Gros-Michel subgroups; whereas fig bananas should therefore be excluded from the scope of Regulation (EEC) No 404/93 and included along with other tropical products in Regulation (EEC) 1035/72 on the common organization of the market in fruit and vegetables⁶; whereas Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff⁷ should also be amended;

Whereas Article 19 of Regulation (EEC) No 404/93 allocates by volume the import tariff quota of third-country and non-traditional ACP bananas opened each year between the various categories of operators who have marketed bananas of specified origins in the reference period, or, in the case of new operators, who are beginning to market bananas on the Community market; whereas Article 15a defines 'marketing' as placing on the market, not including making the product available to the final consumer;

Whereas this definition was adopted at the time of the implementation of the new market organization with the dual objective of not disrupting the normal trading relations between persons operating at different points in the banana marketing chain while also allowing some evolution of trading structures with a view to the completion of the internal market; whereas, in the light of the experience gained during the transition period, the way in

1 OJ No L

2 OJ No L

3 OJ No L

4 OJ No L 47, 25.02.1993, p.1.

5 OJ No L 349, 31.12.1994, p. 105.

6 OJ No L 118, 20.05.1972, p. 1.

7 OJ No L 256, 07.09.1987, p. 1.

which trading practices have evolved, the fact that those practices are exceedingly complex and the need to make operation of the arrangements simpler and more transparent, the allocation by volume and the administration of the tariff quota should be based, as is traditional in matters of trade, on the criterion of effective importation; whereas, therefore, Regulation (EEC) No 404/93 should be amended accordingly;

Whereas the use of three-year averages for calculating the reference quantities on the basis of which the import duties are allocated is no longer justified because the establishment of the common organization of the market has stabilized the volume of imports;

Whereas Article 16(3) of Regulation (EEC) No 404/93 provides that, where necessary and in exceptional circumstances affecting production or import conditions, the forecast supply balance may be adjusted and the tariff quota be adapted; whereas this arrangement must be defined in greater detail and developed in order to ensure the continuity of Community supplies and the pursuance of normal trading relations, while also allowing appropriate remedy for any serious damage suffered in such circumstances by Community producers or by certain categories of banana operators;

Whereas in order to fulfil the undertakings made by the European Union in the context of its relations with the ACP countries, provision should be made for mechanisms similar to those introduced under the Framework Agreement on Bananas concluded during the Uruguay Round negotiations in order to cope with cases of *force majeure* affecting production in ACP countries and to permit certain temporary transfers for reasons other than *force majeure* within their geographical area,

HAS ADOPTED THIS REGULATION:

Article 1

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

1. In Article 1(2) the description of goods covered by CN code ex 0803 "Bananas, excluding plantains, fresh or dried" is replaced by the description "Bananas, excluding plantains and fig bananas, fresh or dried".
2. In the second paragraph of Article 15a
 - the term "Annex" in point 1 is replaced by "Annex I", and
 - point 5 is deleted.
3. In Article 16, paragraph 3 is deleted.
4. The following Article is inserted:

"Article 16a

Where necessary, in particular to take account of the effects of exceptional circumstances affecting production or import conditions during the marketing year,

the necessary measures shall be adopted to ensure the continuity of Community supplies. Such measures shall include the revision of the forecast supply balance.

Such measures may also relate to the following:

- adaptation of the tariff quota provided for in Article 18,
- provisions to remedy serious damage suffered by
 - (i) producers in Community production areas
 - or
 - (ii) one or more categories of operators as referred to in Article 19(1).

Such provisions may derogate from Article 19(4).

The measures provided for in this Article shall be adopted by the procedure laid down in Article 27."

5. In Article 18(1), the last subparagraph is replaced by the following:

"Where Community demand increases, as determined on the basis of the supply balance or where any other change in the supply balance so justifies, the volume of the tariff quota shall be increased accordingly, in accordance with the procedure laid down in Article 27."

6. In Article 19, paragraphs 1 and 2 are replaced by the following:

"1. The tariff quota opened shall be allocated as follows:

(a) 66,5% to the category of operators who imported third-country and/or non-traditional ACP bananas;

(b) 30% to the category of operators who marketed Community bananas and/or imported traditional ACP bananas;

(c) 3,5% to the category of operators established in the Community who started marketing bananas other than Community and/or traditional ACP bananas in 1992 or later.

The import opportunities pursuant to (a) and (b) shall be available to operators established in the Community who imported or marketed in the Community on their own account a minimum quantity of bananas of the above origins, to be determined.

Supplementary criteria to be met by operators shall be laid down in accordance with the procedure provided for in Article 27. The Member States shall draw up the list of importers and the average quantity per operator referred to in paragraph 2.

2. On the basis of separate calculations for each of the categories of operators referred to in paragraph 1(a) and (b), each operator shall obtain import licences on the basis of the quantities of bananas that he has imported in the last two years for which figures are available. For the category of operators referred to in paragraph 1(a), the quantities to be taken into consideration shall be the sales of third-country and/or non-traditional ACP bananas. In the case of operators referred to in paragraph 1(b), account must be taken of the imports of traditional ACP bananas and/or quantities of Community bananas placed on the market. Third-country and/or non-traditional ACP bananas imported under licences issued under paragraph 1(b) shall not be taken into account for determining the rights to be established under paragraph 1(a), so that the initial allocation of licences between the two categories of operators remains identical."

7. The following Article is inserted:

"Article 19a

1. If, for reasons of *force majeure*, an ACP State is not able to export to the Community market all or some of the traditional and non-traditional quantities, it may supply the Community market with products of other origins, subject to conditions defined in advance in accordance with the procedure laid down in Article 27. These conditions must permit the serious damage suffered by production areas or by one or more of the categories of operators referred to in Article 19(1) to be remedied.

2. The conditions for temporary reallocation of traditional and non-traditional quantities, for reasons not ascribable to *force majeure*, between ACP countries listed in Annex II located in the same geographical zone, shall be adopted by the same procedure.

8. The Annex hereto is inserted as Annex II.

Article 2

1. In Annex I to Regulation (EEC) No 2658/87, heading 0803 is replaced by the following:

		Rate of duty		
		autonomous (%) or levy (AGR)	conventional (%)	Supplementary unit
0803	Bananas, including plantains, fresh or dried:			
	- Fresh:			
0803 00 11	-- Plantains	20	20	—
0803 00 15 ⁸	-- Fig bananas	20	20	—
0803 00 18 ⁹	-- Other	850 ECU/ 1000 kg net	—	—
0803 00 90	- Dried	20	20	—

2. The amendments to the subheadings of the Combined Nomenclature provided for in this Regulation shall apply as subheadings of the integrated tariff of the European Communities (Taric) until they are included in the Combined Nomenclature in accordance with Article 12 of Regulation (EEC) No 2658/87.

Article 3

In Article 1(2) of Regulation (EEC) No 1035/72 the following lines are inserted:

" 0803 00 15 - Fresh fig bananas
ex 0803 00 90 - Dried fig bananas".

Article 4

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

Article 1 (2)(b) and 6 shall apply for the first time, in respect of quantities of bananas imported and placed on the Community market in 1996 in order to determine the entitlements of operators within the tariff quota.

⁸ Taric Code for 1995: 0803 00 19 * 10

⁹ Taric code for 1995: 0803 00 19 * 90

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

Done at Brussels

For the Council

ANNEX II

Geographical zones

- Zone I - Caribbean ACP States
- Zone II - African ACP States

FINANCIAL STATEMENT



1. BUDGET HEADING: 1508 APPROPRIATIONS: 193 million ECU

2. TITLE:
 Proposal for a Council Regulation concerning amendments to Regulation (EEC) No 404/93 on the common organization of the market in bananas

3. LEGAL BASIS: Article 43 of the Treaty

4. AIMS OF PROJECT:
 To bring Regulation (EEC) No 404/93 into line with trading practices and to allow for possible cases of *force majeure*.

5. FINANCIAL IMPLICATIONS	PERIOD OF 12 MONTHS Mio ECU	CURRENT FINANCIAL YEAR (95) Mio ECU	FOLLOWING FINANCIAL YEAR (96) Mio ECU
5.0 EXPENDITURE - CHARGED TO THE EEC BUDGET (REFUNDS/INTERVENTIONS) - NATIONAL ADMINISTRATION - OTHER			
5.1 RECEIPTS - OWN RESSOURCES OF THE EEC (LEVIES/CUSTOMS DUTIES) - NATIONAL			

	1995	1996	1997	1998
5.0.1 ESTIMATED EXPENDITURE				
5.1.1 ESTIMATED RECEIPTS				

5.2 METHOD OF CALCULATION:

6.0 CAN THE PROJECT BE FINANCED FROM APPROBIATIONS ENTERED IN THE RELEVANT CHAPTER OF THE CURRENT BUDGET? XXXXXX

6.1 CAN THE PROJECT BE FINANCED BY TRANSFER BETWEEN CHAPTERS OF THE CURRENT BUDGET? XXXXXX

6.2 IS A SUPPLEMENTARY BUDGET NECESSARY? XXXXXX

6.3 WILL FUTURE BUDGET APPROPRIATIONS BE NECESSARY? XXXXXX

OBSERVATIONS:

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