Commission Regulation (EC) No 838/2004 of 28 April 2004 on transitional measures for imports of bananas into the Community by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia

COMMISSION REGULATION (EC) No 838/2004

of 28 April 2004

on transitional measures for imports of bananas into the Community by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, and in particular Article 2(3) thereof,

Having regard to the Act of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, and in particular the first paragraph of Article 41 and Article 57 thereof,

Having regard to Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organisation of the market in bananas[(1)],

Whereas:

(1) Commission Regulation (EC) No 896/2001[(2)] lays down detailed rules for applying Council Regulation (EEC) No 404/93 as regards the arrangements for importing bananas into the Community.

(2) Commission Regulation (EC) No 414/2004 adopting specific measures with a view to adapting the arrangements for administering tariff quotas on banana imports as a result of the accession of new Member States on 1 May 2004[(3)] adopted the first measures with a view to the accession of the ten new Member States to the Community. The purpose of those measures is to identify the operators established in the Community as constituted on 30 April 2004 who have supplied the markets of the new Member States and who meet the conditions laid down in Articles 3 and 4 of Regulation (EC) No 896/2001, in the case of traditional operators, and Articles 6 to 12 of that Regulation, in the case of non-traditional operators. At the same time, the new Member States have adopted similar provisions in accordance with their national procedures.

(3) The necessary transitional measures should be adopted in order to facilitate the transition from the arrangements in force in the new Member States prior to accession to the import arrangements in force under the common organisation of the markets in the banana sector.

(4) In order to ensure market supply, in particular in the new Member States, an additional quantity should be fixed over and above the quotas opened for imports of products originating in all third countries by Article 18(1) of Regulation (EEC) No 404/93 on the same terms as regards tariffs. Such fixing must be transitional and may not prejudge the outcome of the negotiations under way in the context of the World Trade Organisation (WTO) as a result of the accession of new members. In addition, it should not preclude the possibility of an increase if need be to meet requirements justified by demand.

(5) This additional quantity must be managed using the mechanisms and instruments put in place by Regulation (EC) No 896/2001 to manage the existing tariff quotas. However, because these arrangements are transitional, this additional quantity must be managed separately from the tariff quotas.

(6) Under the mechanisms introduced by Regulation (EC) No 896/2001, the additional quantity must be distributed between the two categories of operators defined in Article 2 of that Regulation and rules must be adopted for determining a specific reference quantity for each traditional operator and a specific allocation for each non-traditional operator. It should be specified that the distribution referred to above and the determination of the reference quantities and allocations concern operators who have supplied the markets of the new Member States during the years prior to accession.

(7) In view of the difficulties encountered in applying Article 6(2) of Regulation (EC) No 414/2004, in particular certifying that bananas which were the subject of primary imports during the 2000-02 reference period were actually released for free circulation in the new Member States, and the amendment of that provision by Regulation (EC) No 689/2004[(4)], a provisional reference quantity or allocation, as the case may be, should be fixed for each operator so that they may be issued with import licences for a first instalment at the beginning of May 2004. The purpose of this provisional fixing is to allow the competent national authorities to make checks and verify the supporting documents submitted by operators, to correct declarations made under Articles 4 and 5 of Regulation (EC) No 414/2004 and to rectify, where necessary, the notifications referred to in Article 7(3) of that Regulation in good time before the next instalment of the additional quantity is opened.

(8) With a view to managing this available quantity, adjustment coefficients to be applied to the quantities notified by the Member States should be fixed.

(9) In order to ensure satisfactory market supply, and in particular to ensure a continual flow of imports into the new Member States, the transitional measures should include the issue of licences with a view to release for free circulation in a new Member State. Accordingly, securities lodged should be released in proportion to the quantities released for free circulation in a new Member State.

(10) To the same end, an initial period should be opened for the submission of import licence applications at the beginning of May 2004 in advance of the submission period for the third quarter.

(11) In order to ensure that the additional quantity is managed separately and the use of import licences monitored as required by the rules, the specific entries to be made

on licences should be stipulated. In addition, the provisions applicable to reallocation licences and to the transfer of licences between operators should be adapted.

(12) The Annex to Regulation (EC) No 896/2001 should be adapted to include the competent authorities of the new Member States responsible for managing the scheme.

(13) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Bananas,

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation:

(a) 'Community of fifteen' means the Community as constituted on 30 April 2004;

(b) 'New Member States' means the Czech Republic, Estonia, Cyprus, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia and Slovakia;

(c) 'The enlarged Community' means the Community as constituted on 1 May 2004;

(d) 'primary import' means the economic operation defined in the first subparagraph of Article 3(1) of Regulation (EC) No 896/2001 with a view to sale in one or more new Member States;

(e) 'minimum quantity' means the minimum quantity defined in the third subparagraph of Article 3(1) of Regulation (EC) No 896/2001 established on the basis of all primary imports carried out with a view to supplying the markets of the new Member States;

(f) 'Competent authorities' means the competent authorities listed in the Annex to Regulation (EC) No 896/2001, as amended by this Regulation.

Article 2

Purpose

This Regulation introduces the transitional measures needed to facilitate the transition from the arrangements in force in the new Member States prior to their accession to the Community of fifteen to the tariff quota import arrangements introduced by Regulations (EEC) No 404/93 and (EC) No 896/2001.

Regulation (EC) No 896/2001 shall apply subject to this Regulation.

Article 3

Additional quantity

1 A quantity of 300 000 tonnes, net weight, shall be available for imports of bananas into the new Member States for the period from 1 May 2004 to 31 December 2004.

This quantity shall be available for imports of products from the origins referred to in Article 18(1) of Regulation (EEC) No 404/93.

Imports covered by that quantity shall be subject to the duties fixed in Article 18(2) of the above Regulation.

2 The quantity fixed in paragraph 1 may be increased if a growth in demand is observed in the new Member States.

Article 4

Access to the additional quantity

1 Access to the additional quantity fixed in Article 3 shall be open to traditional operators and non-traditional operators established in the enlarged Community who meet the requirements of Article 3 or Article 4 of Regulation (EC) No 414/2004, as the case may be.

2 249 000 tonnes of the quantity shall be available to traditional operators and 51 000 tonnes to non-traditional operators.

I[F1] Article 5

Quantity available for the second period for the issue of licences in July 2004

A quantity of 105 000 tonnes shall be available for the second period for the issue of licences in July 2004 with a view to the importation of bananas into the new Member States. 87 150 tonnes of that quantity shall be available to traditional operators and 17 850 tonnes to non-traditional operators.

Textual Amendments

F1 Substituted by Commission Regulation (EC) No 1260/2004 of 8 July 2004 amending Regulation (EC) No 838/2004 on transitional measures for imports of bananas into the Community by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia.

Article 6

Specific reference quantity for traditional operators for the period from 1 May to 31 December 2004

1 The competent authority of the Member State of registration shall give each traditional operator who carried out the minimum quantity of primary imports of bananas with a view to their sale in one or more of the new Member States during one of the years in the reference period 2000, 2001 or 2002 a specific reference quantity for the period from 1 May to 31 December 2004 based on the average of primary imports which that operator carried out during the above three-year period. This reference quantity shall be established on the basis of the supporting documents referred to in Article 6(2) and the first subparagraph of Article 6(4) of Regulation (EC) No 414/2004.

This specific reference quantity shall be obtained by multiplying the annual average of primary imports referred to in the previous subparagraph by a coefficient of 0.667.

2 In the light of the Member States' notifications and the quantity fixed in Article 3, the Commission shall, if necessary, set an adjustment coefficient to be applied to the specific reference quantity of each traditional operator.

3 The competent authorities shall inform each operator of its specific reference quantity, as adjusted where necessary by the adjustment coefficient referred to in paragraph 2, no later than the second working day following publication of the regulation fixing that coefficient.

Textual Amendments

F1 Substituted by Commission Regulation (EC) No 1260/2004 of 8 July 2004 amending Regulation (EC) No 838/2004 on transitional measures for imports of bananas into the Community by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia.

Article 7

Specific allocation to non-traditional operators for the period from 1 May to 31 December 2004

1 The competent authorities shall establish a specific allocation for each non-traditional operator registered with them, for the period from 1 May to 31 December 2004.

In the light of the Member States' notifications and the quantity fixed in Article 3, the Commission shall, if necessary, set an adjustment coefficient to be applied to the application for a specific allocation made by each non-traditional operator.

2 The competent authorities shall inform each non-traditional operator of its allocation no later than the second working day following publication of the regulation fixing that coefficient.

Textual Amendments

F1 Substituted by Commission Regulation (EC) No 1260/2004 of 8 July 2004 amending Regulation (EC) No 838/2004 on transitional measures for imports of bananas into the Community by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia.

Article 8

Submission of licence applications and issue of licences

1 Operators shall submit their import licence applications to the competent authorities of the Member State in which they are registered.

2 Import licences, hereinafter referred to as 'accession licences', shall be issued only for the release for free circulation in a new Member State.

3 Licence applications shall bear the words: 'accession licence', 'traditional operator' or 'non-traditional operator', as the case may be, and 'Regulation (EC) No 838/2004. Licence only valid in a new Member State'.