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I

(Information)

COURT OF AUDITORS

SPECIAL REPORT No 7/2002

**on the sound financial management of the common organisation of markets in the banana sector,
together with the Commission's replies***(pursuant to Article 248(4), second subparagraph, of the EC Treaty)*

(2002/ 294/01)

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SUMMARY

Introduction

I. The banana market is the world's second largest fruit market after citrus fruits. A common market organisation (CMO) for bananas was introduced in that sector in 1993. Its main objective was to harmonise and stabilise the market by means of various aid measures and to limit imports by introducing a tariff quota system.

II. The main objective of the audit was to examine how the Council defined the objectives of the CMO, the way in which the Commission gave effect to them and the manner in which the implementing measures were managed by the Member States and monitored by the Commission.

The measures financed by the EU

III. A lack of precision in some of the basic implementing texts led to difficulties with the implementation of the CMO, e.g. deficiencies in the information required to calculate aid, non-compliance with the rules applicable to producer organisations, applications for compensatory aid in respect of quantities presented for marketing by producers but subsequently not accepted by purchasers.

IV. Some producers received additional national financial support which was not notified to the Commission in advance. In addition, shortcomings were revealed in the documents provided in support of aid payments.

V. The premium for final cessation of banana production had only limited impact.

Measures to regulate the market

VI. The difference between world prices and Community prices results in what are known as 'quota rents'.

VII. The system of tariff quotas initially introduced by the CMO resulted in a complex import system and a situation of persistent non-compliance with the World Trade Organisation (WTO) rules.

VIII. At Member State level efficient quota management has been jeopardised by unsatisfactory customs practice and fraudulent imports.

Developments and evaluation

IX. After putting in place an interim arrangement, the Commission is moving towards an exclusively tariff-based system for introduction by 2006. In doing this, its intention was to maintain adequate protection for producers in the EU and ACP (African, Caribbean and Pacific) States without affecting the volume of imports and with minimal impact on prices.

X. The Commission is expected to produce a general evaluation of the CMO at the end of 2004. This should allow an overall assessment to be made of the consequences of the introduction of the CMO and the degree to which its initial objectives have been achieved.

Conclusions and recommendations

XI. Some of the CMO's objectives have not been achieved, and there have been shortcomings in the measures taken to achieve them; in addition some of the measures have had unforeseen and undesired results. Little or no use has been made of grubbing-up premiums and alternative crops. Shortcomings in the methods used to calculate reference prices and production prices have led to undue payment of compensatory aid and to financial corrections. The quota rent advantage derived from the tariff quota system by the multinationals operating in the market is approximately two to three times as great as the support given to EU and ACP growers ⁽¹⁾.

⁽¹⁾ The figures quoted by the Commission in their reply relate to the rate of quota rent of 200 euro per tonne estimated by them compared to the rate of income compensation aid of 383 euro per tonne for the year 2000 (see Annex 6). The Court's calculations are based on the total value of the quota rent in relation to the quota of 2 553 000 tonnes which is some 511 million euro. This is around two to three times the expenditure for income compensation aid in 1999 and 2000.

XII. The vulnerability of producers within their producer organisations should be given more attention. Furthermore, the import arrangements provided for under the CMO have proved susceptible to irregularities and significant weaknesses were found in import controls.

XIII. As the Commission has committed itself to conducting its first major evaluation around 2004, it should ensure that it keeps to this timetable and that its analysis includes an evaluation of the synergy of the various types of support for the banana sector.

INTRODUCTION

The issues at stake in the banana market

1. The banana market is the world's second largest fruit market after citrus fruits. The Community consumes approximately four million tonnes of bananas every year but only produces 20 % of its requirements. Approximately 60 % of the Community's supplies comes from Latin America (see *Annex 1*). These bananas, known as 'dollar bananas', are sold at prices below the price of those produced in the Community. The remaining 20 % comes from the ACP States. There are two large producer countries in the EU: Spain, where the autonomous region of the Canary Islands produces 400 000 tonnes per year, and France, where the overseas departments of Guadeloupe and Martinique produce 300 000 tonnes per year. Over the period 1989 to 2000 Community production and imports of dollar bananas increased by approximately 6 %.

2. Prior to 1993 various import regimes existed in the Community, hampering the free circulation of bananas within the Community and constituting an obstacle to the establishment of a common system for trade with third countries. Among the Member States that are *producers* of bananas, national market organisations applied quantitative import restrictions which created an obstacle to the single market. Among the Member States that are *not producers*, some gave priority to the marketing of bananas from ACP States while others had liberal importation rules.

3. To achieve a single market, it was necessary to put in place a common market organisation (CMO) to replace the various national systems. In 1993 the common organisation of the market in bananas was therefore introduced by Council Regulation (EEC) No 404/1993 ⁽¹⁾.

The aims and implementation of the CMO

4. The main objectives of the CMO are:

- (a) *harmonisation and stabilisation of the market* for bananas within the Community;

- (b) *free movement of bananas within the Community* and implementation of a common regime for trade with third countries;
- (c) ensuring *adequate incomes* for EU producers and for traditional suppliers in the ACP (African, Caribbean and Pacific) States and fair prices for consumers;
- (d) through the creation of *producer organisations*, improving the efficiency of production and maximisation of earnings from bananas produced in the Community.

The legislator thus sought to establish a balance between the separate, and contradictory, interests that existed prior to 1993.

5. To achieve these objectives, the Regulation introduced a number of measures:

- (a) *compensatory aid* (i.e. a premium per tonne of bananas marketed) to balance out any subsequent loss of income; this aid is granted to EU producers with the aim of placing them in an equivalent position to that which existed prior to the introduction of the CMO;
- (b) a *single premium* (per hectare) granted to Community producers who cease to produce bananas where other crops prove more appropriate;
- (c) the introduction of a Community *tariff quota* system for the marketing of bananas produced in third countries and ACP States;
- (d) *temporary aid* to encourage the setting up of producer organisations and to facilitate the administration of them during the start-up phase;
- (e) aid granted in the context of *operational programmes* for regions eligible for assistance from the Structural Funds, with the aim of increasing competitiveness and improving the use of resources in the banana sector.

6. The first two measures are wholly financed through the European Agricultural Guarantee and Guidance Fund (EAGGF), Guarantee Section, and comprise interventions designed to regulate the market. Since 1 January 2002 the start-up aid for producer groups has been co-financed by the EAGGF Guarantee Section. The latter two measures are co-financed (Member States and

⁽¹⁾ Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organisation of the market in bananas (OJ L 47, 25.2.1993, p.1).

Commission) through one of the four Structural Funds, i.e. the EAGGF Guidance Section. The aid for producer organisations is similar to that provided in the CMO for fruit and vegetables ⁽¹⁾; the co-financing of operational programmes under the Structural Funds is designed to align them with the rules ⁽²⁾ governing management of the Structural Funds for the benefit of regions whose development is lagging behind.

7. In addition to the basic Council Regulation creating a common organisation of the market in the banana sector (see paragraph 3), the Commission adopted implementing rules including those for ⁽³⁾:

- (a) the arrangements for importing bananas into the Community ⁽⁴⁾;
- (b) the compensatory aid scheme in the banana sector ⁽⁵⁾;
- (c) the tariff quota system for agricultural products ⁽⁶⁾.

8. The advent of the single market finally put an end to the special arrangements operated previously by the Member States. As a result, for bananas produced within the EU there ceased to be an upper limit on quantities of bananas marketed in the Community, while those from the ACP States benefited from more favourable tariffs, with compensatory aid to Community producers subject to maximum quantity limits. As for imports of bananas into the Community, they were subject to a tariff quota system, i.e. the duty to be charged was calculated at a preferential rate up to a given quantity.

9. To prevent traditional suppliers of bananas in the ACP States being penalised by the introduction of the CMO in 1993, the Community adopted a special system of aid for the benefit of these producer countries, in parallel with the CMO.

Audit objectives, scope of the audit and audit approach

10. The main objectives of the audit were to examine:

- (a) how the Commission gave effect to the CMO objectives defined by the Council in the banana sector and what measures were taken to achieve them;

- (b) how these measures were managed by the Member States and monitored and evaluated by the Commission;
- (c) to what extent the objectives of the CMO were attained.

11. A secondary objective was to analyse the reasons why the banana import arrangements, from the viewpoint of the tariff quota system, had led to appeals to the World Trade Organisation (WTO) and tariff retaliation by the United States of America. The audit therefore examined:

- (a) the effectiveness of the import arrangements as a means of regulating the market and their compliance with international trade rules;
- (b) the use made of import licences in connection with these arrangements and their impact on the market;
- (c) the effectiveness of physical checks on imports and the reality of the corresponding collection of related own resources.

12. The audit focused on the management, in 1999, of the system of compensatory aid in Spain and France. Their production accounts for 99 % of total banana production in the Community. As a result, they receive 96 % of the aid. Audit visits were made to the Commission's offices, selected administrative bodies and producers (including producer organisations) in France and in Spain with the aim of obtaining a true picture of the operation of the arrangements at all levels. The audit also included an examination of projects submitted for support under the operational programmes financed through the EAGGF Guidance Section and a general examination of the system of support for the ACP banana-producing States. The scope of the audit did not extend to the financing of measures in support of crops grown as a substitute for bananas, which are covered by the REGIS Community initiative (integration of the outermost regions of the Community) and totalled 3,5 million euro for the period 1994 to 1999.

13. An evaluation of the quality and the operation of the internal control system was obtained by examining whether aid payments (to individual producers) complied with national and Community rules. The audit included analysis of the work of the Commission's offices (clearance of accounts) and of national bodies involved in the management and control of the aid schemes.

14. The management of the tariff quota system by Agriculture DG at the Commission was also examined, including the management of the physical checks on imports, which has been delegated to national customs authorities. In the course of this work auditors from the Court observed the way in which these procedures were applied at a major EU port handling significant quantities of bananas (Antwerp). Discussions were also held with representatives of three multinational companies involved in large-scale importation and marketing of bananas in the Community and with the Commission services responsible for own resources and customs procedures.

⁽¹⁾ Council Regulation (EEC) No 1035/72 of 18 May 1972 (OJ L 118, 20.5.1972).

⁽²⁾ Council Regulation (EEC) No 2052/88 of 24 June 1988 (OJ L 185, 15.7.1988).

⁽³⁾ Other procedures adopted by the Commission under the CMO include quality standards (Regulation (EC) No 2257/94), rules on producer groups (Regulation (EC) No 919/94) and grubbing-up arrangements (Regulation (EEC) No 1639/93).

⁽⁴⁾ Commission Regulation (EEC) No 1442/93 of 10 June 1993 (OJ L 142, 12.6.1993).

⁽⁵⁾ Commission Regulation (EEC) No 1858/93 of 9 July 1993 (OJ L 170, 13.7.1993).

⁽⁶⁾ Commission Regulation (EEC) No 3719/88 of 16 November 1988 (OJ L 331, 2.12.1988).

15. Evidence was obtained by checking documents and records, and by requesting and obtaining confirmation of information. This was rounded off by discussions with the representatives of Member States and selected bodies.

Budgetary aspects

16. Table 1 shows the expenditure on the income compensation and grubbing-up premium funded by the EAGGF Guarantee Section between 1993, when the CMO was established, and 2000. Total expenditure in the period amounted to some 1 287 million euro of which some 662 million euro was paid to Spain and 572 million euro to France as the dominant banana producers in the EU. The total land under banana cultivation in the EU is around

27 000 hectares of which France has around 16 750 and Spain 8 500, supporting a total of some 1 600 and 10 500 producers respectively. The number of producers in Spain reflects the small size of holdings, of which 80 % are less than 1 ha. The budget for compensatory aid has been set at 303 million euro for 2002, which represents some 11 200 euro per hectare.

17. The Community contribution to the measures in support of the banana sector under the two operational programmes audited by the Court, in France and Spain, were 28 million euro and 8,5 million euro respectively (for the period 1994 to 1999). The financing for measures in support of the banana sector in ACP States amounts to some 45 million euro per year.

Table 1

EAGGF Guarantee income compensation and grubbing-up premium ⁽¹⁾

Actual expenditure of EU banana producer States 1993 to 2000

(Mio EUR)									
Year	1993	1994	1995	1996	1997	1998	1999	2000	Total
Spain		73,1	60,6	120,3	96,2	105,1	97,2	109,7	662,2
France	4,11	58,1	48,3	73,8	102,2	94,7	73,7	117,2	572,1
Portugal		7,0	6,8	8,8	8,1	8,1	6,8	7,3	52,9
Greece		0,0				0,0	0,0	0,2	0,2
TOTAL	4,11	138,2	115,7	202,9	206,5	207,9	177,7	234,4	1 287,4

⁽¹⁾ Grubbing-up premium only for 1993 (41 000 euro) and 1994 (4 000 euro)
Source: Commission 2002.

THE MEASURES FINANCED BY THE EU

Weaknesses in the management of compensatory aid

18. One of the aims of the new CMO system applied in 1993 was to ensure that producers had adequate income to continue production at the costs entailed by the structural situation. In order to make good the loss of marketing income ⁽¹⁾ likely to affect EU producers' incomes following the implementation of the new system the framework regulation ⁽²⁾ introduced a system of income compensation for the producers in question. This principle was to be applied as long as the situation had not been improved by the implementation of structural measures. It should be noted that the regulations do not define exactly what might constitute 'adequate income', but they do define all the items needed for the aid calculation.

19. Calculation and payment of aid: compensatory aid is a premium paid to Community producers, in principle through the producer organisations of which they are members, for the quan-

tities of bananas marketed in the Community. This aid is calculated by the Commission on the basis of the difference between:

- a 'flat-rate reference income', on the one hand, determined by means of the average price of the bananas produced and marketed in the Community during a reference period before the introduction of the CMO, less the costs of delivery fob ⁽³⁾ and transport;
- and, on the other, the 'average production income' calculated for each year on the basis of the average price of the bananas produced and marketed in the Community during the year under consideration (less the costs of delivery fob and transport); this calculation must take into account the most recent information available in the Member States.

20. Limitation of the quantities eligible for compensatory aid: the Council fixed the maximum quantities produced and marketed in the EU for which compensation will be paid at 854 000 tonnes.

⁽¹⁾ Council Regulation (EEC) No 404/93, Article 12.

⁽²⁾ Council Regulation (EEC) No 404/93 of 13 February 1993 (OJ L 47, 25.2.1993).

⁽³⁾ fob: 'free on board', means that the risks of damage to or loss of the goods are transferred to the buyer at the point where the goods are on board the ship.

Lack of precision in the legal texts and difficulties in their implementation

Varying interpretations of the information required for calculating aid

21. The rules governing the calculation of compensatory aid, carried out by the Commission using data forwarded by the Member States, stipulate that the premium for producers shall be based on an average price for the bananas after deduction of the costs of transport (see details in paragraph 19). These rules do not specify in detail all the price and cost components used as the basis for this calculation.

22. This lack of precision led to weaknesses in the application of the rules mentioned above. These weaknesses were identified by the Commission offices responsible for clearing the accounts during inspections carried out in 1997. They led to substantial corrections:

- (a) the costs deducted were questionable, refunds and discounts had not been declared, thereby increasing the deductible costs and hence the amount of financial aid (0,8 million euro recovered in France);
- (b) sales were made at abnormally low prices (Spain and Portugal) and claims made for types of banana which were not eligible for compensatory aid (Portugal); the amounts recovered totalled 2,6 million euro in Spain and 0,5 million euro in Portugal.

Applications for compensatory aid in respect of quantities presented for marketing by producers, but not subsequently accepted by the purchasers

23. Compensatory aid is granted to producers who sell bananas on the Community market and is *paid on the quantities marketed* by each producer through the producer organisation. The legal framework does not define 'marketing', nor does it specify at what stage of the marketing process the aid entitlement arises. The Court considers that this should equate to *the point at which the quantities in question are accepted by the importer/purchaser*, whether at the quay in the port of embarkation or on arrival in mainland Europe.

24. In Guadeloupe, it was found that aid had been claimed for quantities of bananas presented for marketing *which were not subsequently accepted* by the purchaser on their arrival at the European mainland. In Guadeloupe entitlement to aid was established in relation to the quantities of bananas leaving warehouses/packing sheds for despatch to the port and transport to mainland Europe. The goods may be damaged in transit; some may be rejected on quality grounds on arrival. However, the purchaser

only pays for the quantities that are accepted. The Court established that the quantities on which the entitlement to aid was calculated were not adjusted to reflect the quantities ultimately purchased. This resulted in undue payments amounting to some 2 million euro; the Commission will propose a correction.

25. The national authorities confirmed that adjustments had been made in respect of goods which were not accepted or which had deteriorated before the cargoes were accepted for transport to the EU mainland destination. But further adjustments were not made in respect of amounts rejected subsequent to that. For the purposes of the aid calculation it was, in their view, reasonable to equate the time of acceptance of the quantities being marketed with the end of the packing stage, on the principle used to establish reference and production prices. They also argued that the method had been notified to, and tacitly accepted by, the Commission since the latter had received a copy of the paying agency's written procedures explaining how the aid due is determined.

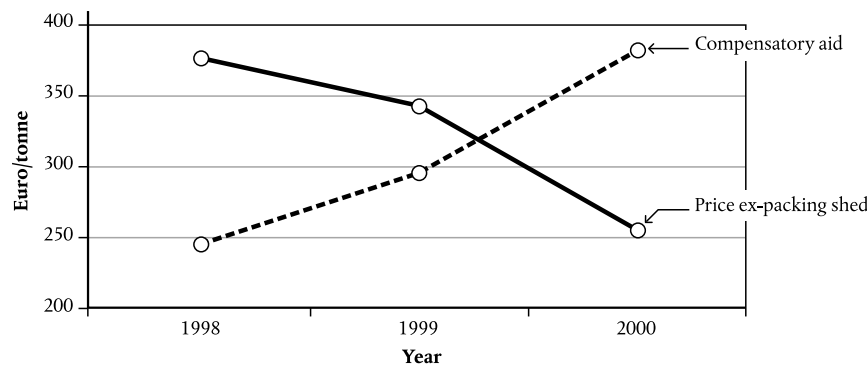
26. The Court noted that there were differences in practice between France and Spain. Bananas from the Canary Islands are usually sold to primary/secondary importers before being sent to the Iberian peninsula. The situation is thus not comparable to that in Guadeloupe, because the quantities are accepted by the purchaser before dispatch.

Impact of aid on producers' incomes and cash flows

27. The CMO aims to ensure for producers adequate incomes and cash flows (but does not give a more precise definition of what this means). As there may be a delay between the sale of the bananas on the market and the payment of Community aid, the regulations allow producers to apply for an advance, subject to the provision of a security. The Commission has also, on a number of occasions, waived the provisions of Article 4 of Regulation (EEC) No 1858/93, which state that the amount of each advance is 70 % of the aid in respect of the preceding year. The Commission justified its action on the grounds of the level of aid in the previous year or the adverse trend of market prices during the year in question.

28. Even with the artificial maintenance of EU prices above world-market levels, world-market prices as a whole have fallen. Income from EU production has therefore dropped and aid has increased. The result is that aid now accounts for more than 50 % of EU growers' incomes (see Table 2 and Annex 6).

Table 2

Changes in banana prices (EC) and compensatory aid to producers

Source: Table prepared by the Court of Auditors on the basis of Commission data (see Annex 6).

29. As Community aid represents a large part of producers' income (more than 50 %) and *the advance on this aid is limited*, and in view of *the significant delays that occur as regards the final aid payment*, some producer organisations (Martinique) grant supplementary advances. The aim is to ensure that producers have adequate cash resources. The Court found that some producer organisations are thus carrying out prefinancing, not only by means of advances on Community aid but also by advances on income from sales.

Additional national financial support for producers

30. Despite the efforts to improve producers' cash flows, falling banana market prices and climatic disasters have had a significant impact on producers' incomes. The audit showed that in 1997, in order to alleviate the precarious financial situation of producers in Martinique and Guadeloupe, France granted producers loans totalling 13 million euro. The loans were interest free and unsecured.

31. Article 88 of the EC Treaty provides that the Member States must inform the Commission of any plans to grant State aid, in sufficient time for it to be able to submit its comments. The Court found that, although the support provided was compatible with the criteria in force, the Commission had not been informed beforehand, as is required.

32. Despite the provision of national aid, the situation of producers continued to deteriorate and, at the request of the French government, the Commission agreed in November 1999 to increase the amount of aid which could be advanced.

33. In 1999, France announced other measures in Martinique and Guadeloupe to re-stabilise the producers' economic circumstances.

34. The Court's observations provide information on producers' incomes, cash flows and precarious economic situation.

The absence of a precise definition of the objectives and the non-availability of any (economic and financial) evaluation of them means that in-depth cost-effectiveness analysis of these measures is not possible. The information contained in the preceding paragraphs also leads to the conclusion that the CMO objective of maintaining production at the costs entailed and guaranteeing an adequate income has only been partially achieved. The Commission must carry out an in-depth evaluation with a view to assessing the impact of the measures taken and whether they are economic, effective and efficient.

Inadequate documentation in support of aid payments

35. In Spain, the local working instructions on the management of compensatory aid were not sufficiently explicit in respect of the purpose of internal controls, their scope, their frequency and their level.

36. The Court identified weaknesses in connection with documents which served as proofs of payment. For instance, differences were discovered between the quantities for which aid had been claimed and the quantities for which aid had actually been paid. The local authorities, while acknowledging these differences, were unable to produce proof that they had been the subject of reconciliation. Although the Court was able to identify some factors that could explain the differences, it concluded that it was essential for this reconciliation to be clearly documented in future.

37. In order to ensure that a right to aid really exists, the regulations stipulate that applications for aid must include certain information (e.g. the name of the producer, the name of the organisation submitting the application, sales invoices, etc.).

38. In the context of its examination of aid applications and payments in Spain the Court found that, for about 50 % of the local cash sales between one producer organisation and one local trader, the invoices did not provide reliable evidence of the client's identity. Thus at the point where the authorities were processing the applications they did not have sufficient evidence to accept the sales as qualifying for compensatory aid.

Minimal impact of the premium for final cessation of cultivation

39. Where conditions were unsuited to the production of bananas and more suited to alternative crops, cessation of banana growing was to be encouraged through the payment of a one-off premium.

40. The main condition for qualifying for this type of aid was the grubbing-up of all banana plants on holdings where the area planted to bananas was less than five hectares, and of half the banana plants on holdings where the area planted to bananas was larger than this. The aid was fixed at 1 000 euro per hectare, with a prohibition on replanting bananas on the land in question for a period of 20 years. The Court noted that the expenditure aid was minimal, amounting to only 45 000 euro — the equivalent of 45 hectares — for the eligible period 1993 to 1994. In the EU the area under bananas has actually increased by two per cent since 1994. The areas cultivated by ACP and dollar banana producers, however, have increased by a much larger percentage (16 % and 20 % respectively), despite the world oversupply situation.

41. European producers and their organisations gave the following explanations: on the one hand, they had no real possibilities in terms of substitution crops; on the other hand, the premium was not sufficiently attractive to producers. From this the Court concluded that, either the objective of encouraging substitute production was unrealistic or that it is more profitable for producers to continue growing bananas as long as they receive financial assistance.

Non-compliance with the rules applicable to producers' organisations

42. The responsible authorities in the Member States grant 'recognition' to these organisations if they fulfil the conditions laid down in the Community regulations. These include the following points:

- (a) the statutes of these organisations must:
 - (i) require producers to market the whole of their production through the organisation;

- (ii) guarantee the producers' control of the organisation and its decision-making procedures;

- (iii) stipulate that every producer must undertake to remain a member for a minimum period of three years and give at least 12 months' notice of his intention to leave the organisation;

- (b) the competent authorities in the Member States must, on the one hand, ensure that the producer organisations are set up and operate in accordance with the regulations, by means of on-the-spot checks at least once every three years, and, on the other, must withdraw their 'recognition' when they find that the obligations imposed by the regulations are not being fulfilled.

43. The Commission's clearance of accounts units found cases of non-compliance with these requirements (France). They were:

- (a) non-compliance by some producers with the requirement that the whole of their production was to be marketed through the organisation;

- (b) the competent authority in the Member State had not examined the activities of each producer organisation at least once every three years.

44. Although progress was found to have been made, especially following intervention by the Commission, there are still problems such as non-compliance with the requirement that all production is to be marketed. These problems are treated as part of the procedure for clearing the accounts.

Limited effectiveness of the structural programmes

Objectives defined in terms which are too general

45. As pointed out above in the 'Introduction' section, the CMO in the banana sector covers objectives not only in connection with agricultural policy but with structural policy objectives as well. Thus co-financing under the Structural Funds (EAGGF-Guidance) is possible for projects which pursue at least two of the three following objectives: (1) application of a *quality and commercial strategy*; (2) *improvement of the use of resources*; (3) *improving competitiveness*. These objectives are general (not quantified) and their expected impact is not precisely defined. They must be included in the programming documents drawn up at Member State level and subsequently in the terms of reference of individual projects.

46. The Court found that the programming documents (period 1994 to 1999) of the Member States (France and Spain) did not indicate how the measures which had been planned fulfilled at least two of the three objectives specified in the CMO Regulation. The link is even more tenuous in the projects carried out under these programmes.

Cost-effectiveness

47. The absence of a clear definition of quantified objectives and measures for achieving them allows neither monitoring nor evaluation of the structural strand of the CMO. The mid-term evaluations gave rise to observations of a general nature as the findings of the *ex post facto* evaluation of the programmes could not be available before 2003.

48. The measures in the structural strand of the CMO (e.g. improving competitiveness) are closely linked to those of the agricultural market strand (e.g. compensatory aid to producers). It is therefore necessary to monitor the implementation and consistency of these two strands continuously, as well as evaluating them individually and the synergy of the CMO as a whole. In view of the fact that several of the Commission's directorates-general are involved in the management of the various strands of the CMO, close coordination is vital.

49. The implications of important changes in the way in which the CMO is managed are discussed by the main services responsible. However, the required level of coordination and exchange of information on the impact of Structural Fund and agricultural market (EAGGF-Guarantee) measures, necessary to ensure their cost-effectiveness and synergy, is not being achieved. This will not happen until the evaluation of the CMO is completed by the end of 2004.

One example

50. In the programming document for the French overseas departments there is provision for a measure for 'the modernisation of the banana distribution network'. In addition to the construction and improvement of packing facilities the projects adopted on the basis of this programme involve cable transport systems; vehicles and trailers. There is no information to indicate to what extent these projects are supposed to contribute to the objectives laid down (quality strategy, improvement of competitiveness and improved use of resources).

51. The audit also revealed that the producers' cash-flow problems had not made the implementation of the projects any easier. In actual fact producers have to prefinance projects before they receive national and Community aid. Moreover, the interval between initial approval of a project and the final payment can be very long, sometimes up to two years.

52. The framework programme for the new period 2000 to 2006 included a short general evaluation of the old programme pointing out that the slowness of its implementation was due to difficulties in the banana sector and problems with project financing. It also said that it was not possible to replace bananas with substitution crops.

53. The Court has reached the conclusion that no quantified objectives were specified and that information was available neither on the effectiveness of the measures taken to improve competitiveness nor on their impact on the utilisation of resources or the quality of the products. The actions supported concentrated on increasing production capacity rather than on competitiveness or the efficient use of the banana sector's resources, and this was done in spite of the oversupply situation on the world market.

Protecting producers in the ACP States

54. To ensure that the introduction of the CMO would not penalise traditional ACP suppliers of bananas, Community Regulation (EC) No 2686/94 introduced technical and financial assistance measures and income support for banana producers in ACP countries. These measures aimed to increase their productivity, improve product quality and marketing and encourage crop diversification. Income support was abolished following a subsequent reform of the CMO.

55. External consultants were employed by the Commission to evaluate the efficiency, effectiveness, impact and viability of the implementation of the arrangements prior to the reform (in five countries). They also analysed in how far it was appropriate and met the needs of the beneficiaries. The study (January 2000) concluded that the assistance had covered a broad range of initiatives, that its impact on competitiveness had been greatest where it involved improving productivity in the field (for example, irrigation, drainage, etc.), that its impact was least in the areas where it was potentially greatest (e.g. management reform), and that the sector's limited competitiveness (two countries) argued against any expansion of exports. The study recommended that, in future, the priority objectives of aid should be clearly defined and that the creation of alternative sources of income should be one of the main priorities. The Court considers that this evaluation should serve as a model for the evaluation of the CMO before any new programmes are drawn up in support of traditional producers (see paragraph 99).

MARKET REGULATION MEASURES

Conflicting interests

Sales price and consumer choice

56. The EU imports around 80 % of its needs. The system of preferential tariff quotas was designed to achieve a stable balance between the sources of market supply and to provide a steady market for the output of the various producer regions. The tariff quota system also generates Community own resources.

57. The CMO placed the emphasis on harmonisation of marketing channels, and on the free movement of goods within the Community, while keeping consumer prices at a reasonable level. It was important to pursue these objectives while also maintaining consumer choice, i.e. not undermining imports from outside the EU.

European prices and quota rents

58. The GATT Uruguay Round negotiations between 1986 and 1993 focused on removing export subsidies and import quotas with the aim of liberalising the market. The measures introduced by the EU combined the payment of income compensation to EU producers with improved market access for non-EU bananas, through the quota system. The initial system nevertheless actually reduced access to the market for traditional dollar banana importers, by attributing 30 % of the quota to importers who had previously only imported EU or ACP bananas. They were awarded 30 % of the dollar banana quota (see paragraph 61). They therefore had to choose between seeking an increase in profits by marketing dollar bananas, or selling their rights to other operators who would be seeking to increase their import opportunities. This created the secondary market for import licences.

59. The differential between world prices and EU prices is known as a 'quota rent'. It is not a charge on the EU budget, since it is passed on to the consumer. In 1999, the Commission estimated the quota rent to be around 200 euro ⁽¹⁾ per tonne. Taking the current quota of 2 653 000 tonnes (see paragraph 91) the quota rent amounts to a total of 531 million euro. Accurate estimates are difficult because various fluctuating parameters and hypotheses such as exchange rates have to be taken into account. Other estimates of the quota rent go as high as 388 euro/tonne which gives a total of more than 1 000 million euro (see also paragraphs 73 to 74).

A complex and controversial situation

Complexity of the import arrangements

60. The quota system introduced by the CMO was as follows (see Annex 2):

- (a) quantities imported from ACP States ('traditional ACP bananas') benefited from a tariff quota of 857 700 tonnes free of customs duties;

- (b) 'non-traditional ACP' quantities (i.e. quantities in excess of quota (a)) and quantities from third countries (essentially dollar bananas) were awarded a combined quota of 2 000 000 tonnes subject to customs duties of 100 euro per tonne;

- (c) 'non-traditional ACP' quantities and quantities from third countries in excess of quota (b) were to be subject to customs duties of 750 euro and 850 euro per tonne. These higher duties were intended to discourage imports outside the quotas.

61. The import arrangements originally established by the CMO (Annex 2) allocated quotas for *third countries* and *non-traditional ACP bananas* as follows: category A — 66,5 % for operators established in the EU and marketing non-traditional ACP and third country bananas; category B — 30 % for operators established in the EU and marketing EU and traditional ACP bananas; category C — 3,5 % for new operators marketing non-traditional ACP and third country bananas.

62. The allocations for categories A and B were also weighted in relation to the type of commercial activity in which the operators were engaged: category (a) — 57 % to primary importers; category (b) — 15 % to secondary importers; category (c) — 28 % to ripeners.

63. In order to justify the amounts to be allocated under the CMO, operators were required to disclose, via national administrations, the level of their marketing activity for a reference period which, at the time of the launch of the market, was the three years leading up to 1992. In anticipation of the introduction of the system, some operators saturated the market with very cheap bananas in the period before the introduction of the CMO in the hope of driving up their initial share of the quota.

64. Quotas are managed on a quarterly basis. Indicative quantities are set which represent the proportion of the quota allowed to enter the EU. These are published in the *Official Journal of the European Communities*.

65. The audit showed that the Commission's Agriculture Directorate-General had carried out credibility tests on the quantities declared by Member States as the basis for their initial allocations of quota. The total quantities declared for primary importers did not correspond to those which were later handled by secondary importers and ripeners. The Member States drew attention to these discrepancies and, after investigation, appropriate adjustments were made. The reference quantities were reduced by amounts which ranged from less than one per cent to nearly 20 %. Member States claimed that the discrepancies had arisen from a misinterpretation of Commission implementing regulations on the attribution of reference quantities to the various operator categories.

⁽¹⁾ SEC(1999) 1397 final of 8 September 1999, 'Report from the Commission to the Council on consultations with a view to settlement of the banana dispute'.

66. These errors did not affect the EU budget, but did, exclusively, affect the allocation of quotas to the three marketing categories (see paragraph 61).

Disagreements with the WTO

A controversial system

67. The automatic allocation of a substantial part of the quota (see paragraph 61) provoked considerable criticism. In the case of dollar banana the big operators protested at having to buy import rights and against the protection given to EU and traditional ACP producers. The arrangements were formally challenged by the interested parties under the GATT disputes procedure.

68. Some multinationals adapted to the new rules laid down by the CMO and anticipated them by diversifying their crops and their marketing to the EU and ACP countries. Others made no attempt to do so.

Non-compliance with WTO rules persisted till 2001

69. The quota system was modified in 1995, primarily to accommodate the new EU Member States. Following a ruling by the Dispute Settlement Body of the WTO in 1997, the Council approved further modifications in order to bring the CMO into line with WTO rules. These modifications entered into force on 1 January 1999. The various provisions introduced by the reforms are set out in diagrammatic form in *Annexes 3 and 4*.

70. The main changes introduced were the abolition of the categories and subcategories of operators and a reclassification of importers into two main operator categories — traditional and new arrivals. Traditional operators were those established in the EU and importing on their own account.

71. Despite these reforms, the WTO ruled that this system remained non-compliant, since it perpetuated distortions, and that the separate quota for ACP States was still unacceptable.

72. Even before the WTO decision, the United States of America had tried to impose unilateral sanctions on a range of EU goods, valued at USD 500 million a year. The WTO ruled that they were both precipitate and excessive and asked for the sanctions to be reduced to USD 191 million, which is the level they were imposed at until the conclusion of bilateral negotiations with the United States of America in April 2001 and the adoption of an amended system of quota tariffs ⁽¹⁾ in December 2001 (see paragraphs 86 to 92).

⁽¹⁾ Council Regulation (EC) No 2587/2001 of 19 December 2001 (OJ L 345, 29.12.2001).

Weaknesses in the management of quotas

The emergence of a secondary market

73. Registered operators may apply for import licences, up to the level of their allocation for the quarter in question, within the indicative quantities decided by the Commission. The category must be specified in the application. The quantities attributed with the licence may be transferred during the period of its validity at the rate of a single transfer per licence. The Commission has acknowledged that applications for category C licences (new importers) were being made by operators who had no intention of importing but who simply wanted to sell on the licences at a profit.

74. One of the biggest multinational operators, when interviewed by the auditors, valued the licences at about USD 5 per standard case (18,5 kg), which equates to USD 270 per tonne. This confirms the extent to which the quota rent is attractive to those wishing to market dollar bananas in the EU (see also paragraph 59).

Management shortcomings

75. The Court examined the import licensing system in France, where the paying agency issues stocks of blank licence forms to operators. Although the licences are serially numbered and bear the title of the issuing authority, the serial number is not used as a means of controlling either their origin or their eventual use by the importers.

76. The agency acknowledged, however, that when the quantities authorised are entered on the licence, an official number is attributed to it. The agency confirmed that it is the responsibility of the importer or licence holder to record the quantities imported on the back of the form. It also confirmed that it is the customs authorities at the port of entry that are required to certify the quantities deemed to have been released for free circulation in the Community. The certification is usually in the form of the official stamp of the responsible authority, attesting that all the required checks have been performed.

77. The paying agency also confirmed that it is the responsibility of the operator to whom the licence is issued to return it to the issuing authority within 30 days of its expiry date, as a security measure.

78. However, the audit established that national customs authorities were under no obligation to notify the issuing authority separately of the quantities they had authorised for importation by means of the licences presented. As a result, the issuing authority relied exclusively on the licence holder, who was supposed to return the used licence, but the absence of

an independent cross-check between the customs authority and the issuing authority rendered the system vulnerable.

Inadequate checks on imports

Shortcomings in the physical checks

79. Under the framework regulations the national customs authorities are required to establish the weight (net mass) of the bananas imported for release for free circulation in the Community. The check is based on a sample of packing units for each type of package and each origin. The sample of packing units to be weighed by the customs authorities must be representative and must comprise a minimum number of units.

80. In order to obtain first-hand knowledge of how this is done, the Court examined how the system operated in a major EU port (Antwerp, Belgium). The auditors observed the unloading of a large vessel containing some 373 000 boxes weighing nearly 7 500 tonnes and also observed the weighing tests carried out by the customs authorities. They found that the way in which the checks were carried out did not provide reasonable assurance as to the quantities being imported. The sample size was too small and the selection not representative. Accurate checks are essential, particularly in view of the fact that the difference between the weight checked by the customs authorities and the declared weight varied by between - 2 % and + 6 %. In addition, the results of the tests were applied not to the ship that was being checked, but to the cargo of the following ship.

81. The controls prescribed by the regulations are not always applied or documented adequately, particularly in the case of large cargoes. The minimum sample sizes were well below the level needed to give statistical confidence and precision in the case of large quantities. Extrapolating sample results to a population other than the target population does not give a reliable result and is not in accordance with the Regulation. These weaknesses mean that the weight of the imported bananas is not reliably verified and there is no assurance as to the quality of the management and monitoring of the quotas.

82. As a result of the audits carried out by the Court, the Commission conducted an inquiry with the aim of obtaining an overview of the systems put in place by the Member States for clearing fresh bananas through customs. The Commission concluded that the national systems do not ensure that the Community rules are properly applied, nor do they give any guarantee that the financial interests of the EU are being protected.

83. In the light of the checks carried out by the Court and by the Commission, the Court concludes that the Commission has never hitherto had sufficient information about the quantity of

bananas imported for it to be able to ensure that management of the quotas is sound.

Case of fraud involving import licences

84. The audit by the Court followed shortly after the discovery in Italy of a major import fraud, in which forged licences were used to import bananas. OLAF (the European Anti-fraud Office) announced the discovery of the fraud in the summer of 2000. Large quantities of dollar bananas had entered the EU via Italian ports under cover of false 'French' import licences. This made it possible for the importer to bring bananas into the Community throughout this period without their being subject to quota, and to pay duty at the rate of 75 euro per tonne instead of 680 to 822 euro per tonne for above-quota imports. It was estimated that some 160 000 tonnes entered in this way, and thus evaded customs duties of 126 million euro. Italy could thus have suffered VAT losses of 5,5 million euro.

85. OLAF considered that the market had been significantly disturbed, because of the scale of the fraud. When such disturbances affect prices there is a corresponding effect on the level of aid. The Commission has not calculated the impact that the fraud may have had on compensatory aid.

DEVELOPMENTS AND EVALUATION

The search for an interim arrangement

86. In May 1999, the Council asked the Commission to submit proposals for reform of the CMO in order to bring it into line with WTO rules. In the face of the difficulties encountered, the Commission announced its intention of moving towards a tariff-only system of control from 2006 and introducing an interim system for 2001 to 2005.

87. Throughout 2000 the Commission discussed various options with all parties. In December 2000 the European Parliament⁽¹⁾ finally adopted the proposal set out in COM(2000) 621⁽²⁾, which provided for transitional tariff quota arrangements. The scheme was to operate on a 'first come, first served' (FCFS) basis, which seemed to be acceptable to most parties.

⁽¹⁾ Second report on the proposal for a Council regulation amending Regulation (EEC) No 404/93 on the common organisation of the market in bananas — Committee on Agriculture and Rural Development. European Parliament (A5-0374/2000 final).

⁽²⁾ Communication from the Commission to the Council on the 'first come, first served' method for the banana regime and the implications of a tariff only scheme.

88. The system envisaged three quotas one of which was a new autonomous C quota of 850 000 tonnes. The quotas would be open to all bananas irrespective of their origin. The entry duties for quotas A and B would be 75 euro/tonne and for the new C quota 300 euro/tonne. There would be a preferential tariff for ACP bananas.

89. Doubts were expressed concerning the potential administrative difficulties and the system caused some disquiet, as it seemed likely to favour the larger operators, who were better equipped to orchestrate their operations. After intense, high-level, bilateral negotiations with the United States of America, the proposal was abandoned by the Commission in April 2001 in favour of continuing the tariff quota system, but in a modified form.

90. Detailed rules for applying the new system were issued in Commission Regulation (EC) No 896/2001 of 7 May 2001 on the basis of historical references, but with 83 % allocated to traditional operators and 17 % to non-traditional operators. The reference period for the definition of operator categories and authorised quantities was 1994 to 1996.

91. The tariff quotas were adopted under Council Regulation (EC) No 2587/2001 of 19 December 2001 amending Regulation (EEC) No 404/93, with effect from 1 January 2002, as follows:

quota A — 2 200 000 tonnes,

quota B — additional quota 453 000 tonnes,

quota C — an autonomous quota of 750 000 tonnes.

Quotas A and B are open to imports originating in any third country and quota C is reserved for imports of produce originating in ACP States. Imports under A and B quotas are also subject to duty of 75 euro per tonne, while imports of produce originating in ACP States are subject to a zero rate of duty. Imports under the C quota are subject to a zero rate of duty.

92. The Commission also recognised the need to tighten the criteria for non-traditional operators in order to avoid the registration of fictitious operators. As a result of this agreement the United States of America lifted the sanctions on products from the EU. So ended the long trade dispute over bananas.

Evaluation and monitoring by the Commission; future orientation of the CMO

93. Under Article 32 of Regulation (EEC) No 404/93, which introduced the CMO, the Commission is required to produce two reports on the implementation of the Regulation:

- (a) the first was to be presented not later than the end of the third year after the entry into force of the Regulation and was to include an analysis of the *marketing trends* for EU, ACP and third countries since the introduction of the CMO;
- (b) the second was supposed to report on the *implementation of the Regulation* as of 31 December 2001 and to contain appropriate proposals for agreement after 31 December 2002. When the second reform of the import arrangements was introduced under Council Regulation (EC) No 1637/98 ⁽¹⁾, this deadline was moved to 2004.

A singularly protected market

94. The first report, produced in October 1995 (SEC(95) 1565), found that:

- (a) world production had increased so much that there was world overproduction. Despite increases in consumption the real world price had continued to fall;
- (b) EU producers were singularly protected from market forces, through the measures introduced by the CMO. Leaving aside the existence of incentives to improve production via the Structural Funds, this meant that EU producers would be likely to increase their production, at least to the level at which aid ceased to be payable;
- (c) ACP States had not increased their production to the quota level set for traditional imports; the resulting margin had not been spread evenly between the various countries;
- (d) despite the information which flowed into the Commission from Member States, it was difficult to establish an overall picture, particularly with regard to retail prices;
- (e) there was some indication that EU/ACP bananas were beginning to penetrate EU markets other than those which had previously given them preferential treatment.

95. The report provided no price breakdown to indicate the extent to which costs were being influenced by the market measures. As subsequent events have shown, the desired equilibrium between EU, ACP and Latin American producers has not been achieved.

⁽¹⁾ Council Regulation (EC) No 1637/98 of 20 July 1998 amending Regulation (EEC) No 404/93 on the common organisation of the market in bananas (OJ L 210, 28.7.1998, p.28).

The major evaluation in 2004

96. Regulation (EC) No. 1637/98 provided a framework for the evaluation expected from the Commission in 2004, which is to include an analysis of the market trends for EU/ACP and dollar bananas, and an assessment of the effectiveness of import control measures. Special attention is also to be given to ACP suppliers and their ability to maintain their position in the EU market.

97. The synergy of all the components of the aid to the banana sector will need to be assessed during the forthcoming evaluation, in order to obtain an overall picture of the consequences of introducing the CMO and the extent to which the initial objectives have been achieved. It might also be appropriate to make a very objective assessment of the potential future of banana cultivation by EU producers, in the same way as has been done for ACP producers. The Commission must ensure that the necessary expertise, both internal and external, is made available for these assessments.

Towards a system based solely on tariffs after 2006

98. The level of single tariff to be applied from 2006 has yet to be decided. The Commission's objective is to maintain appropriate protection for EU and ACP producers, to avoid any change in import volumes and to minimise the impact on prices and to limit the costs of this.

99. The Court considers that the evaluation of the CMO mentioned in the preceding section will enable the impact, efficiency and effectiveness of the arrangements to be measured and should provide a basis for the formulation of new options and proposals for reform of the regime. It will therefore be essential to carry out an in-depth analysis of models underlying various hypotheses, their advantages and drawbacks, including the risks of trade conflicts.

CONCLUSIONS AND RECOMMENDATIONS

The aims of the CMO — complexity and contradictions

100. The CMO in the banana sector covers a body of complex and contradictory objectives relating to several areas of Community policy: regulation of the market, restructuring of the sector, development of the sector in the ACP States. Each of these policy areas is considered, as part of the remits of different Commission DGs using different management and control systems. The objectives of these Community policies are closely intertwined, which makes evaluation of their respective impact, effectiveness, consistency and synergies difficult. A clear definition of the CMO's objectives, including their expected impact, is therefore essential.

Differentiation of the various goals and a clearer definition of the CMO's objectives, with a description of the expected impact, would, firstly, make it possible to measure the costs and benefits and, secondly, facilitate management and control.

Definition of objectives and measures either too general or unrealistic

101. The objective of encouraging development towards the growing of substitution crops by awarding a grubbing-up premium was, firstly, unrealistic (especially in the absence of any real alternatives) and, secondly, not attractive to producers.

102. The absence of clear, quantified objectives for the projects financed under the Structural Funds and the lack of monitoring and evaluation make it impossible to evaluate the extent of their contribution to the success of the CMO in the banana sector.

The Court recommends that the planned evaluation of the CMO verify that there are clear definitions of precise, realistic, quantified objectives, and of the measures for achieving them. It is also essential to ensure that, firstly, implementation is subject to continuous monitoring and, secondly, the objectives of individual projects are consistent with those of the CMO.

Cost-effectiveness

103. Community support for producers, which currently accounts for more than 50 % of their income, does not resolve the problem of an adequate income for the cultivation of bananas and being able to continue production at the costs entailed. In the absence of, firstly, a clear definition of the objectives and, secondly, economic and financial evaluations of them, it is impossible to form an opinion of the justification for the compensatory aid system (see paragraphs 28 to 36).

The Commission must carry out an in-depth evaluation with the aim of measuring the impact of the measures taken on producers' incomes, and the economy, efficiency and effectiveness of them.

104. The tariff quota system introduced to regulate imports created more favourable market conditions for importers by limiting supply. The corresponding cost has been two to three times greater than the total aid paid to EU producers (see also footnote 1).

Although it is expected that this situation will be rectified in 2006 when the single tariff scheme is introduced, the Commission must ensure that the scheme does not have any kind of new impact that may not have been quantified. In this respect it will be necessary to carry out a full analysis of the risks, costs and benefits associated with various possible options for introducing a single tariff.

Management shortcomings

105. The coordination and exchange of information on the impact of the Structural Funds and market measures set out in the CMO does not ensure the achievement of the required synergy and cost effectiveness.

The various objectives of the CMO should be more clearly defined and, in parallel with that, the responsibilities of the managing departments at the Commission should be clearly differentiated. The latter should not only manage the various strands of the CMO and ensure they are consistent, they should also adopt a more forward-looking management approach vis-à-vis the Member States. The Commission should therefore take all necessary steps to ensure that the regulatory framework is consistently applied and interpreted.

106. The ex post evaluations of the operational programmes which are foreseen should be used as part of the CMO evaluation process due to be completed by the end of 2004. This should also be taken as an opportunity to examine the synergy of the various measures taken to date.

The Commission may wish to take into account the evaluations of the ACP programmes, which have shown that development of the banana sector is not always viable.

Control weaknesses

107. The Court found significant weaknesses in the controls on the tariff quota system applicable to the arrangements for imports. The import arrangements have proved to be vulnerable to fraud and costly for the EU. Weaknesses were noted in the documentation which serves as proof for the payment of compensatory aid to producers (paragraphs 37 to 40).

The Court recommends that the Commission, in cooperation with the Member States, improve the instructions on the control procedures to be applied by the latter. Their implementation should be the subject of control and monitoring by the Commission.

This report was adopted by the Court of Auditors in Luxembourg at its meeting of 12 September 2002.

For the Court of Auditors

Juan Manuel FABRA VALLÉS

President

ANNEX 1

QUANTITIES OF BANANAS MARKETING IN THE EU BETWEEN 1993 AND 2000, BY REGION AND COUNTRY OF ORIGIN

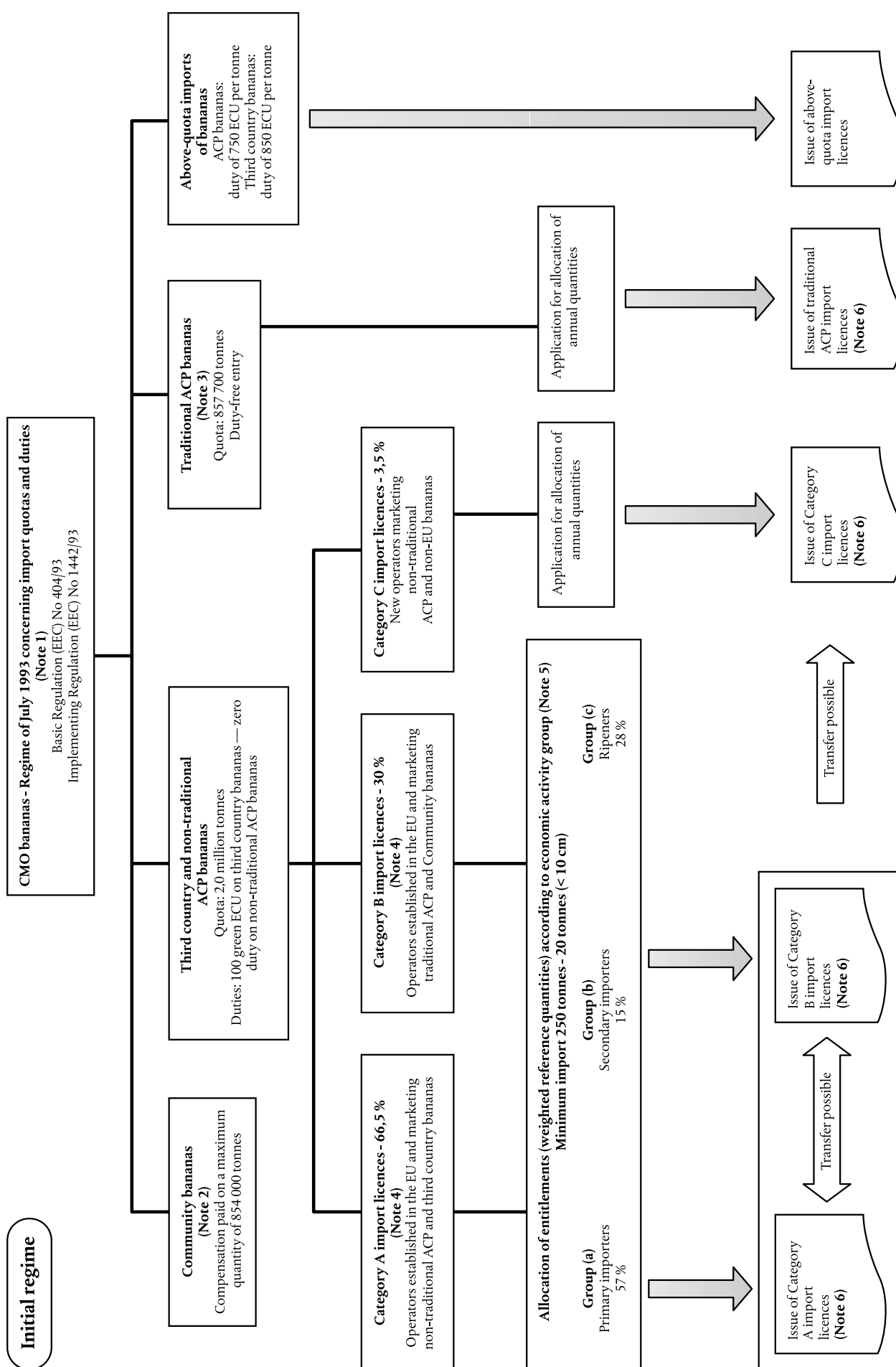
(Tonnes)

Country of origin	1993	1994	1995	1996	1997	1998	1999	2000
Total	3 951 480	3 761 588	3 827 301	3 954 961	3 965 691	3 867 407	3 926 980	4 065 623
EU	643 691	584 622	658 206	684 605	810 537	786 232	729 304	782 175
<i>% of total</i>	16,3 %	15,5 %	17,2 %	17,3 %	20,4 %	20,3 %	18,6 %	19,2 %
Greece	7 233	3 071	3 138	3 807	3 901	3 589	3 336	3 275
Spain	330 875	321 555	369 387	345 943	403 999	437 414	362 188	397 578
France	279 837	234 130	251 280	310 652	374 747	314 793	342 009	358 861
Martinique	180 861	151 965	188 073	249 733	277 013	240 499	258 501	271 269
Guadeloupe	98 976	82 165	63 207	60 919	97 734	74 294	83 508	87 592
Portugal	25 746	25 866	34 401	24 203	27 890	30 436	21 771	22 461
ACP	748 126	726 987	763 965	800 075	693 054	654 853	675 987	756 808
<i>% of total</i>	18,9 %	19,3 %	20,0 %	20,2 %	17,5 %	16,9 %	17,2 %	18,6 %
Dollar banana producers	2 559 664	2 449 978	2 405 129	2 470 281	2 462 100	2 426 322	2 521 689	2 526 640
<i>% of total</i>	64,8 %	65,1 %	62,8 %	62,5 %	62,1 %	62,7 %	64,2 %	62,1 %

Notes:
The table shows that for the period 1993 to 2000 the EU supplied between 15,5 % and 20,3 % of its banana demand and ACP States about 18 %. It also shows that in 2000 imports of dollar bananas were nearly twice the amount obtained from EU and ACP sources.

Source: Commission, 2000.

ANNEX 2



Note 1: General

This description only covers the quota regime and compensation system. The other mechanisms for which provision is made under Regulation (EEC) No 404/93 (grubbing-up premium, producers' organisations and quality standards) are not described here.

Note 2: Quantities for which compensation may be paid to EU producers (in 1 000 tonnes — total quantity of 854 000 tonnes) — Article 12 of Council Regulation (EEC) No 404/93

Canary Islands (420) — Guadeloupe (150) — Martinique (219) — Madeira, the Azores and the Algarve (50) — Crete and Lakonia (15)

Note 3: Traditional ACP bananas (in 1 000 tonnes — total quantity of 857 700 tonnes) — Annex to Council Regulation (EEC) No 404/93

Côte d'Ivoire (155) — Cameroon (155) — Suriname (38) — Somalia (60) — Jamaica (105) — St Lucia (127) — St Vincent and the Grenadines (82) — Dominica (71) — Belize (40) — Cape Verde (4,8) — Grenada (14) — Madagascar (5,9)

Note 4: Allocation of annual quantities for categories A and B, Articles 4 and 5 of Regulation (EEC) No 1442/93

Advance registration of operators with the competent authorities in each Member State according to category of economic activity. Annual allocations are made on the basis of individual applications. The annual allocations are awarded on the basis of a reference quantity corresponding to the average quantities marketed by the operators during the three years prior to the year for which the tariff quota is awarded (this average is referred to as the 'reference quantity'). The quantities marketed are multiplied by weighting coefficients depending on the operator's category of economic activity (57 %, 15 % or 28 %, see Note 5). Thus, every operator is given a weighted reference quantity.

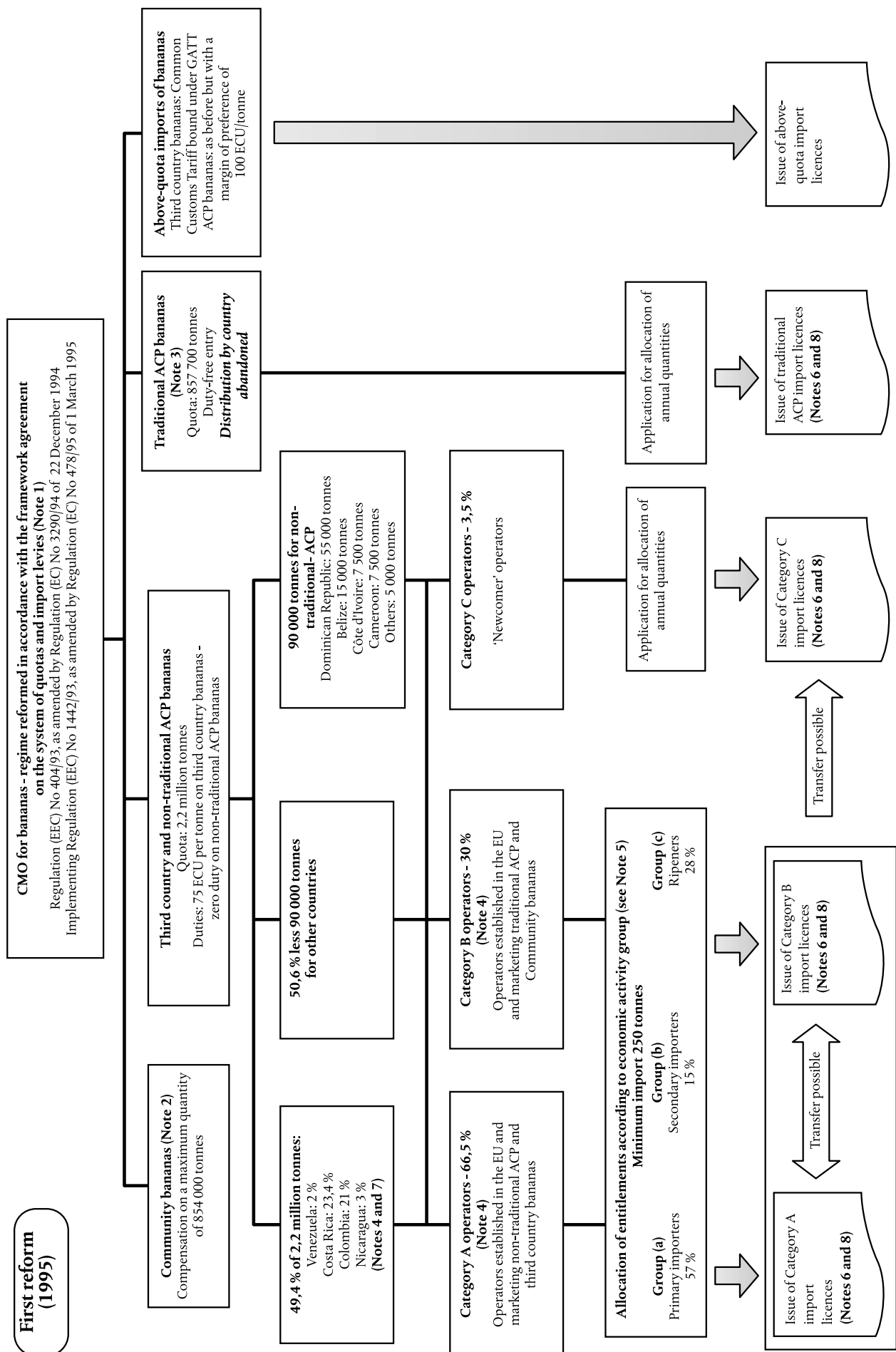
Note 5: Distribution of import entitlements according to operators' economic activity (Regulation (EEC) No 1442/93)

- Group (a) 57 %: primary importers. Purchase/produce green bananas in the country of origin (third country or ACP State), consign them and sell them in the EU (American multinationals).
- Group (b) 15 %: secondary importers. Supply, release for free circulation and sell green bananas on the European market, bearing the commercial risk as owner of the product (European transport enterprises).
- Group (c) 28 %: ripeners and vendors of bananas on the market, as owners of the products.

Note 6: Fixing indicative quantities for each quarter, applications for and issue of quarterly import licences to operators (Article 9 of Regulation (EEC) No 1442/93)

Indicative quantities are fixed for each quarter by the Commission for the purposes of issuing import licences. Operators submit their applications for licences on a quarterly basis to the competent national authorities. Applications may be adjusted by applying a weighting coefficient, depending on the indicative quantities fixed for each quarter and taking the annual weighted reference quantities into account.

ANNEX 3



Note 1: General

This description only covers the quota regime and the compensation system. The other mechanisms for which provision is made under Regulation (EEC) No 404/93 (grubbing-up premium, producers' organisations and quality standards) are not described here.

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Canary Islands (420) — Guadeloupe (150) — Martinique (219) — Madeira, the Azores and the Algarve (50) — Crete and Lakonia (15)
(in 1 000 tonnes — a total of 854 000 tonnes)

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Côte d'Ivoire (155) — Cameroon (155) — Suriname (38) — Somalia (60) — Jamaica (105) — St Lucia (127) — St Vincent and the Grenadines (82) — Dominica (71) — Belize (40) — Cape Verde (4,8) — Grenada (14) — Madagascar (5,9)
(in 1 000 tonnes — a total of 857 700 tonnes)

Note 4: Allocation of annual A and B quantities, Articles 4 and 5 of Regulation (EEC) No 1442/93

Advance registration of operators with the competent authorities in each Member State according to category of economic activity. Annual allocations are made on the basis of individual applications. The annual allocations are awarded on the basis of a reference quantity corresponding to the average of the quantities marketed by the operators during the three years prior to the year for which the tariff quota is awarded (this average is referred to as the 'reference quantity'). The quantities marketed are multiplied by weighting coefficients depending on the operator's category of economic activity (57 %, 15 % or 28 %, see Note 5). Thus, every operator is given a weighted reference quantity.

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Note 6: Fixing indicative quantities for each quarter, applications for and issue of quarterly licences to operators

Indicative quantities are fixed for each quarter by the Commission for the purposes of issuing import licences. Operators submit their applications for licences on a quarterly basis to the competent national authorities. Applications may be adjusted by applying a weighting coefficient, depending on the indicative quantities fixed for each quarter and taking the annual weighted reference quantities into account (Article 9 of Regulation (EEC) No 1422/93).

The release of bananas for free circulation in the Community is subject to the submission of a certificate of origin (Article 6 of Regulation (EC) No 478/95).

Note 7: Export licences (Article 7 of Regulation (EC) No 478/95)

Applications for import licences of Categories A and C for goods originating in Colombia, Costa Rica, or Nicaragua must be accompanied by valid export licences.

Note 8: Application of correction coefficients (Article 4 of Regulation (EC) No 478/95)

Where operators' applications are modified by the application of a correction coefficient, the operators concerned may either withdraw the applications or submit new applications for products of origins to which no correction coefficient is applicable.

ANNEX 4

Second reform (1998)

CMO banana - reformed system of import quotas and duties, applicable since 1 January 1999 (Note 1)
Regulation (EEC) No 404/93, as amended by Regulation (EC) No 3290/94 of 22 December 1994 and Council Regulation (EC) No 1637/98 of 20 July 1998
Commission Regulation (EC) No 2362/98 of 1 March 1995 repealing implementing Regulations (EEC) No 1442/93 and (EC) No 478/95

Community bananas (Note 2)
Compensation paid on a maximum quantity of 854 000 tonnes

Third country and non-traditional ACP bananas
Quota of 2,553 million tonnes: 2,2 million tonnes and autonomous quota of 0,353 million tonnes
Duties: 75 euro per tonne on third country bananas - zero duty on non-traditional ACP bananas

Traditional ACP bananas (Note 3)
Quota: 857 700 tonnes
Duty-free entry
System of country allocation abandoned

Above-quota bananas
Third country bananas: Common Customs Tariff bound under GATT (737 euro/tonne)
ACP bananas: as before, but with a preference of 200 euro/tonne

90,57 % (Annex I to Regulation (EC) No 2362/98)
Allocation on the basis of 1996 to 1998 imports)

Costa Rica: 25,61 %
Colombia: 23,03 %
Ecuador: 26,17 %
Panama: 15,76 %

9,43 % non-traditional ACP bananas i.e.
240 748 tonnes
Allocation by country abolished

Traditional operators
92 %
(Note 4)

'Newcomer' operators
8 %
(Note 5)

Three years' activity

Allocation of import entitlements on the basis of a *reference quantity* for all bananas of ACP and third country origin (Note 6)
Minimum import quantity of 100 tonnes or 20 tonnes for bananas of less than 10 cm

Applications for annual allocations. Applications may not exceed 10 % of the total annual allocation

Issue of import licences (Note 7)

Transferable once only

Issue of import licences (Note 7)

Issue of above-quota import licences

Note 1: General

This description only covers the quota regime and compensation system. The other mechanisms for which provision is made under Regulation (EEC) No 404/93 (grubbing-up premium, producers' organisations and quality standards) are not described here.

Note 2: Tonnage for which compensation may be offered to EU producers (in 1 000 tonnes — total 854 000 tonnes) — Article 12 of Council Regulation (EEC) No 404/93

Canary Islands (420) — Guadeloupe (150) — Martinique (219) — Madeira, the Azores and the Algarve (50) — Crete and Lakonia (15)

Note 3: Traditional ACP bananas (in 1 000 tonnes — total 857 700 tonnes) — Annex to Council Regulation (EC) No 1637/98

Côte d'Ivoire — Cameroon — Suriname — Somalia — Jamaica — St Lucia — St Vincent and the Grenadines — Dominica — Belize — Cape Verde — Grenada — Madagascar

Allocation of separate shares to various countries no longer exists (Annex I to Regulation (EEC) No 404/93).

Note 4: Traditional operators

Traditional operators must be established in the EU and must have imported a minimum quantity of third-country and/or ACP bananas on their own account during the reference period for subsequent marketing in the Community.

Note 5: 'Newcomer' operators

'Newcomers' are operators who must be established in the EU at the time of registration and who must have been engaged independently and on their own account 'in the commercial activity of importing fresh fruit and vegetables falling within Chapters 7 and 8 of the Tariff and Statistical Nomenclature and the Community Customs Tariff, or products under Chapter 9 thereof (coffee, tea, maté and spices) if they have also imported products falling within Chapters 7 and 8 in one of the three years immediately preceding the year in respect of which registration is sought ...'. The declared customs value of the imports undertaken during this three-year period must be at least 400 000 euro.

Note 6: Allocation of reference quantities (traditional operators) and quantities allocated annually ('newcomers')

For each traditional operator, the import entitlement (i.e. the annual 'reference quantity') is determined on the basis of the quantity of bananas 'actually imported' during the reference period. For 1999 the reference period covered the years 1994 to 1996.

For the newcomers there are no reference quantities. Their 'requests for annual allocation' may not cover a quantity greater than 10 % of the total quantity reserved for newcomers each year. A newcomer may obtain the status of a traditional operator after three years of commercial activity. Obligation to lodge a security of 18 euro/tonne.

Note 7: Quarterly procedure for issuing licences

'Indicative quantities' for the first three quarters may be calculated by the Commission for the purpose of issuing licences. The licences are issued at the end of a quarterly procedure in two stages. First stage: applications are submitted for quantities in respect of the origins fixed in the Regulation: traditional ACP, Annex 1 and others. These quantities may be adjusted by the application of a reduction coefficient where the 'indicative quantities' are exceeded or where quantities allocated annually are still available. At the end of the first stage the applications are either cancelled by the operator or supplemented by submission of new applications for the origins which are not affected by the application of a corrective coefficient. Unused quantities covered by licences may be reallocated under certain conditions. Licences may be transferred once only under certain conditions.

ANNEX 5

INSTRUCTIONS FOR VERIFYING THE MASS OF BANANAS ACCEPTED FOR IMPORT INTO THE EU

1. Regulation (EC) No 89/97 of 20 January 1997 amended Regulation (EEC) No 2454/93 which laid down provisions for implementing Council Regulation (EEC) No 2913/92 establishing the Community Customs Code. The first recital in the preamble to Regulation (EC) No 89/97 stated that verification of the net mass specified in declarations of entry for free circulation of bananas had, in the past, posed problems of methodology and uniform application. The Regulation in question therefore introduced specific methods to be universally applied to determine the net mass of bananas for admission. Bananas are the only import where the verification methodology is specified in this way.

2. Regulation (EC) No 89/97 specifies the checks to be carried out. It requires:

- a sample to be taken from each type of package and for each place of origin,
- that the control must be carried out in a way which ensures that the packaging units weighed constitute a representative sample and that *at least* the minimum quantities shown below are checked:
 - up to 400 units: 5 units to be checked,
 - 401 to 700: 7 units to be checked,
 - 701 to 1 000: 10 units to be checked,
 - 1 001 to 2 000: 13 units to be checked,
 - more than 2 000: 15 units to be checked,
- where the whole cargo is covered by a single declaration the customs office may, if fraud is not suspected, base their calculation of net mass on a minimum sample of 15 units per type of package and place of origin,
- the net mass is determined thus:
 - open at least one packaging unit in order to establish its weight,
 - deduct this weight from the total mass of all the units (boxes) in the sample, in order to determine the net mass of each,
 - calculate the average net mass for the sample,
 - multiply this average net mass by the total number of boxes shown on the declaration, in order to determine the total mass admitted for importation.

ANNEX 6

CHANGES IN COMPENSATORY AID TO BANANA PRODUCERS

(Quantities in tonnes; values in euro/tonne)

	Portugal	France		Spain	Greece	EC weighted average	Change relative to previous year
		Martinique	Guadeloupe				
1998 year							
Quantity	30 436	240 499	74 294	437 414	3 589	786 232	
Price ex-packing shed ⁽¹⁾	336	396	368	370	738	378	
Aid	244	244	244	244	244	244	
Supplementary aid	32					1	
Total	612	640	612	614	982	623	
1999 year							
Quantity	21 770	258 501	83 508	362 188	3 336	729 303	- 7,2 %
Price ex-packing shed ⁽¹⁾	277	284	231	415	516	343	- 9,3 %
Aid	297	297	297	297	297	297	21,7 %
Supplementary aid	50	30	85			22	
Total	624	611	613	712	813	662	
2000 year							
Quantity	22 461	271 269	87 592	397 578	3 275	782 175	7,2 %
Price ex-packing shed ⁽¹⁾	213	234	215	283	473	257	- 25,1 %
Aid	383	383	383	383	383	383	29,0 %
Supplementary aid	33		19			3	
Total	629	617	617	666	856	643	

⁽¹⁾ Supplementary aid is granted to producer regions when average income from production is significantly lower than the average income in the Community.

Note:

The table shows that in 1999/2000 the prices paid to EU banana producers fell and that income compensation increased as a consequence.

Source: Commission.

THE COMMISSION'S REPLIES

SUMMARY

III. The level of detail in the definition and quantification of objectives is similar to the other market organisations and will be reviewed in depth when the market organisation is evaluated under Article 32 of Regulation (EEC) No 404/93 (evaluation planned for 2004).

The Commission finds that the method for calculating the compensatory aid is clearly defined in Article 12 of Regulation (EEC) No 404/93.

The Commission considers that it solved the management problems that arose in the Member States effectively, by taking immediate corrective action.

IV. The Commission will be drawing the attention of the relevant national authorities to the State aid scheme cited by the Court with a view to ruling on whether it is compatible with the common market under Article 87 of the Treaty.

The Commission had already identified the shortcomings in the documents supplied in support of compensatory aid payments as mentioned by the Court. These are being followed up under the clearance of accounts procedure.

V. The grubbing-up aid was a limited measure (1993 and 1994) connected with the transition to the common organisation of the market. The main purpose of the measure was to enable a very specific and limited category of producers to leave the sector.

VI. The difference vis-à-vis other representative markets (such as the United States of America) is not due to the quota rent alone, but also to other factors such as the distance from the production areas, distribution costs, product quality and customs duties.

Moreover, a tariff-only system will be introduced on 1 January 2006 at the latest (Article 16(1) of Regulation (EEC) No 404/93, as amended by Regulation (EC) No 216/2001), and quota rents are part of all tariff-quota regimes.

VII. The import arrangements introduced in 1993 replaced a situation which was extremely diverse, given the existence of 12 different national import regimes. The new arrangements were designed to ensure fair access to the Community market for many different types of operators and bananas from many different origins, taking account of the situations of the various players in the import system (e.g. ACP producer States with close ties to particular Member States of the Community).

The current system has achieved a remarkable stability. It is widely appreciated for its simplicity by producer third countries and the Community's other trading partners.

VIII. The Commission is aware of the Member States' shortcomings in applying the Community legislation on physical checks on the net quantity of imported bananas. At the meeting of the Customs Code Committee of 17 May 2002, the Commission departments reminded the Member States of their obligations under the Community rules and stressed the importance of those obligations. The Commission will monitor this matter within the Customs Committee in order to achieve full and correct application of the Community rules.

Fraudulent imports were detected by the Commission. It should be noted that this discovery was possible because imports are subject to a licensing scheme. The Commission immediately adopted Regulation (EC) No 1632/2000 to introduce a procedure for cross-checks on the issuing and use of licences so that such fraud can no longer occur.

IX. The transitional arrangements currently in force are indeed designed to maintain fair market access for EU and ACP producers before a tariff-only system is introduced, no later than 1 January 2006. However, with regard to import volumes, 100 000 tonnes were transferred from the C quota (ACP bananas) to the B quota (open to all origins) as of 1 January 2002 following the entry into force of Regulation (EC) No 2587/2001.

X. The Commission attaches the same importance as the Court to the evaluation of the different aspects of the market organisation and its objectives planned for 2004.

XI. The Commission takes the view that:

- (a) the fundamental objectives of the market organisation have in the main been achieved, in particular the fusion of several national markets into a single market, the quantitative balance in market supply, fair prices for consumers and for Community and ACP producers. In the context of a world market dominated by multinationals, the Community market has remained diversified and pluralist, in terms of both the origins of bananas and types of traders;
- (b) the grubbing-up premium was a limited measure (1993 and 1994) connected with the transition to the common organisation of the market. The main purpose of the measure was to enable a very specific and limited category of producers to leave the sector;
- (c) the method for calculating the compensatory aid is clearly defined by the Community legislation in force (Article 12 of Regulation (EEC) No 404/93 and Regulation (EEC) No 1858/93). The Commission has identified the shortcomings in the application of the Community rules and these are being followed up under the clearance of accounts procedure;
- (d) lastly, concerning the comparison between the quota rent and the support given to Community and ACP growers, the Commission notes that:
 - there are 3,5 times more 'dollar bananas' than bananas produced in the Community (the same applies for ACP bananas),
 - the compensatory aid received by Community producers in 2000 was 1,9 times the theoretical quota rent estimated for dollar bananas,
 - the producers of bananas in the ACP countries enjoy not only technical assistance but also particularly advantageous preferential treatment (an exclusively reserved tariff quota, zero import duty inside all the quotas and a duty reduced by EUR 300 outside the quotas),
 - the existence of tariff quotas, and therefore, inevitably, a quota rent, also makes it easier to sell Community and ACP bananas and indirectly benefits Community and ACP producers.

XII. The Commission has identified the shortcomings in the way the Member States apply the rules applicable to producer organisations and the matter is being followed up under the accounts clearance procedure.

The Commission has also adopted a number of measures to improve the cash-flow situation of producers (see points 27 et seq.).

The Member States' customs procedures on import have yet to be improved and the Commission stressed this point to the Member States at the meeting of the Customs Code Committee on 17 May 2002. The Commission will continue to insist that the Member States find a permanent solution to the problem.

XIII. The Commission attaches the same importance as the Court to the evaluation of the different aspects of the market organisation planned for 2004. It will ensure that it keeps to this timetable.

INTRODUCTION

1. The general statement that dollar bananas are sold at lower prices than Community bananas does not fully reflect market reality. The prices of bananas from different origins depend on a number of market factors, in particular distribution, consumer preference, quality and trade mark.

4. The aims of the market organisation reflect the goals of the common agricultural policy as set out in Article 33 of the Treaty. The Commission thinks that, on the whole, the balance sought by the legislator between the different market organisations has been achieved, despite the complexity of those aims.

In the context of a world market dominated by multinationals, the Community market has remained diversified and pluralist, in terms of both the origins of bananas and types of traders.

5(e). The legal basis for structural assistance resides in the Community's rural development and regional policies. The market organisation text merely refers to structural instruments which can provide support that is consistent with the aims of the market organisation.

17. The amount budgeted for the special framework of assistance in favour of traditional ACP banana suppliers is to be spread among 12 ACP beneficiary countries. The annual budget so far has been approximately EUR 44 million to EUR 45 million. This scheme was introduced by Council Regulation (EC) No 856/1999 for a period not exceeding 10 years.

THE MEASURES FINANCED BY THE EU

18 to 20. Strictly speaking, the compensatory aid scheme is not income aid. Its objective is more limited, as recital 7 of Regu-

lation (EEC) No 404/93 indicates, the aim being 'to permit the continuation of Community production at the costs entailed by the specific structural situation for as long as this remains unadjusted by the structural measures implemented'.

21. The Commission did not consider it necessary to draw up a list of eligible price and cost components in addition to the definition in Regulation (EEC) No 1858/93 because the details of the components to be taken into account for each marketing stage were already listed in an internationally recognised nomenclature (Incoterms). Incoterms is used, *inter alia*, by the Member States of the WTO. In the EU, this nomenclature is normally administered by the chambers of commerce in the Member States.

22. The Commission has adopted Regulation (EC) No 1467/1999 (amending Regulation (EEC) No 1858/93) which, firstly, lays down a flat-rate amount for the costs to be deducted for determining the producer prices at the ex-packing shed stage and, secondly, requires the information on quantities and prices to be broken down by bananas marketed inside and outside their producer region, so that the origin of abnormally low prices can more easily be detected.

The 'abnormally low' prices relate to products marketed locally and not in the rest of the Community, and the percentages concerned are very small.

23. The Commission shares the Court's view that the term 'marketing' should mean the actual sale of the product. It considers that this problem arises from an incorrect application of the Community rules at national level, which will be rectified under the current accounts clearance exercise.

24 to 25. The Commission shares the Court's view that the method applied in France since 1 January 1998 to determine the quantity on which compensatory aid is paid does not comply with the Community rules. The Commission is acting on these findings under the accounts clearance procedure, but has not yet decided on a financial correction.

The Commission confirms that the interministerial circular setting out, *inter alia*, the procedures concerned was transmitted to the Commission at the time. However, the Commission would point out that the Member State is responsible for issuing instructions at national level that comply with Community legislation and it cannot free itself from this requirement simply by notifying the Commission of a national rule.

27. The Commission has adopted Regulation (EC) No 471/2001, which aims expressly at improving the cash-flow situation of producers by introducing the possibility of a sixth advance payment for bananas marketed during November and December. The current system of advances is therefore an important advantage to Community producers, who are entitled to the payment of six advances throughout the year, at regular two-monthly intervals.

30 to 33. Any aid granted by a Member State without the prior authorisation of the Commission is illegal and the Commission may have to establish whether it is compatible with the competition rules. The Commission departments will draw the attention of the French authorities to this aid scheme in order to obtain the information needed to allow it to rule on its compatibility with the common market under Article 87 of the Treaty.

34. The Commission wishes to stress that the trend in Community output since 1993 shows that traditional banana production in the Community has increased slightly (+ 6,3 %). The Commission sees this as a convincing indicator that the financial injection generated by both the market prices obtained when the bananas are sold and the various Community support schemes, in particular compensatory aid, have proven to be effective instruments at a level that is largely adequate, in particular for the Community growers in certain regions.

The Commission notes the Court's suggestion that it carry out a detailed evaluation of the cost-effectiveness of the measures taken under the internal regime; it will do this during the review exercise in 2004.

35 to 38. The Commission wishes to point out that there is no financial impact in the case identified by the Court.

39 to 41. The grubbing-up premium was a limited measure for 1993 and 1994 designed to enable producers in areas with poor production potential to leave the sector if they so wished. The measure therefore targeted a limited number of specific cases.

In the general context of banana production, given the absence of other sources of income, the grubbing-up premium would not in itself be a sustainable strategic alternative for the vast majority of producers.

43 to 44. The Commission confirms that it has identified shortcomings in the compliance with the statutory criteria for the recognition of producer organisations in France and that problems persist despite apparent improvements. These are being followed up under the accounts clearance procedure.

45. The structural measures provided for under the market organisation are implemented under the development programmes of the regions concerned (Martinique, Guadeloupe and the Canary Islands). Such measures to strengthen the agricultural economy of these regions existed before the organisation of the market in bananas was created. The same is true of the sugar sector and all the other sectors of agricultural activity in these regions (livestock farming, fruit and vegetables, etc.).

46. In the context of regional programming under the Structural Funds, the aim of the measures for bananas is to improve quality, use of resources and competitiveness (moreover, agri-environment measures financed by the EAGGF Guarantee Section have also been launched, particularly in Martinique). For example, the 1994 to 1999 rural development operational programme for the Canary Islands states the following objectives and measures: 'to improve production and competition conditions, this assistance will take the form, in particular, of measures relating to research, harvesting, presentation and packaging, transport, storage, marketing and sales promotion.' The Commission therefore considers that the programme supplies the link between the three objectives sought by the market organisation and the measures proposed in the context of structural assistance.

47. The single programming document covering the allocation from all four Structural Funds (ERDF, ESF, EAGGF and FIFG) cannot set out the aims for each measure in too much detail, particularly in agriculture, because of the uncertainty of the weather in these regions, especially in the Antilles. Besides, the relatively slow start up of the programmes and the need to close the previous programme (1989 to 1993, and the two annual programmes for 1992 and 1993 for the Antilles) meant that the mid-term evaluation could do no more than evaluate the implementation of the programme.

48. The Commission entirely shares the Court's insistence on coordination. This coordination is ensured by the instruments mentioned in point 49.

It should also be noted that the results of structural measures are sometimes difficult to measure because of local economic fluctuations and local weather.

49. All decisions on the internal aid scheme for Community producers and the programmes financed by the Structural Funds in the production regions are taken after an interdepartmental consultation procedure which amply involves all the departments concerned from the earliest stages in preparing the measure to be adopted.

Concerning the impact of the measures, the ex post evaluation of the programmes financed by the Structural Funds will be completed in 2003. This procedure, which will cover both the cost-effectiveness and the synergy of the measures, will thus assess the impact of the projects implemented under these programmes. The findings of this evaluation will also be taken into account in the evaluation of the market organisation planned for 2004, also in view of the transition to the tariff-only regime. Thus the interactions and synergies between the measures financed by the Structural Funds and the market measures in the banana sector are closely monitored.

50. The Commission considers that types of assistance and the aims of these projects are fully consistent with the aims of the market organisation and clearly pursue the three goals laid down in Article 10 of Regulation (EEC) No 404/93.

In this connection it should be stressed that any quality strategy aimed at increasing the competitiveness of the product requires continual modernisation of production and marketing structures. This approach is systematically included in the priorities of the Community Support Frameworks and operational programmes. These programmes and their strategies are regularly examined and assessed by all the Commission departments concerned before a decision is taken to grant aid.

51. The cash-flow problems facing producers are not unique to the banana sector. They affect almost all those sponsoring projects to develop these island regions. Moreover, the already heavily burdened banking sector is not always willing to assist projects that will not be immediately profitable. The new programming for 2000 to 2006 aims to reduce the lead time between approval of a project and payment of the Community aid.

52. The ex ante evaluation provided for by the rules for the new programming period must indeed include an overall evaluation of the previous programme. This evaluation is sometimes brief because it was drawn up at the end of 1999 while the size of the final financial instalments makes it difficult to measure tangible results.

53. Assistance was granted to improve production capacity. This is because the implicit aim of making banana production more competitive requires the production of bananas of constant quality, which was far from being the case in the past. Varietal improvement (improving resistance to hurricanes by reducing the size of the banana trees, drip irrigation, control of inputs, etc.) has allowed this constant quality to be achieved. But at the same time quality has also been improved by transporting the fruit without shocks or jolts (cable way, trailers with suspension) and maintained by improving the cold chain (agri-food investment was used to finance cold walls in Guadeloupe and Martinique).

MARKET REGULATION MEASURES

57. In terms of results, maintaining diversity of supply sources has made it possible to offer Community consumers a broad product range in terms of both quality and price. The market organisation has led to interpenetration and diversification on the existing national markets (for example, the British market has opened up to dollar bananas where before it had been dominated by Caribbean and Community bananas, and ACP bananas now have access to the German market).

58. The Commission believes that the approach of gradually opening up the Community market was continuously upheld. The banana import regime, based on a gradually reduced consolidated tariff, has been accompanied by tariff quotas with a strong tariff preference and progressive quantity adjustments.

The import regime introduced in 1993 aimed to ensure fair access to the Community market for bananas from many origins and different types of operators, taking account of the high degree of integration of the participants in the import trade (e.g. some ACP producer States have close ties with certain Community countries). The new regime took the place of a situation which was extremely diverse, given the existence of 12 different national import regimes which in some cases granted substantial preferences to certain origins.

Under the current arrangements, the Community market has achieved a stability and profitability which is widely appreciated by the exporting countries.

Average imports of dollar bananas in 1989/90 were much lower than in any year after 1993.

In a quota management system based on historical reference quantities, it goes without saying that there must be some adjustment towards the more recent operational context. Consequently, the transfer of licences between operators (it has never been possible to determine the scale of this practice) has helped to bring the system into line with practical market requirements and brought flexibility into a system based on traditional flows. The current arrangements have restricted the drift of this market, in particular for non-traditional operators. It is already planned that as from 2004 the system will be adjusted so that operators' reference quantities are fixed in the light of their actual use of licences. This change should solve the problem once and for all.

59. In 2000 the European Parliament endorsed the tariff quota regime in so far as it allowed these producers continued access to the market. In 2001 the Council decided, on a proposal from the Commission, to introduce a tariff-only system from 1 January 2006 at the latest.

The quota rent is an inherent part of any tariff quota regime and the Commission agrees with the Court that it is difficult to make any precise estimation, particularly of its impact on the consumer price. This price has generally fallen since the market organisation was set up (– 22 % in 2000).

The Commission wishes to stress that the quota rent:

- is linked to the particularly high level of the tariff preference for bananas (EUR 605 per tonne) and to movements in world market prices,
- is spread over the different stages of importing and marketing according to the relative strength of the operators in the trade, in particular the supermarkets. Indeed, the producer third countries have not taken full advantage of the opportunity offered by the preferential tariff quotas. Cut-throat competition between producers, particularly in Latin America, has allowed traders importing into the Community market to buy bananas at a very low price, thereby obtaining a substantial quota rent because of the much higher selling price on the Community market. Keeping producer prices

high would allow producers to benefit from the quota rent, and it is also worth making the general point that the fact that the traditional ACP suppliers are part of a closely integrated import chain enables the growers in those countries to sell their bananas at a higher price than the other countries in the dollar area, thereby drawing some benefit from the quota rent.

60 to 63. The import arrangements are now appreciably simpler than they were at the outset.

65. Regarding the checking of the operators' quantities declared by the Member States (double counting), the Commission wishes to point out that it made considerable efforts to prevent the same quantities being taken into account to calculate the rights of several different operators. In particular, the Commission was closely involved in checking the figures for individual operators in collaboration with the competent national authorities, in order to identify and eliminate the cases of double counting before fixing the final adjustment coefficient to be applied to each operator's reference quantity. The Court of First Instance recognised that the Commission played 'a very important role, together with the competent national authorities, in checking and correcting the operators' individual reference quantities in order to eliminate cases of double counting'.

66. The problem of double counting has arisen in each category of operators.

67. The arrangements introduced when the market organisation first entered into force were designed to ensure fair access to the Community market to bananas from different origins and different types of operators. As a result of the disputes with the EU's trading partners, the Community sought actively to identify solutions compatible with the WTO. Since the conclusion of the dispute settlement understandings with the United States and Ecuador in April 2001, the international sanctions have been raised and the system has attained a remarkable stability. Moreover, the Commission would point out that on 14 November 2001 the WTO granted two exemptions from Articles I and XIII of GATT to allow the creation of a C quota entirely reserved for the ACP States and the fixing of a zero customs duty for banana imports originating in the ACP States inside the tariff quotas. The current regime is widely appreciated by the producer third countries and the Community's other trading partners.

69. The volume of the quotas was adjusted in 1995 to take account of the demand from the new Member States. However, the rules governing the importation arrangements were not changed. The new Member States benefited from transitional measures for a nine-month adjustment period before fully applying the import regulations in force in the Community.

73. Under the arrangements in force since 1 July 2001, the Commission has introduced stricter eligibility criteria for the registration of non-traditional operators (see Article 6 of Regulation (EC) No 896/2001).

74. In the specific case quoted by the Court, the Commission considers that the amount of USD 5 per case quoted by the operator concerned should be taken not as a mean value but as a maximum. It should be stressed that the price of licences and the quota rent are two different things. Specifically, the price of a licence reflects the economic climate and depends closely on the trading relations between the operators and the specific commercial operation for which the licence is being transferred.

75 to 78. The Commission adopted Regulation (EC) No 1632/2000 to strengthen the provisions on management and checks, and the national authorities are now required to make cross-checks on import licences.

79 to 83. The Commission is aware of the Member States' shortcomings in applying the Community legislation on physical checks on the net quantity of imported bananas. At the meeting of the Customs Code Committee of 17 May 2002, the Commission departments reminded the Member States of their obligations under Community legislation and stressed the importance of those obligations. The Commission does not think that the reasons why Member States fail to fulfil their obligations correctly are connected with the content of the provisions for applying the Customs Code. The Commission will continue its efforts with the Member States in the Customs Committee to solve this problem once and for all.

The Commission's own inspections have already revealed, in all the Member States visited, non-compliance with aspects of the legislative requirements to properly weigh a specific proportion of fully representative samples and to apply those findings to declarations accepted. Action is already being taken in these Member States to remedy the various shortcomings. All the Member States have been notified of the findings in a thematic report, which will be discussed at a forthcoming meeting of the Advisory Committee on Own Resources.

The Commission found the same situation during its inspections in Zeebrugge and Antwerp. Following the Commission's request, the Belgian authorities have already changed their procedures.

Although cases of non-conformity were found in the other Member States inspected, the particular procedures used in Belgium were not reproduced elsewhere. Other Member States have been instructed no longer to accept standard weights and to ensure that samples are taken sufficiently frequently and are of sufficient size to comply with Regulation (EC) No 89/97. The Commission will

take any measures needed to compensate for financial consequences deriving from non-compliance, including back-dated interest on arrears.

In its thematic report on the control of fresh banana imports, the Commission concluded that none of the Member States inspected was fully complying with the border checks required for banana imports. All the Member States involved have satisfactorily responded to requests to take the necessary remedial action to ensure that their procedures fully comply with the legislation. The Commission is meanwhile following up any cases where the shortcomings in controls have had direct measurable effects on the own resources due, including demands for back-dated interest where appropriate. It is also alerting the other Member States to the deficiencies found.

84. The fraud concerned several Community ports and several Member States (Belgium, Italy, Spain, Portugal, Greece and Germany). The false licences were also forged from French and Spanish originals. The total quantities involved are around 220 000 tonnes and the total customs duty evaded amounts to some EUR 160 million.

These fraudulent imports were detected by the Commission. It should be noted that this discovery was possible because imports are subject to a licensing scheme. Independently of the action taken against the discovered fraud, the Commission immediately adopted Regulation (EC) No 1632/2000 to introduce a procedure for cross-checks on the issuing and use of licences so that such fraud can no longer occur.

85. It is extremely difficult to assess the impact of fraud and any influence that impact might have on banana prices and compensatory aid. Factors other than fraud have had a more direct and in some ways much more important influence on price levels, namely an increase of around 10 % in the world stocks of export bananas and a fall of more than 15 % in both the fob prices for Ecuadorian bananas and the Community import price between 1996 and 2000, the same period in which the fraudulent imports took place.

86. With regard to the current state and future prospects of the import arrangements, the approach proposed by the Commission and approved by the Council is indeed to introduce a tariff-only system from 1 January 2006 at the latest (Regulation (EC) No 216/2001).

DEVELOPMENTS AND EVALUATION

87. It should be noted that the 'first-come, first-served' approach examined by the Commission before the dispute settlement understandings were reached with the United States of America and Ecuador was a method for managing tariff quotas, and so the Commission was not yet contemplating abolishing the

quota regime at the time when it was studying the possibilities for adopting the system referred to above.

89. The 'first-come, first-served' method is the one most commonly used for managing other tariff quotas at Community level.

In view of the difficulties of finding a solution with our other trading partners, the Commission believed that this method could have been a viable alternative to historical reference quantities.

95. The successive amendments since 1995 have achieved a quantitative market balance because on the whole the quantities sold on the Community market are well balanced in relation to demand and in terms of Community output and imports from the ACP States and other producer third countries. The transfer of 100 000 tonnes from the C quota to the B quota from 1 January 2002 should further improve this balance. The Community market is one of the world's most diversified markets in terms of both the origin of the products and the types of importers.

96 to 99. The Commission agrees on the importance of a thorough analysis of market trends, the impact of the transition to a tariff-only system on all the parties involved, and the synergy between the different components of the market organisation. It takes due note of the Court's recommendation that the review exercise be based on appropriate internal and external expert opinions.

CONCLUSIONS AND RECOMMENDATIONS

100. The Commission believes that the Court's comments, the 2004 review and the prospect of moving to the tariff-only system will provide an opportunity to evaluate (or even re-examine) the market organisation's objectives for both the internal arrangements and trade with third countries. Close attention could be paid to the interactions and synergies with the objectives set for the banana sector in the context of other Community policies.

101. The grubbing-up aid was a limited measure (1993 and 1994) connected with the transition to the common organisation of the market. The main purpose of the measure was to enable a very specific and limited category of producers to leave the sector.

102. The measure to convert the banana sector under the 1994 to 1999 rural development programme for the Canary Islands was monitored by the Commission departments with the same regularity as the other operational programmes during that period. The Commission has no direct knowledge of the projects selected by the authorities. These must comply with the provisions set out in the programmes. The ex post evaluation of the 1994 to 1999 operational programme, including the measure to convert the banana sector, is currently under way.

103. The Commission is aware of the large increase in the level of the compensatory aid during recent years. It should also be noted that this development is the result of the surplus supply on the world market and the consequent drop in banana prices. The rallying of world prices made it possible to reduce the compensatory aid substantially in 2001.

However, it should be stressed that Community output has increased slightly since 1993. This fact is a convincing indicator that the financial injection generated by both the market prices obtained when the bananas are sold and the various Community support schemes, in particular the aid to compensate the loss of sales revenue, has proven adequate for Community growers as a whole.

The Commission is also deeply convinced of the need to conduct an in-depth review of the aid scheme for Community producers. The review procedure will be launched in mid-2003.

104. The Commission notes that:

- Community producers receive compensatory aid which, in 2000, was 1,9 times the theoretical quota rent estimated for dollar bananas,
- the existence of tariff quotas, and thus, inevitably, a quota rent, makes it easier to sell Community and ACP bananas and indirectly benefits the producers in those areas.

The Commission takes due note of the Court's recommendation that a thorough analysis be made of the impact of the transition to a tariff-only system on all the parties involved, at the time of the review exercise in 2004.

105. See the reply to point 49.

106. The banana industry is not always sustainable in some traditional ACP banana-growing States. The Commission recognised this and tackled it when establishing the special framework of assistance for those countries. As stated in Article 3(2) of Council Regulation (EC) No 856/1999 introducing the scheme, which is designed to facilitate the adaptation to the new market

conditions, technical and financial assistance is granted to those countries either 'to improve competitiveness in the banana sector', or 'to support diversification where improvement in the competitiveness of the banana sector is not sustainable'.

Furthermore, the Commission is obliged by Article 9 of the same Regulation 'every two years... to submit a report, accompanied if appropriate by proposals, on the operation of this Regulation to the European Parliament and to the Council'. The first report was presented in December 2000 as foreseen and the second one is in preparation. Thus, the scheme is being continually monitored and the possibility of translating these evaluations into factual proposals is ensured.

107 to 108. The Commission is aware of the shortcomings in the physical checks by customs officials on the net quantities

of bananas imported. Action is already under way, via the usual procedures, for following up areas of non-conformity highlighted in inspection reports, to ensure that the Member States properly implement the Community rules on checks on banana imports. The Commission will insist that the Member States rigorously apply the provisions in force.

The Commission had already identified the shortcomings in the documents supplied in support of compensatory aid payments mentioned by the Court and these are being followed up under the clearance of accounts procedure.

The Commission's discovery of import frauds was followed by immediate corrective action. The Commission immediately adopted Regulation (EC) No 1632/2000 to introduce cross-checking procedures on the issuing and use of licences to prevent any continuation of such fraud.
