

## COUNCIL REGULATION (EEC) No 3162/78

of 29 December 1978

opening, allocating and providing for the administration of a Community tariff quota for cocoa butter and a tariff quota for soluble coffee originating in developing countries

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(2)</sup>,

Whereas, within the context of UNCTAD, the European Economic Community offered to grant tariff preferences on certain processed agricultural products of Chapters 1 to 24 of the Common Customs Tariff originating in developing countries; whereas the preferential treatment proposed in that offer consists, in respect of certain goods which are subject to the trade arrangements laid down in Regulation (EEC) No 1059/69, of a reduction in the fixed component of the charge applicable to such goods by virtue of that Regulation, and, in respect of products which are subject to the single customs duty, of a reduction in such duty; whereas preferential imports of the products concerned could be effected without quantitative restrictions; whereas it appears appropriate, however, in view of the sensitiveness of the cocoa butter and soluble coffee sectors generally and of the need to safeguard the interests of the ACP States in this field, to lay down for those two products special conditions consisting in a reduction of the customs duty applicable to these two products within the limits of Community tariff quotas;

Whereas the offer by the Community includes a clause stating that it is made on the assumption that the main industrialized countries which are members of the OECD participate in granting preferences and make similar efforts in this direction; whereas, moreover, it is evident from the conclusions worked out in UNCTAD that this offer, while being of a temporary nature, does not constitute a binding commitment and, in particular, may be withdrawn wholly or in part at a later date;

whereas this possibility may be adopted *inter alia* with a view to remedying any unfavourable situations which might arise in the ACP States following the implementation of the generalized preference scheme;

Whereas tariff preferences have been applied as from the second half of 1971; whereas it is expedient to continue to apply them throughout 1979;

Whereas in respect of cocoa butter and soluble coffee originating in the countries and territories listed in Annex A the Community should therefore open for 1979 two Community tariff quotas within the limits of 21 600 tonnes and at a customs duty of 8 % for cocoa butter and of 18 750 tonnes and a duty of 9 % for soluble coffee;

Whereas, however, in the multilateral trade negotiations, in accordance with paragraph 6 of the Tokyo Declaration, the Community reaffirmed that special treatment should be granted to the least developed among the developing countries wherever this is possible; whereas, therefore, in respect of cocoa butter and soluble coffee originating in the least developed developing countries appearing on the list drawn up under United Nations Resolution 3487 (XXX) of 12 December 1975, the Community should totally suspend customs duties within the limits of the two abovementioned Community tariff quotas;

Whereas, in accordance with Protocol 23 to the Act of Accession <sup>(3)</sup>, the generalized tariff preference scheme became fully applicable in the new Member States on 1 January 1974;

Whereas the benefit of these tariff quotas should be reserved for products originating in the countries and territories under consideration, the concept of 'originating products' being determined in accordance with the procedure laid down in Article 14 of Council Regulation (EEC) No 802/68 of 27 June 1968 on the common definition of the concept of the origin of goods <sup>(4)</sup>;

Whereas it is necessary to ensure equal and continuous access for all Community importers to the said quotas and the uninterrupted application of the rates laid down

<sup>(1)</sup> Opinion delivered on 15. 12. 1978 (not yet published in the Official Journal).

<sup>(2)</sup> Opinion delivered on 29. 11. 1978 (not yet published in the Official Journal).

<sup>(3)</sup> OJ No L 73, 27. 3. 1972, p. 14.

<sup>(4)</sup> OJ No L 148, 28. 6. 1968, p. 1.

for these quotas to all imports of the products concerned into all Member States until these quotas are used up; whereas, having regard to the principles set out above, the Community nature of the quota can be respected by allocating the Community tariff quota among Member States; whereas, moreover, to this end and in the context of the utilization system, the actual charges against the quota may relate only to products which have been entered for home use and which are accompanied by a certificate of origin;

Whereas, to take account of future import trends for the products in question in the various Member States, the quotas should be divided into two tranches, the first being allocated among Member States and the second held as a reserve to cover subsequently the requirements of Member States which have exhausted their initial shares; whereas, moreover, the reserve constituted in the manner described above tends to avoid making the system of utilization of the quota excessively rigid, to the detriment of the developing countries concerned and will contribute to achieving the aim already mentioned of improving the generalized preferences system; whereas, to give importers in each Member State some degree of certainty, the first tranche of the Community quota might be fixed at a relatively high level, in this case at approximately 90 % of the full quotas;

Whereas the statistical data available cover only a relatively brief period, and they should be weighted on the basis of the estimates which may be made for the quota year; whereas the shares in the first tranche may be drawn up as follows:

	(tonnes)	
	<i>cocoa butter</i>	<i>soluble coffee</i>
Germany	720	810
Benelux	10 935	1 395
France	90	225
Italy	45	45
Denmark	45	45
Ireland	45	45
United Kingdom	7 560	14 310

Whereas Member States may exhaust their initial shares for the products in question at different rates; whereas to avoid disruption of supplies on this account it should be provided that any Member State which has almost

used up its initial share should draw an additional share from the reserve; whereas this must be done by each Member State as and when each of its additional shares is almost entirely used up, and repeated as many times as the reserve allows; whereas the initial and additional shares must be available for use until the end of the quota period; whereas, however, it seems advisable to permit the Member States to limit the exercise of their total obligation to draw on the reserve amount to a level not exceeding 40 % of their initial share; whereas this method of administration calls for close cooperation between Member States and the Commission which must, in particular, be able to observe the extent to which the quota amount is used and inform Member States thereof;

Whereas if, at a specified date in the quota period, a considerable balance remains in one or other Member State it is essential that that Member State pay a large amount of it back into the reserve, in order to avoid a part of the Community quota remaining unused in one Member State when it could be used in others;

Whereas provision should be made for measures enabling any serious disturbance within the sector of the Community's economic activity to be avoided, and to this end the Commission should be empowered to re-introduce in part or in full the normal duties in order to avoid such disturbance;

Whereas, since the Kingdom of Belgium, the Kingdom of the Netherlands and the Grand Duchy of Luxembourg are united in and represented by the Benelux Economic Union, all transactions concerning the administration of the shares allocated to that economic union may be carried out by any one of its members,

HAS ADOPTED THIS REGULATION

Article 1

1. From 1 January to 31 December 1979, Community tariff quotas shall be opened within the Community for imports of the products listed below and under the conditions stated:

CCT heading No	Description	Volume (in tonnes)	Rate of duty
18.04	Cocoa butter, including cocoa fat or oil	21 600	8 % <sup>(1)</sup>
21.02	Extracts, essences or concentrates, of coffee, tea or maté and preparations with a basis of those extracts, essences or concentrates; roasted chicory and other roasted coffee substitutes and extracts, essences and concentrates thereof: ex A. Extracts, essences or concentrates of coffee and preparations with a basis of those extracts, essences or concentrates: — Extracts of coffee or 'soluble coffee' obtained by a water method of extraction from roasted coffee, put up in powder form, granulated, in grains, in tablets or in a similar solid form	18 750	9 % <sup>(1)</sup>

<sup>(1)</sup> For the countries listed in Annex B, customs duties shall be totally suspended.

2. These tariff quotas shall apply solely to products originating in the countries and territories listed in Annex A. However, those imports which enjoy exemption from customs duties under other preferential tariff arrangements granted by the Community may not be charged against these tariff quotas.

For the purposes of this Regulation the concept of originating products shall be determined in accordance with the procedure laid down in Article 14 of Regulation (EEC) No 802/68.

Article 2

1. A first tranche of 19 440 tonnes for cocoa butter and of 16 875 tonnes for soluble coffee of the Community tariff quotas referred to in Articles 1 shall be allocated, in respect of each Member State, in shares the amounts of which are set out below:

	(tonnes)	
	cocoa butter	soluble coffee
Germany	720	810
Benelux	10 935	1 395
France	90	225
Italy	45	45
Denmark	45	45
Ireland	45	45
United Kingdom	7 560	14 310

2. The second tranche of 2 160 tonnes for cocoa butter and 1 875 tonnes for soluble coffee shall constitute the reserve.

Article 3

1. If a Member State has used 90% or more of its initial share as fixed in Article 2 (1), or of that share

minus any portion returned to the reserve pursuant to Article 5, it shall forthwith, by notifying the Commission, draw a second share, to the extent that the reserve so permits, equal to 10% of its initial share rounded up should the occasion arise to the nearest unit above.

2. If a Member State, after exhausting its initial shares, has used 90% or more of the second share drawn by it, that Member State shall forthwith, by notifying the Commission, draw a third share, equal to 5% of its initial share rounded up should the occasion arise to the nearest unit above.

3. If a Member State, after exhausting its second share, has used 90% or more of the third share drawn by it, that Member State shall, under the same conditions, draw a fourth share equal to the third. This process shall continue until the reserve has been exhausted.

4. By way of derogation from paragraphs 1, 2 and 3, a Member State may draw shares lower than those specified in those paragraphs if there are grounds for believing that those specified may not be used in full. Any Member State applying this paragraph shall inform the Commission of its grounds for so doing.

5. Any Member State may limit the sum total of its additional shares to 40% of its initial share, informing the Commission that it is so doing.

Article 4

Additional shares drawn pursuant to Article 3 shall be valid until 31 December 1979.

*Article 5*

A Member State which on 15 September 1979 has not exhausted one of its initial shares shall, not later than 1 October 1979, return to the reserve any unused portion in excess of 20% of the initial amount. It may return a greater portion if there are grounds for believing that such portion may not be used in full.

Member States shall, not later than 1 October 1979, notify the Commission of the total quantities of the product in question imported up to and including 15 September 1979 and charged against the Community quotas and of any portion of their initial shares returned to the reserve.

*Article 6*

The Commission shall keep an account of the shares opened by the Member States pursuant to Articles 2 and 3 and shall, as soon as the information reaches it, inform each State of the extent to which the reserve has been used up.

It shall, not later than 15 October 1979, inform the Member State of the amount still in reserve following any return of shares pursuant to Article 5.

It shall ensure that when an amount exhausting the reserve is drawn the amount so drawn does not exceed the balance available, and to this end shall notify the amount of that balance to the Member State making the last drawing.

The Member States shall take all appropriate measures to ensure that additional shares drawn pursuant to Article 3 are opened in such a way that importations may be charged without interruption against their cumulative shares of the Community quota.

*Article 7*

1. The Member States shall ensure free access to each of the shares which have been allocated to them for importers of the products concerned who are established on their territory.

2. The extent to which shares of Member States have been used up shall be determined on the basis of imports of the said goods which have been entered for home use, and which are accompanied by a certificate of origin in accordance with the rules referred to in Article 1 (2).

3. Goods may qualify for a tariff quota only if the certificate of origin referred to in paragraph 2 is

submitted before the date on which the levying of duties is re-introduced.

*Article 8*

Member States shall inform the Commission at monthly intervals of imports of the products in question charged against their shares. This information shall show both the value expressed in European units of account and the quantity expressed in tonnes.

*Article 9*

If the Community should find that the products benefiting under the arrangements provided for in Article 1 are being imported into the Community in quantities or at prices such as to put or be likely to put Community producers of similar or directly competitive products at a serious disadvantage or to create an unfavourable situation in the ACP States, the customs duties applied within the Community may be re-introduced in part or in full for imports of the products in question from the country or countries or territory or territories which are the cause of such disadvantage. Such measures may also be taken in the event of a serious disadvantage, either actual or foreseeable, which is confined to a single region of the Community.

*Article 10*

1. In order to ensure that Article 9 is applied, the Commission may, by way of a Regulation, re-introduce normal duties for a fixed period.

2. If the Commission has acted at the request of a Member State, the former shall give its decision within a maximum period of 10 working days from the date of receipt of the request and shall inform the Member State of the action it has taken.

3. Each Member State may refer the measure taken by the Commission to the Council within a period of 10 working days following the date it was notified. The fact that the matter has been referred to the Council shall not constitute the suspension of the measure. The Council shall meet without delay. Acting on a qualified majority, it may amend or repeal the measure in question.

*Article 11*

Articles 9 and 10 shall not prejudice the application of the protective clauses drawn up in connection with the common commercial policy pursuant to Article 113 of the Treaty.

*Article 12*

Member States and the Commission shall collaborate closely to ensure that the above Articles are observed.

*Article 13*

This Regulation shall enter into force on 1 January 1979.

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

Done at Brussels, 29 December 1978.

*For the Council*

*The President*

H.-D. GENSCHER

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## ANNEX A

List of developing countries and territories enjoying generalized tariff preferences <sup>(1)</sup>

## I. INDEPENDENT COUNTRIES

660 Afghanistan <sup>(2)</sup>	488 Guyana	520 Paraguay
208 Algeria	452 Haiti <sup>(2)</sup>	504 Peru
330 Angola	424 Honduras	708 Philippines
528 Argentina	664 India	644 Qatar
453 Bahamas	700 Indonesia	247 Republic of Cape Verde
640 Bahrain	616 Iran	066 Romania
666 Bangladesh <sup>(2)</sup>	612 Iraq	324 Rwanda <sup>(2)</sup>
469 Barbados	272 Ivory Coast	819 Samoa <sup>(2)</sup>
284 Benin <sup>(2)</sup>	464 Jamaica	311 Sao Tome and Principe
675 Bhutan <sup>(2)</sup>	338 Jibuti	632 Saudi Arabia
516 Bolivia	628 Jordan	248 Senegal
391 Botswana <sup>(2)</sup>	696 Kampuchea (Cambodia)	355 Seychelles and dependencies
508 Brazil	346 Kenya	264 Sierra Leone
676 Burma	636 Kuwait	706 Singapore
328 Burundi <sup>(2)</sup>	684 Laos <sup>(2)</sup>	812 Solomon Islands
302 Cameroon	604 Lebanon	342 Somalia <sup>(2)</sup>
306 Central African Empire <sup>(2)</sup>	395 Lesotho <sup>(2)</sup>	728 South Korea
244 Chad <sup>(2)</sup>	268 Liberia	656 South Yemen <sup>(2)</sup>
512 Chile	216 Libya	669 Sri Lanka
480 Colombia	370 Madagascar	224 Sudan <sup>(2)</sup>
375 Comoros	386 Malawi <sup>(2)</sup>	492 Surinam
318 Congo	701 Malaysia	393 Swaziland
436 Costa Rica	667 Maldives <sup>(2)</sup>	608 Syria
448 Cuba	232 Mali <sup>(2)</sup>	352 Tanzania <sup>(2)</sup>
600 Cyprus	228 Mauritania	680 Thailand
456 Dominican Republic	373 Mauritius	280 Togo
500 Ecuador	412 Mexico	817 Tonga
220 Egypt	204 Morocco	472 Trinidad and Tobago
428 El Salvador	366 Mozambique	212 Tunisia
310 Equatorial Guinea	803 Nauru	812 Tuvalu
334 Ethiopia <sup>(2)</sup>	672 Nepal <sup>(2)</sup>	350 Uganda <sup>(2)</sup>
815 Fiji	432 Nicaragua	647 United Arab Emirates
314 Gabon	240 Niger <sup>(2)</sup>	236 Upper Volta <sup>(2)</sup>
252 Gambia <sup>(2)</sup>	288 Nigeria	524 Uruguay
276 Ghana	652 North Yemen <sup>(2)</sup>	484 Venezuela
473 Grenada	649 Oman	690 Vietnam
416 Guatemala	662 Pakistan	048 Yugoslavia
260 Guinea <sup>(2)</sup>	440 Panama	322 Zaire
257 Guinea Bissau	801 Papua New Guinea	378 Zambia

<sup>(1)</sup> The code number preceding the name of each beneficiary country or territory is that given in 'Geonomenclature 1979' (Regulation (EEC) No 2843/78 – OJ No L 339, 5. 12. 1978, p. 5).

<sup>(2)</sup> This country is also included in Annex B.

## II. COUNTRIES AND TERRITORIES

dependent or administered, or for whose external relations Member States of the Community or third countries are wholly or partly responsible

- 808 American Oceania <sup>(1)</sup>
- 802 Australian Oceania (Christmas Island, Cocos (Keeling) Islands, Heard Island and McDonald Islands, Norfolk Island)
- 421 Belize
- 413 Bermuda
- 357 British Indian Ocean Territory
- 812 British Oceania
- 703 Brunei
- 463 Cayman Islands
- 529 Falkland Islands and dependencies
- 822 French Polynesia
- 044 Gibraltar
- 740 Hong Kong
- 743 Macao
- 377 Mayotte
- 476 Netherlands Antilles
- 809 New Caledonia and dependencies
- 814 New Zealand Oceania (Tokelau and Niue Islands; Cook Islands)
- 890 Polar regions (French Southern and Antarctic Territories, Australian Antarctic Territories, British Antarctic Territories)
- 329 St Helena and dependencies
- 454 Turks and Caicos Islands
- 457 Virgin Islands of the United States
- 811 Wallis and Futuna Islands
- 471 West Indies

*Note:* The above lists may be amended subsequently to take account of changes in the international status of countries or territories.

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<sup>(1)</sup> American Oceania includes: Guam, American Samoa (including Swain's Island), Midway Islands, Johnston and Sand Islands, Wake Island and the Trust Territory of the Pacific Islands (the Caroline, Marianas and Marshall Islands).

## ANNEX B

## List of least developed developing countries

660 Afghanistan	386 Malawi
666 Bangladesh	667 Maldives
284 Benin	232 Mali
675 Bhutan	672 Nepal
391 Botswana	240 Niger
328 Burundi	652 North Yemen
306 Central African Empire	324 Rwanda
244 Chad	819 Samoa
334 Ethiopia	342 Somalia
252 Gambia	656 South Yemen
260 Guinea	224 Sudan
452 Haiti	352 Tanzania
684 Laos	350 Uganda
395 Lesotho	236 Upper Volta

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