



COMMISSION OF THE EUROPEAN COMMUNITIES

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COM(1998) 4 final

98/0013 (CNS)

Proposal for a

COUNCIL REGULATION (EC)

amending Regulation (EEC) N° 404/93 on the common organisation
of the market in bananas

**Recommendation for a Council Decision authorising the Commission to negotiate
with countries having a substantial interest in the supply of bananas in order to
reach an agreement on allocation of the tariff quotas and the traditional ACP
quantity**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. The Dispute Settlement Body of the World Trade Organisation has found in a decision that some of the import provisions of the common market organisation for bananas infringe GATT and GATS rules.

The infringements concern import licences, the present allocation of the tariff quota and other aspects of the Framework Agreement on bananas, including the granting of export licences in signatory countries, and certain quantities set for traditional imports from ACP States.

2. Other aspects of the CMO are not questioned. These include the size of the tariff quota and both the quota and non-quota tariff rates bound in our GATT commitments, the preference for traditional imports and the preferential tariff treatment for non-traditional imports from the ACP countries, and the aid scheme for Community producers.
3. The Council should therefore be requested to amend Regulation (EEC) No 404/93 to bring it into line with our international commitments in the framework of the WTO and the IVth Lomé Convention while maintaining support for Community growers and an adequate supply to the market which respects the interests of consumers.
4. The attached proposal on Title IV of Regulation (EEC) No 404/93 "Trade with third countries" provides as follows:
 - (1) The tariff quota bound under GATT is maintained (at 2.2 million tonnes and duty of ECU 75/t), as is the right to import beyond the quota (at a duty rate of ECU 765/t at present).
 - (2) To cope with the increase in consumption stemming from the last enlargement of the Community, an autonomous tariff quota of 353 000 tonnes is opened. Within this autonomous tariff quota, the duty for imports beyond the bound quota is reduced to ECU 300/t in order to secure adequate supply to the market while preserving the competitive balance with imports

from the ACP countries. The principle of a supply balance for the Community market so that the tariff quota can be adjusted if necessary is retained.

- (3) It should remain possible to assign part of the tariff quotas to particular countries. At the moment only Costa Rica and Colombia of the main supplier countries have obtained a fixed share of the quota. Allocations will have to be granted to all suppliers with a substantial interest (hence probably also to Ecuador and Panama). Other countries would have access to that part of the tariff quota not reserved to these four countries.
- (4) The special treatment of traditional imports from the ACP countries is retained for a maximum quantity of 857 700 t at nil duty. This preserves the access to the Community market provided for in Protocol 5 to the IVth Lomé Convention.

This should probably not be allocated between ACP countries since (a) the present allocation has been deemed to infringe GATT rules and (b) the same criterion should be used for allocating tariff quotas and traditional ACP quantities.

The tariff preference for non-traditional ACP importers is raised to ECU 200/t in order to safeguard import flows given the new allocation of the tariff quotas and the new duty rate for the autonomous tariff quota.

- (5) The present system of import licence categories (B licences and allocation by the activity functions of primary importer, secondary importer and ripener) is scrapped.

A system of import licences compatible with the rules of the WTO should be introduced.

Nevertheless, it is particularly important to ensure that the modification of the import régime does not have negative consequences for the marketing of EU and ACP bananas.

There is a range of options for doing this which include the method based on the chronological order of submitting applications ("first come, first served"), the method of allocation in proportion to quantities applied for when the applications were submitted ("simultaneous examination") and the method based on consideration of traditional trade flows ("traditionals/newcomers").

The Commission considers that the most appropriate method for dealing with trade in bananas is "traditionals/newcomers". However, at this juncture it would not wish to exclude other possibilities complying with WTO rules.

(6) A legal basis for dealing with exceptional circumstances pertaining to supply of the market is established. It covers all supply origins without exception.

5. In submitting the present proposal the Commission withdraws the previous ones for amendment of Regulation (EEC) No 404/93.

Proposal for a Council Regulation (EC)

amending Regulation (EEC) N° 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 43 thereof,

Having regard to the opinion of the European Parliament,

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

(1) Whereas a number of changes are required in the provisions on trade with third countries contained in Title IV of Regulation (EEC) N° 404/93¹, as last amended by Regulation (EEC) N° 3290/94²;

(2) Whereas the Community's international commitments in the framework of the World Trade Organisation (WTO) and to the other signatories of the IVth Lomé Convention should be met simultaneously with achievement of the purposes of the common organisation of the market in bananas;

(3) Whereas a basic tariff quota of 2 200 000 tonnes at the reduced duty of ECU 75 per tonne is bound in the WTO;

(4) Whereas the increase in consumption resulting from enlargement of the Community warrants opening of an autonomous tariff quota of 353 000 tonnes; whereas this autonomous tariff quota should involve reduction to ECU 300 per tonne of the customs duty applicable beyond the above bound tariff quota; whereas this reduction is warranted

¹ OJ N° L 47, 25.2.1993, p. 1

² OJ N° L 149, 31.12.1994, p. 185

by the need to guarantee adequate supply of the Community market while preserving competitive balance with banana imports originating in ACP countries;

(5) Whereas for traditional ACP bananas retention of the total quantity of 857 700 tonnes that may be imported at nil duty preserves access to the Community market for the supplier countries of the traditional quantities, in line with Protocol 5 annexed to the IVth Lomé Convention and with WTO rules;

(6) Whereas in view of the obligations under the Lomé Convention, particularly Article 168 thereof, and of the need to guarantee proper conditions of competition for non-traditional ACP bananas, application to imports of these of an ECU 200 preference will allow the trade flows in question to be maintained under the new import arrangements introduced by this Regulation;

(7) Whereas for the purpose of subdividing the tariff quotas and, if the situation arises, the traditional ACP quantity, a single criterion should be used for determining those producer countries with a substantial interest in the supply of bananas; whereas should there be no reasonable possibility of reaching agreement with these countries, the Commission, assisted by a committee of representatives of the Member States, must have the authority to carry out allocation using that criterion;

(8) Whereas provision should be made for the autonomous tariff quota to be modified to take account of any increased Community demand found when a supply balance is drawn up; whereas 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;

(9) Whereas operation of the provisions of the present Regulation should be reviewed at the end of an adequate trial period;

(10) Whereas appropriate amendments should therefore be made to Title IV of Regulation (EEC) N° 404/93,

HAS ADOPTED THIS REGULATION:

Article 1

Articles 16 to 20 of Title IV of Council Regulation (EEC) N° 404/93 are replaced by the following:

“Article 16

Articles 16 to 20 of this Title shall apply only to fresh products of CN code ex 0803 00 19.

For the purposes of this Title

- (1) “traditional imports from ACP States” means imports into the Community of bananas originating in the countries listed in the Annex hereto up to a limit of 857 700 tonnes (net weight) per year; these are termed “traditional ACP bananas”;
- (2) “non-traditional imports from ACP States” means imports into the Community of bananas originating in ACP States but not covered by definition (1); these are termed “non-traditional ACP bananas”;
- (3) “imports from non-ACP third countries” means bananas imported into the Community originating in third countries other than the ACP States; these are termed “third country bananas”.

Article 17

All importation of bananas into the Community shall be subject to presentation of an import licence issued by Member States to any interested party irrespective of his place of establishment in the Community without prejudice to specific provisions adopted for application of Articles 18 and 19.

Import licences shall be valid throughout the Community. Except by derogation adopted under the procedure set out 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. A tariff quota of 2.2 million tonnes (net weight) shall be opened each year for imports of third country and non-traditional ACP bananas.

Imports of third country bananas under the tariff quota shall be subject to duty of ECU 75 per tonne, while imports of non-traditional ACP bananas shall be free of duty.

2. An additional tariff quota of 353 000 tonnes (net weight) shall be opened each year for imports of third country and of non-traditional ACP bananas.

Imports of third-country bananas under this tariff quota shall be subject to duty of ECU 300 per tonne and of non-traditional ACP bananas to duty of ECU 100 per tonne.

3. No duty shall be payable on imports of traditional ACP bananas.

4. Should there be no reasonable possibility of securing agreement of all WTO contracting parties with a substantial interest in the supply of bananas, the Commission may under the procedure set out in Article 27 allocate the tariff quotas provided for in paragraphs 1 and 2 and the traditional ACP quantity between those countries with a substantial interest in the supply.

5. By derogation from Article 15 non-traditional ACP bananas imported outside the tariff quotas indicated in paragraphs 1 and 2 shall be subject to duty per tonne equal to the duty indicated in Article 15 less ECU 200.

6. 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.

7. The additional tariff quota provided for in paragraph 2 may be increased if demand in the Community increases as indicated by a balance sheet of production, consumption, imports and exports.

Determination of the elements of the balance sheet, its adoption and increase of the additional tariff quota shall be effected under the procedure set out in Article 27.

8. Should supply of the Community market be affected by exceptional circumstances affecting production or importation, the Commission shall adopt the specific measures necessary under the procedure set in Article 27.

In such cases the additional tariff quota provided for in paragraph 2 may be adjusted on the basis of the balance sheet indicated in paragraph 7. The specific measures may derogate from the rules adopted under Article 19(1). They must not discriminate between supply origins.

9. Third country, traditional ACP and non-traditional ACP bananas re-exported from the Community shall not be counted against the corresponding tariff quotas.

Article 19

1. The tariff quotas indicated in Article 18(1) and (2) and imports of traditional ACP bananas shall be managed in accordance with the method based on taking account of traditional trade flows ("traditionals/newcomers").

The Commission shall adopt the implementing arrangements required under the procedures set out in Article 27.

Where necessary, other suitable methods may be adopted.

2. The method adopted shall as appropriate take account of the supply requirements of the Community market and of the need to safeguard its equilibrium.

Article 20

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

- a) guarantee of the nature, provenance and origin of the product;
- b) recognition of the document serving to verify these guarantees;
- c) terms of issue and period of validity of import licences;

- d) any specific provisions needed to facilitate the switch from the import arrangements applying on and after 1 July 1993 to the present arrangements of Title IV;
- e) measures needed to ensure respect for obligations stemming from agreements concluded by the Community under Article 228 of the Treaty.”

Article 2

Article 32 of Council Regulation (EEC) N° 404/93 is replaced by:

“Article 32

1. By 31 December 2005 the Commission shall present a report on the operation of this Regulation to the European Parliament and the Council.
2. The report shall in particular analyse the marketing trends for Community, ACP and third country bananas and assess how the import arrangements have worked.”

Article 3

1. Article 15a of Regulation (EEC) N° 404/93 is deleted.
2. The Annex to Council Regulation (EEC) N° 404/93 is replaced by the Annex hereto.

Article 4

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

It shall apply from 1 January 1999.

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

ANNEX

Traditional imports from the ACP States

Imports originating in the following supplying countries, up to a limit of 857,700 tonnes (net weight) annually:

Ivory Coast

Cameroon

Surinam

Somalia

Jamaica

St Lucia

St Vincent and the Grenadines

Dominica

Belize

Cape Verde

Grenada

Madagascar

Recommendation for a Council Decision authorising the Commission to negotiate with countries having a substantial interest in the supply of bananas in order to reach an agreement on allocation of the tariff quotas and the traditional ACP quantity

Following a decision by the World Trade Organisation's Dispute Settlement Appellate Body the Commission has sent the Council a proposal for changes in the import arrangements for bananas introduced by Title IV of Council Regulation (EEC) N° 404/93, as last amended by Regulation (EC) 3290/94.

In line with this proposal the Commission recommends that the Council authorise it to open negotiations with countries with a substantial interest in supplying bananas to the Community so that the import tariff quotas and the traditional ACP quantity can be allocated among them, in accord with the attached negotiating instructions and in consultation with the Article 113 Committee.

A single criterion for determining the countries with a substantial interest in supplying bananas will be used, based on total imports into the Community.

The above proposal includes a provision that, should there be no reasonable possibility of reaching agreement with the countries concerned, the Commission would have authority to make the allocation between them assisted by a committee of Member States' representatives.

ANNEX

A single criterion for determining the producer countries with a substantial interest in supplying bananas, based on total imports into the Community, shall be used to allocate the tariff quotas and, if the situation arises, the traditional ACP quantity, with the agreement of the countries concerned.

The negotiations shall be conducted by the Commission in consultation with the Article 113 Committee and in line with further instructions that the Council may address to it.

FINANCIAL STATEMENT

DATE: 09/12/97

1. BUDGET HEADING: 1000 and B1-1508		APPROPRIATIONS: ECU 623.9 and 205 million (PB)		
2. TITLE: Proposal for a Council Regulation amending Regulation (EEC) No 404/93 on the common organization of the market in bananas				
3. LEGAL BASIS: Article 43 of the EC Treaty				
4. AIMS OF DRAFT LEGISLATION: Modifying the banana regime in the light of WTO panel conclusions, with effect from 1 January 1999				
5. FINANCIAL IMPLICATIONS	PERIOD OF 12 MONTHS million ecu	CURRENT FINANCIAL YEAR (98) million ecu	FOLLOWING FINANCIAL YEAR (99) million ecu	
5.0. EXPENDITURE - CHARGED TO THE EC BUDGET (REFUNDS/INTERVENTION)	228.8		227.2	
5.1. REVENUE - OWN RESOURCES OF THE EC (LEVIES/CUSTOMS DUTIES)	262.7		262.7	
	2000	2001	2002	2003
5.0.1. ESTIMATED EXPENDITURE	228.8	228.8	228.8	228.8
5.1.1. ESTIMATED REVENUE	262.7	262.7	262.7	262.7
5.2. METHOD OF CALCULATION: See Annex				
6.0. CAN THE PROJECT BE FINANCED FROM APPROPRIATIONS ENTERED IN THE RELEVANT CHAPTER OF THE CURRENT BUDGET?				YES/NO
6.1. CAN THE PROJECT BE FINANCED BY TRANSFER BETWEEN CHAPTERS OF THE CURRENT BUDGET?				YES/NO
6.2. IS A SUPPLEMENTARY BUDGET NECESSARY?				YES/NO
6.3. WILL FUTURE BUDGET APPROPRIATIONS BE NECESSARY?				YES/NO
OBSERVATIONS: The system of aid for Community producers (see Annex 'Expenditure - compensatory aid') remains unchanged, so there will be no extra expenditure compared with the present situation. In terms of revenue, the new system will mean an increase of ECU 78.0 million.				

Annex to financial statement attached to VI/8901/97 dated 8 December 1997

1. Revenue - customs duties

The consolidated quota of 2 200 000 tonnes at a duty rate of ECU 75/tonne includes a share for non-traditional ACP bananas (estimated at 30 000 t or 50% in relative quantities) to be imported at a zero rate. The autonomous quota of 353 000 t bears a duty rate of ECU 300/tonne but also includes the remaining non-traditional bananas (30 000 t) qualifying for a tariff preference of ECU 200/tonne.

Outside the quotas mentioned, importing bananas will not be commercially viable.

Calculation of estimated annual revenues:

(2 200 000 - 30 000) tonnes x ECU 75/tonne	ECU 162.8 million
(353 000 - 30 000) tonnes x ECU 300/tonne	ECU 96.9 million
(30 000 t x ECU 0/tonne) + (30 000 t x ECU (300-200)/tonne)	ECU 3.0 million
(per 12 months and budget year)	ECU 262.7 million

Current revenues estimated at:

(2 200 000 + 353 000 - 90 000) t x ECU 75/tonne	ECU 184.7 million
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The difference therefore comes to

ECU 78.0 million

2. Expenditure - compensatory aid

	Year n =	B 99	B 00	12 m'ths
In year n-1		1998	1999	
Forecast quantity marketed	(tonnes)	800 000	810 000	
Advances: instalments 4(50%), 5 and 6	(tonnes)	333 333	337 500	
Advances estimated at	(ECU/tonne)	196.8	196.8	
Remaining balance estimated at	(ECU/tonne)	84.3	84.3	
Total estimated aid*	(ECU/tonne)	281.1	281.1	
- Total advances	(ECU m)	65.6	66.4	
- Estimated remaining balance	(ECU m)	67.5	68.3	
Expenditure in	(ECU m)	133.1	134.7	
In year n		1999	2000	
Forecast quantity marketed	(tonnes)	810 000	810 000	
Advances: instalments 1, 2, 3 and 4(50%)	(tonnes)	472 500	472 000	
Advances estimated at	(ECU/tonne)	196.8	196.8	
- Total advances	(ECU m)	93.0	93.0	
TOTAL COST TO BUDGET	(ECU m)	226.0	227.7	227.7
dt 1.005		227.2	228.8	228.8

* Estimated aid based on average of aid levels set in 1993-96 (extremes excluded)

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