



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.11.1999
COM(1999) 582 final

99/0235 (CNS)

Proposal for a

COUNCIL REGULATION

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

(presented by the Commission)



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.11.1999
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ADDENDUM

Au document COM(1999) 582 final
du 10.11.1999. Fiche financière

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FINANCIAL STATEMENT

1. BUDGET HEADING: BI-1508		APPROPRIATIONS: EUR 267 million (LA)		
2. TITLE: Proposal for a Council Regulation amending Regulation (EEC) No 404/93 on the common organisation of the market in bananas.				
3. LEGAL BASIS: Article 37 of the Treaty				
4. AIMS: To amend the system of banana imports.				
5. FINANCIAL IMPLICATIONS		PERIOD OF 12 MONTHS (EUR million)	CURRENT FINANCIAL YEAR [2000] (EUR million)	FOLLOWING FINANCIAL YEAR [2001] (EUR million)
5.0 EXPENDITURE		77	31 *	76
- CHARGED TO THE EC BUDGET (REFUNDS/INTERVENTION)				
- NATIONAL AUTHORITIES				
- OTHER				
5.1 REVENUE		30	15	30
- OWN RESOURCES OF THE EC (LEVIES/CUSTOMS DUTIES)				
- NATIONAL				
		2002	2003	2004
5.0.1 ESTIMATED EXPENDITURE		76	76	77
5.1.1 ESTIMATED REVENUE		30	30	30
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 WILL A SUPPLEMENTARY BUDGET BE NECESSARY?				YES / NO
6.3 WILL FUTURE BUDGET APPROPRIATIONS BE NECESSARY?				YES / NO
OBSERVATIONS:				
The calculations assume that the transitional system is applied. A figure cannot be put at this stage on the impact of a "tariff only" system.				
It should also be noted that the figure of EUR 77 million could be reached even under the current system if the ACP countries increase their production and reach the duty-free export quota currently available to them.				
* The figure for 2000 is based on the grant of an advance equal to 70% of the new estimated compensatory aid in respect of the quantities marketed in 2000. Should the aid be set at 70% of the estimated aid before reform, the additional amount of expenditure estimated for 2000 would be carried over entirely to the 2001 budget year; total additional expenditure would then amount to EUR 107 million.				

Bananas

Calculation of the proposal's financial implications

Calculation data		Normal year
1 The Union's supply balance in bananas		3 934 000
a EU quota		854 000
	volume used	854 000
	balance unused	0
b Bound quota (A)		2 200 000
c Autonomous quota (B)		353 000
	volume available	2 553 000
	average volume used	2 420 000
	balance unused	133 000
d Traditional ACP bananas (C)		850 000
	volume used	660 000
	balance unused	190 000
		323 000
Additional total available		
2 Utilisation of available quantities		
A Total quantity added	t	323 000
B Increase in supply	%	8,2%
C Inverse elasticity of demand		-1,54
D Resulting reduction in price	%	-12,6%
e Average cif prices recorded	EUR/t	528,0
f Unit reduction in price	EUR/t	-66,7
g New price	EUR/t	461,3
h Additional reduction by virtue of increased competition	%	-5%
i Additional unit reduction in price	EUR/t	-23,1
j Total unit reduction	EUR/t	-89,8
k Total fall in price	%	-17,0%
3 Total extra expenditure	EUR m	77
4 Revenue from customs duties		
a Duties from quotas A and B	75	10
b Estimated duties from quota C		20
5 Total additional duties	EUR m	30

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EXPLANATORY MEMORANDUM

Following a ruling adopted by the Dispute Settlement Body of the World Trade Organisation in 1997, on 20 July 1998 the Council adopted Regulation (EC) No 1637/98 amending Regulation (EEC) No 404/93 on the common organisation of the market in bananas, in order to bring those elements of the import regime found to be incompatible with WTO rules into line with our WTO obligations whilst also respecting the Community's other objectives.

The modified regime entered into force on 1 January 1999. The WTO Dispute Settlement Body subsequently found that the revised regime was not fully compatible with WTO rules. The United States imposed retaliatory measures in the form of prohibitive tariffs on EC products to a value of USD 191,4 million.

Following the latest WTO ruling, the Commission has had extensive contacts with interested parties with a view to putting forward a proposal which would be generally accepted as resolving this dispute.

An interim report on these contacts was given to the Council on 26 May 1999, which also described in a very exhaustive form all the options that are theoretically available to deal with the situation. Since then, further contacts have been held with complainants and other governments concerned, and also with many of the operators in the banana trade. The Commission reported to the Council on these contacts on 13 September 1999. The Council requested the Commission to present a proposal.

Such a proposal should meet the Community's obligations under the WTO as well as its key concerns regarding Community and ACP banana producers and the need to respect the strict limitations on the Community budget.

From these contacts it has emerged that in general Latin American banana-exporting countries prefer a tariff quota system. Most of the trade operators also favour this approach. Other interested parties insist on a flat tariff approach, possibly after a transitional period in which a TRQ would apply. Among the ACP countries, the majority believe that their social and economic interests would best be served by the maintenance of the TRQ system, but some can accept the concept of a transitional regime towards a flat tariff. However, the contacts have also made apparent that there is wide divergence in the positions of different interested parties as regards the distribution of licences.

The Commission believes that the most stable system is that based on a flat tariff. It is also the system most immune from WTO challenges and therefore it offers the most predictable and stable environment for both producers and operators.

The Commission also recognises the widespread preference for a TRQ system. But it has concluded that acceptance of such a system, if it can be achieved, can only be so on a transitional basis, leading to a flat tariff system. It is clear that a transitional TRQ system would ease the adjustment to a flat tariff system, and would facilitate the necessary adaptations in the ACP banana-supplying countries and in the banana producing regions of the Community.

For these reasons the Commission has concluded that a two-stage process is a preferred option.

Outline of the proposal

In light of the above, a proposal for the modification of the existing import regime for bananas is attached, based on a flat tariff after a transitional period during which a tariff quota system would apply, with preferential tariff access for ACP countries. The level of the flat tariff will need to be negotiated under Article XXVIII GATT. A mandate for such negotiations is therefore part of the proposal of the Commission. A flat tariff system should be introduced by 1 January 2005.

The proposed transitional system envisages three tariff rate quotas. The first is a quota of 2.2 million tonnes at a rate of EUR 75/tonne, which is bound in our WTO Tariff Schedule. To this quantity of 2.2 million t, a second quantity of 353 000 t at the same tariff level would be added.

A third tariff quota of [850] 000 would also be opened. This quota would be open to both ACP and MFN bananas but, for ACP access, a preference of EUR 275/t would be accorded for ACP bananas (implying that the tariff on ACP bananas would be zero as long as the tariff within the quota did not exceed EUR 275/t). The proposed system for the third quota would resolve both the level of the tariff and the distribution of licences to operators as it would produce automatically a balance between the number of licences requested and the available quantities. This quota would be characterised by a bidding procedure through which an abatement with respect to the out-of-quota bound tariff rate would be determined. The lowest level of bidding at which the quota can be filled would be applied to all operators for the quantities for which they have put forward a bid (striking price system).

Quota allocation

As regards the management of the first two tariff quotas, it is to be expected that, because of the relatively low level of the in-quota tariff (EUR 75/t), licences for more quantities will be requested than can be allocated within the quota. For this reason, a system of rationing of licences would be necessary. In legal terms this is a question of detailed rules to apply the tariff quota and as such would be dealt with in the Commission's implementing regulation. It is, however, of considerable importance for the acceptability of the system.

The methods of distributing licences giving access to tariff quotas which are most frequently cited in discussions within the WTO are traditional/newcomer based on a historical reference, first-come/first-served, simultaneous examination, and auctioning.

Auctioning is used by some WTO Members and it is an economically rational means of licence distribution. It is, however, controversial because it is argued that the licence fee constitutes an additional tariff which infringes the tariff binding (in this instance EUR 75 within the first tariff quota, at which level excess demand for licences is to be expected).

Distribution of licences through simultaneous examination of licence requests is a widely used system, but in the case of this attractive tariff quota it can be expected that there would be heavy over-subscription and subsequently large reduction coefficients. In view of the specific characteristics of the banana trade the introduction of such a system might not ensure the ending of the dispute.

A means of limiting potential requests for licences and reducing the size of reduction coefficients is to require that the bananas must be physically present in a Community port before the import licence can be requested. As this system would inevitably lead to a

competition among operators to fulfil the criteria, the system is sometimes referred to as a "ship race" or "pure" first-come, first-served. Although this system might be acceptable to the United States, it is opposed by several of the banana-supplying countries.

The practical application of such a system could, however, present a number of technical and administrative difficulties, both to the Commission and national administrations, which need to be addressed in depth.

Finally, there is the traditional/newcomer system. This is the system all the interested parties would prefer us to employ. It requires, however, an uncontested reference period and definition of "operator".

The latest WTO panel condemned the existing regime, which was based on the period 1994-96 and imports by real importers, because of the drag-on effect from the previous regime.

In theory, such drag-on effect could be avoided by making reference to a period before the entry into force of the banana regime. However, that period was affected by national policies and is too distant from the reality of the present market. A distribution system based solely on a pre-1993 reference period would pose problems of compatibility with EC and international law.

It follows that a historical system could be adopted only if a mutually satisfactory solution is reached, respecting EC and international legal obligations. The Commission will pursue contacts with interested parties to see whether it is possible to achieve such a mutually satisfactory solution.

In light of the above, the preferred option for licence distribution is a historical system, but only if agreement of all parties on a mechanism compatible with EC law can be found. Since such an agreement appears unlikely at this stage the alternative solution would be an appropriate form of a first-come, first-served system provided that the administrative problems can be overcome in such a way that the scheme is both physically practical and demonstrably non-discriminatory.

As regards tariff quota allocation between principal suppliers, the WTO panel concluded that, as there is no representative reference period, it can only be maintained if agreement can be found with all principal suppliers. At present no such agreement exists and the allocation should therefore end. As, however, two of the principal supplying countries claim the right to have a distribution based on the framework agreement, the proposal leaves open the possibility of distribution should the main suppliers all agree to it.

The discussions of the Commission with interested parties will continue during the period in which the Council and the Parliament are examining the proposal. By the time the Council is ready to take a decision, that is to say by the time Parliament expresses its opinion, the Commission will make a report on the outcome of the discussions with the interested parties on the TRQ system. If then no feasible administrative system which will resolve the dispute has been found, the Commission will not be able to maintain its proposal for a transitional regime. In such a situation the Council should adopt the attached negotiating instructions to mandate the Commission to initiate GATT Article XXVIII negotiations immediately with a view to replacing the current regime with a flat tariff.

Implications for negotiation of the successor to the current Lomé Convention

The proposed changes to the banana import regime outlined here, indicating a firm commitment to a tariff-only regime after a transitional period during which a TRQ system would be in force, have implications for the current negotiations on the successor agreement to the present Lomé Convention, which expires on 29 February 2000.

The results to date of these negotiations, as far as trade is concerned, indicate a consensus on the need to proceed to new, WTO-compatible arrangements after an appropriate preparatory period (e.g. five or ten years) during which the existing Lomé preferences would be maintained. Continuation of these preferences would require a new waiver covering the whole of the envisaged preparatory period.

As the proposed alternative to the banana regime would only need a general provision for preferences to be granted under the successor agreement, for which an Article I waiver will be sought at an appropriate time, it does not require the renewal of the Banana Protocol, which has been made virtually inoperable by successive WTO decisions. The Council, on a proposal from the Commission, will need to examine what conclusions it should draw for this in terms of the balance of advantages to be granted in the course of the present negotiations. In the light of the Council decision on the present proposals it may also need to examine what, if any, further measures may be appropriate, in particular for the most vulnerable countries, most heavily dependent upon bananas.

Implications for the Structural Funds

As stated above, one of the objects of the transitional regime is to enable Community banana-producing regions to make appropriate adjustments to a freer market. Appropriate use of the resources allocated to Member States from the Structural Funds, within the existing overall objectives of the Community Structural Funds, could have an important role to play in this process.

As should be clear from this memorandum and from the Communications to the Council of 26 May and 13 September 1999, finding the means whereby the Community can amend its regime to respect all its international obligations as well as its responsibilities to its own producers represents a considerable challenge. The Commission is nonetheless determined, with the cooperation of the Council, to achieve this result.

Proposal for a

COUNCIL REGULATION

**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 Commission¹,

Having regard to the opinion of the European Parliament²,

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

Having regard to the opinion of the Committee of the Regions⁴,

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, as amended by Regulation (EC) No 1637/98, 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).
- (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

¹ OJ C ..., .., p. .
² OJ C ..., .., p. .
³ OJ C ..., .., p. .
⁴ OJ C ..., .., p. .

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, the common customs tariff rate should be reduced in accordance with the most appropriate method, and the preferential tariff granted to the ACP countries must be applied.

- (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 275 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 first two tariff quotas, and a cut of EUR 275 in the duty to be paid under the third tariff quota after application of the aforementioned reduction.
- (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, amendments should be made to Title IV of Regulation (EEC) No 404/93,

HAS ADOPTED THIS REGULATION:

Article 1

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

- 1) Articles 16 to 20 of Title IV are replaced by the following:

"Article 16

1. Articles 16 to 20 of this Title 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 paragraph 1 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. By derogation from Article 15, imports under tariff quota "C" shall be subject to the duty referred to in that Article less a reduction which may be determined by tender.
4. A tariff preference of EUR 275 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 ("traditionals/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 is replaced by the following:

"- quantities of Community and ACP bananas and bananas from third countries other than ACP countries marketed in their territory".
 - 3) Article 32 is deleted.
 - 4) The Annex is deleted.

Article 2

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 April 2000.

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

Done at Brussels,

*For the Council
The President*

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