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## Legislation

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## I

*(Acts whose publication is obligatory)*

**COUNCIL REGULATION (EC) No 1554/97**  
**of 22 July 1997**  
**amending Regulation (EEC) No 1696/71 on the common organization of the**  
**market in hops**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 42 and 43 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

(1) Whereas aid to producers should be used principally to ensure higher and more stable incomes; whereas any amount withheld with a view to attaining the aims of producer groups as laid down in Article 7 (1) (a) to (d) of Regulation (EEC) No 1696/71 <sup>(4)</sup> must accordingly be subject to a fair ceiling; whereas Article 7 (1a) of that Regulation must be amended accordingly;

(2) Whereas increasing aid for other varieties is likely to result in a considerable rise in the areas under those varieties to the detriment of the quality produced; whereas, given overplentiful supply and weak demand, prices for such varieties could plummet, forcing producer groups to exercise their right of veto and to buy back the hops; whereas such hops may not find purchasers on the market and major stocks of varieties of poorer quality are liable to build up within producer groups; whereas this could destabilize the market; whereas, to prevent such a situation from arising, producer groups should decide what varieties can be grown by their

members; whereas, to that end, Article 7 (1) (d) and the first subparagraph of Article 7 (3) (b) should be amended;

(3) Whereas Article 7 (3) (b) of Regulation (EEC) No 1696/71 provides for an obligation in principle on producers who are members of groups and on recognized producer groups which are members of unions to sell all their produce through the group or union; whereas the application of that principle has proved highly problematic for Community producers, a majority of whom are members of one and the same group; whereas the transitional period laid down in the last subparagraph of the abovementioned provision, during which the members of a recognized group may, on condition they are so authorized by the latter, market all or part of their produce themselves in accordance with the rules laid down and under the group's supervision, expires on 31 December 1996; whereas, as a consequence, a decision should be taken on the arrangements to apply from 1 January 1997 and Article 7 (3) (b) should be amended accordingly;

(4) Whereas it would be detrimental to withdraw recognition from producer groups, which, moreover, diligently perform all their other tasks, such as the administration of aid to producers and the attainment of their aims as referred to above; whereas members of recognized producer groups should accordingly be granted the option of marketing all or part of their produce themselves, without suffering any reduction in the aid by way of a penalty, where they are so authorized by the group and on condition that the latter enjoys the right to monitor prices negotiated between producers and traders and can veto them; whereas in the same connection producers so desiring should be allowed to sell part of their produce through another producer group designated by their own group where products with special characteristics not necessarily covered by the commercial activities of the latter are concerned;

<sup>(1)</sup> OJ No C 127, 24. 4. 1997, p. 11.

<sup>(2)</sup> Opinion delivered on 18 July 1997 (not yet published in the Official Journal).

<sup>(3)</sup> Opinion delivered on 29 May 1997 (not yet published in the Official Journal).

<sup>(4)</sup> OJ No L 175, 4. 8. 1971, p. 1. Regulation as last amended by Regulation (EC) No 3290/94 (OJ No L 349, 31. 12. 1994, p. 105).

- (5) Whereas each producer group has its own special characteristics as regards conditions of production and marketing; whereas it is accordingly in the best position to take a decision at any time on behalf of its members as to what steps should be taken quickly to adapt production to market requirements; whereas this latitude presupposes the introduction of some flexibility as regards budget funds and management;
- (6) Whereas, to that end, the aid must be paid at the time of the harvest concerned, no distinction being made between groups of varieties; whereas this implies abandoning the method of calculation laid down in Article 12 (5) (a) and (b), which is based on declarations by the Member States; whereas it should be replaced by flat-rate aid per hectare calculated on the basis of historical averages; whereas, in the event of market disturbance, the aid can be paid in respect of only part of the areas under hops; whereas it should also be possible in such cases to vary the aid; whereas paragraph 6 of that Article should be amended and paragraph 7 deleted;
- (7) Whereas producer groups should be able to decide whether to pay the flat-rate aid in full to their members in proportion to area cultivated or only a percentage of between 80 % and 100 % thereof; whereas Article 7 (1) (e) relating to the administration of the aid scheme should accordingly be adapted;
- (8) Whereas producer groups should be able to withhold up to 20 % of the aid with a view to achieving the aims set out in Article 7 (1) (d), mainly or exclusively for purposes of varietal conversion, where there is still a need; whereas, among the other special measures, it is possible to develop research in the plant health field; whereas that research should concentrate on the use of environmentally-friendly techniques and methods; whereas to that end the expression 'Integrated Crop Protection' can be used;
- (9) Whereas, where producer groups do not market all the produce of their members, the abovementioned option becomes an obligation; whereas it should be incorporated in Article 12 (5);
- (10) Whereas the aid withheld can be accumulated over a maximum period of five years; whereas at the end of that period all aid withheld must have been spent; whereas this point should be incorporated in Article 12 (5);
- (11) Whereas, with a view to rationalization and simplification, payments should henceforth be made once a year only and should cover both aid to producers and aid for varietal conversion; whereas such payments should be made soon after the harvest and in any case by 31 December of the year concerned; whereas, however, that date has already passed as regards the 1996 harvest and a suitable solution should therefore be found; whereas Article 17 should be amended to that end;
- (12) Whereas provision should be made to assess the measures introduced and their impact on the economic situation of the sector and proposals should be made, if appropriate; whereas that obligation should be incorporated in Article 18,
- HAS ADOPTED THIS DECISION:
- Article 1*
- Regulation (EEC) No 1696/71 is amended as follows:
1. in Article 7:
- (a) paragraph 1 (a) shall be replaced by the following:
- '(a) concentrating supply and stabilizing the market by marketing all the produce of the members or, if necessary, by purchasing hops at a higher price than that laid down in Article 7 (3) (b);'
- (b) paragraph 1 (b) shall be replaced by the following:
- '(b) adapting such production jointly to the requirements of the market and improving the product by converting to other varieties, by reorganizing hop gardens, by carrying out promotion, and by conducting research into production, marketing and integrated protection;'
- (c) paragraph 1 (c) shall be replaced by the following:
- '(c) promoting the rationalization and mechanization of cultivation and harvesting operations in order to render production more profitable and better protect the environment;'
- (d) paragraph 1 (d) shall be replaced by the following:
- '(d) deciding what varieties of hops may be grown by its members and adopting common rules on production;'

(e) paragraph 1 (e) shall be replaced by the following:

'(e) managing the aid system provided for in Article 12 by allocating the share of the aid to each member of the group in proportion to area cultivated, subject to the application of paragraph 5 of that Article;'

(f) paragraph 1a shall be replaced by the following:

'1a. Producer groups may use up to 20 % of the aid for measures designed to attain the aims referred to in paragraph 1 (a) to (d);'

(g) paragraph 3 (b) shall be replaced by the following:

'(b) include an obligation in their statutes on producers who are members of groups and on recognized producer groups which are members of unions to:

- comply with the common rules on production and decisions on the varieties to be grown,
- market all their produce through the group or the union.

That obligation shall not apply, however, to products covered by sales contracts concluded by producers before they joined the group, provided that the latter is informed of and has approved such contracts.

However, where the producer group so authorizes and under the conditions it lays down, member producers may:

- replace the obligation to have all their production marketed by the producer group with marketing in accordance with common rules incorporated in the statutes to ensure that the producer group has the right to monitor selling prices, which it must approve, failure to do so requiring the group to take over the hops at a higher price;
- market, through the offices of another producer group designated by their own group, products which by virtue of their characteristics are not necessarily covered by the commercial activities of the latter;'

2. Article 9 shall be deleted;

3. Article 10 shall be replaced by the following:

#### *Article 10*

1. The Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, shall adopt general rules for the application of Article 8.

2. Detailed rules for the application of Article 8 shall be adopted in accordance with the procedure provided for in Article 20;'

4. in Article 12:

(a) paragraph 3 shall be replaced by the following:

'3. (a) In those Community regions in which recognized producer groups are able to ensure a fair income for their members and to achieve rational management of supply, the aid shall be granted to such producer groups alone.

(b) In the specific case where a producer is established in a Member State other than that of the group of which he is a member, the full amount of the aid shall be paid directly to that producer by the competent authorities of the Member State in which he is established.

(c) In the other regions, aid shall also be granted to individual producers;'

(b) paragraph 5 shall be replaced by the following:

'5. (a) The aid per hectare shall be the same for all groups of varieties. For five years from the 1996 harvest, it shall amount to ECU 480/ha.

(b) Where the aid is granted to a recognized producer group in accordance with the first subparagraph of paragraph 3, the group shall be able to decide whether to pay the full aid each year, to its members in proportion to the area they cultivate or only a percentage of at least 80 % thereof, depending on whether there are still applications pending for varietal conversion or possibly other aims to be attained in accordance with Article 7 (1) (d).

(c) Where the aid is granted to a recognized producer group and where that body does not market all the produce of its members, it shall each year withhold 20 % of the aid to producers to attain the aims referred to in (b).

(d) The aid withheld may be accumulated for a maximum period of five years; at the end of that period all aid withheld must have been spent.

- (e) In the case referred to in paragraph 3 (b) of this Article, the producer in question must pay to the producer group of which he is a member an amount equivalent to the amount withheld in accordance with points (b) or (c) above.';

(c) paragraph 6 shall be replaced by the following:

'6. Where the report referred to in Article 11 shows that there is a risk of creating structural surpluses or disturbance in the supply structure of the Community hop market, the Council, acting on a proposal from the Commission in accordance with the procedure laid down in Article 43 (2) of the Treaty, may adjust the amount of the aid set in paragraph 5 either:

- (a) by granting the aid solely in respect of part of the area under hops registered for the year in question, adjusting the aid where the need arises; or
- (b) by declaring ineligible for aid those areas under hops which are in their first and/or second year of production.';

(d) paragraph 7 shall be deleted;

5. Article 12a shall be deleted;

6. Article 16 shall be replaced by the following:

#### *'Article 16*

Except where otherwise provided for in this Regulation, Articles 92, 93 and 94 of the Treaty shall apply to production of and trade in the products referred to in Article 1 (1).';

7. Article 17 shall be replaced by the following:

#### *'Article 17*

1. The Regulations on the financing of the common agricultural policy shall apply to the market in the products referred to in Article 1 (1) from the date of implementation of the arrangements laid down herein.

2. The aid granted by the Member States pursuant to Article 8 shall constitute a common measure within the meaning of Article 2 (1) of Regulation (EEC) No 4256/88<sup>(1)</sup>. It shall be covered by the annual expenditure forecasts referred to in Article 31 (1) of Regulation (EEC) No 2328/91<sup>(2)</sup>.

Article 1 (3) of Regulation (EEC) No 2328/91 shall apply to the aid covered by this paragraph.

The aid shall be paid in accordance with Article 21 of Regulation (EEC) No 4253/88<sup>(3)</sup>.

3. The Member States shall pay the aid to the producers as soon as possible after the harvest and by no later than 15 October 1997 in respect of the 1996 harvest and, as from the 1997 harvest on, between 16 October and 31 December of the marketing year in respect of which the aid is applied for.

4. The Commission shall adopt detailed rules for the application of this Article.

<sup>(1)</sup> Council Regulation (EEC) No 4256/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the EAGGF Guidance Section (OJ No L 374, 31. 12. 1988, p. 25). Regulation as amended by Regulation (EEC) No 2085/93 (OJ No L 193, 31. 7. 1993, p. 44).

<sup>(2)</sup> Council Regulation (EEC) No 2328/91 of 15 July 1991 on improving the efficiency of agricultural structures (OJ No L 218, 6. 8. 1991, p. 1). Regulation as last amended by Commission Regulation (EC) No 2387/95 (OJ No L 244, 12. 10. 1995, p. 50).

<sup>(3)</sup> Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ No L 374, 31. 12. 1988, p. 1). Regulation as last amended by Regulation (EC) No 3193/94 (OJ No L 337, 24. 12. 1994, p. 11).';

8. Article 18 shall be replaced by the following:

#### *'Article 18*

The Member States and the Commission shall send each other such information as is necessary for the implementation of this Regulation. The procedure for forwarding, assessing and disseminating such information shall be adopted in accordance with the procedure laid down in Article 20.

On the basis of that information the Commission shall undertake to draw up an assessment of the sector for the Council of the European Union before 1 September 2000; that assessment may, if appropriate, be accompanied by proposals.'

#### *Article 2*

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

It shall apply from 1 January 1997.

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

Done at Brussels, 22 July 1997.

*For the Council*

*The President*

F. BODEN

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## COUNCIL REGULATION (EC) No 1555/97

of 24 July 1997

establishing certain concessions in the form of a Community tariff quota for  
Turkey in 1997 in respect of hazelnuts

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof,

Having regard to the Act of Accession of Austria, Finland and Sweden,

Having regard to the proposal from the Commission,

Whereas, under the Agreement establishing an Association between the European Economic Community and Turkey<sup>(1)</sup>, concessions were granted to that country in respect of certain agricultural products;

Whereas, following the accession of Austria, Finland and Sweden, the concession for hazelnuts should be adjusted to take account of the trade arrangements for that product which existed between Austria, Finland and Sweden, on the one hand, and Turkey, on the other;

Whereas, in accordance with Articles 76, 102 and 128 of the 1994 Act of Accession, the Community is required to adopt the necessary measures to remedy this situation; whereas those measures should take the form of autonomous Community tariff quotas covering the conventional preferential tariff concessions applied by Austria, Finland and Sweden;

Whereas the tariff quotas established by this Regulation for 1997 replace those established by Regulation (EC) No 819/96<sup>(2)</sup> for 1996,

HAS ADOPTED THIS REGULATION:

*Article 1*

Without prejudice to the import arrangements in the Community applicable to hazelnuts pursuant to the agreement concluded between the Community and Turkey, the existing Community tariff quota shall be increased autonomously in accordance with the Annex to this Regulation.

*Article 2*

Articles 4 to 8 of Regulation (EC) No 1981/94<sup>(3)</sup> shall apply to the tariff concessions referred to in the Annex.

*Article 3*

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

It shall apply with effect from 1 January 1997.

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

Done at Brussels, 24 July 1997.

*For the Council*

*The President*

M. FISCHBACH

<sup>(1)</sup> OJ No 217, 29. 12. 1964, p. 3687/64.

<sup>(2)</sup> OJ No L 111, 4. 5. 1996, p. 3.

<sup>(3)</sup> OJ No L 199, 2. 8. 1994, p. 1. Regulation as last amended by Regulation (EC) No 592/97 (OJ No L 89, 4. 4. 1997, p. 1).

## ANNEX

## Preferential tariff quota opened for 1997

| Order<br>No | CN code                  | Description                    | Conventional<br>quota<br>(in tonnes) <sup>(1)</sup> | Autonomous<br>quota<br>(in tonnes) | Rate<br>of duty<br>applicable |
|-------------|--------------------------|--------------------------------|-----------------------------------------------------|------------------------------------|-------------------------------|
| 09.0201     | 0802 21 00<br>0802 22 00 | Hazelnuts, in shell or shelled | 25 000                                              | 9 060                              | Free                          |

<sup>(1)</sup> Existing quota opened under Community preferential agreements.

**COMMISSION REGULATION (EC) No 1556/97**  
**of 1 August 1997**  
**on the supply of white sugar as food aid**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,  
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food security<sup>(1)</sup>, and in particular Article 24 (1) (b) thereof,

Whereas the abovementioned Regulation lays down the list of countries and organizations eligible for food-aid operations and specifies the general criteria on the transport of food aid beyond the fob stage;

Whereas, following the taking of a number of decisions on the allocation of food aid, the Commission has allocated sugar to certain beneficiaries;

Whereas it is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community food aid<sup>(2)</sup>, as amended by Regulation (EEC) No 790/91<sup>(3)</sup>; whereas it is necessary to specify the time limits and conditions of supply and the procedure to be followed to determine the resultant costs;

Whereas, for a given lot, given the small quantities to be supplied, the packaging methods and the large number of destinations of the supplies, provision should be made for

the possibility for tenderers to indicate two ports of loading, where necessary not belonging to the same port area,

HAS ADOPTED THIS REGULATION:

*Article 1*

White sugar shall be mobilized in the Community, as Community food aid for supply to the recipient listed in the Annex, in accordance with Regulation (EEC) No 2200/87 and under the conditions set out in the Annex. Supplies shall be awarded by the tendering procedure.

For lot A, notwithstanding Article 7 (3) (d) of Regulation (EEC) No 2200/87, the tender may indicate two ports of shipment not necessarily belonging to the same port area.

The successful tenderer is deemed to have noted and accepted all the general and specific conditions applicable. Any other condition or reservation included in his tender is deemed unwritten.

*Article 2*

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

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

Done at Brussels, 1 August 1997.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ No L 166, 5. 7. 1996, p. 1.

<sup>(2)</sup> OJ No L 204, 25. 7. 1987, p. 1.

<sup>(3)</sup> OJ No L 81, 28. 3. 1991, p. 108.

## ANNEX

## LOT A

1. **Operation Nos** <sup>(1)</sup>: 368/96 (A1); 369/96 (A2)
2. **Programme**: 1996
3. **Recipient** <sup>(2)</sup>: Euronaid, PO Box 12, NL-2501 CA Den Haag (tel.: (31-70) 330 57 57; fax: 364 17 01; telex: 30960 EURON NL)
4. **Representative of the recipient**: to be designated by the recipient
5. **Place or country of destination**: A1: Madagascar; A2: Somalia
6. **Product to be mobilized**: white sugar
7. **Characteristics and quality of the goods** <sup>(3)</sup> <sup>(4)</sup> <sup>(7)</sup>: see OJ No C 114, 29. 4. 1991, p. 1 (V.A (1))
8. **Total quantity (tonnes)**: 54
9. **Number of lots**: one in two parts (A1: 18 tonnes; A2: 36 tonnes)
10. **Packaging and marking** <sup>(6)</sup> <sup>(8)</sup> <sup>(10)</sup>: see OJ No C 267, 13. 9. 1996, p. 1 (11.2, A (1) (b), (2) (b) and B (4))  
see OJ No C 114, 29. 4. 1991, p. 1 (V.A (3))  
Language to be used for the marking: A1: French; A2: English
11. **Method of mobilization**: sugar produced in the Community in accordance with the sixth subparagraph of Article 24 (1a) of Council Regulation (EEC) No 1785/81 as follows:  
A or B sugar (points (a) and (b))
12. **Stage of supply**: free at port of shipment <sup>(9)</sup>
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: —
16. **Address of the warehouse and, if appropriate, port of landing**: —
17. **Period for making the goods available at the port of shipment**: 8 — 28. 9. 1997
18. **Deadline for the supply**: —
19. **Procedure for determining the costs of supply**: invitation to tender
20. **Date of expiry of the period allowed for submission of tenders**: 18. 8. 1997 (12 noon (Brussels time))
21. **In the case of a second invitation to tender**:
  - (a) deadline for the submission of tenders: 1. 9. 1997 (12 noon (Brussels time))
  - (b) period for making the goods available at the port of shipment: 22. 9 — 12. 10. 1997
  - (c) deadline for the supply: —
22. **Amount of tendering security**: ECU 15 per tonne
23. **Amount of delivery security**: 10 % of the amount of the tender in ecus
24. **Address for submission of tenders and tendering securities** <sup>(1)</sup>: Bureau de l'aide alimentaire, Attn Mr T. Vestergaard, Bâtiment Loi 130, bureau 7/46, Rue de la Loi/Wetstraat 200, B-1049 Brussels  
Telex: 25670 AGREC B; fax: (32 2) 296 70 03/296 70 04 (exclusively)
25. **Refund payable on application by the successful tenderer** <sup>(4)</sup>: periodic refund applicable to white sugar on 23. 7. 1997, fixed by Commission Regulation (EC) No 1363/97 (OJ No L 188, 17. 7. 1997, p. 3)

*Notes:*

- (<sup>1</sup>) The operation number should be mentioned in all correspondence.
- (<sup>2</sup>) The successful tenderer shall contact the recipient as soon as possible to establish which consignment documents are required.
- (<sup>3</sup>) The successful tenderer shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.
- (<sup>4</sup>) Commission Regulation (EEC) No 2330/87 (OJ No L 210, 1. 8. 1987, p. 56), as last amended by Regulation (EEC) No 2226/89 (OJ No L 214, 25. 7. 1989, p. 10), is applicable as regards the export refund. The date referred to in Article 2 of the abovementioned Regulation is that referred to in point 25 of this Annex.

The amount of the refund shall be converted into national currency by applying the agricultural conversion rate applicable on the day of completion of the customs export formalities. The provisions of Articles 13 to 17 of Commission Regulation (EEC) No 1068/93 (OJ No L 108, 1. 5. 1993, p. 106), as last amended by Regulation (EC) No 1482/96 (OJ No L 188, 27. 7. 1996, p. 22), shall not apply to this amount.

- (<sup>5</sup>) The successful tenderer shall supply to the beneficiary or its representative, on delivery, the following document:
  - health certificate.
- (<sup>6</sup>) Since the goods may be rebagged, the successful tenderer must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.
- (<sup>7</sup>) The rule provided at the second indent of Article 18 (2) (a) of Commission Regulation (EEC) No 2103/77 (OJ No L 246, 27. 9. 1977, p. 12) is binding for determination of the sugar category.
- (<sup>8</sup>) Notwithstanding Article 7 (3) (d) of Regulation (EEC) No 2200/87, the tender may indicate two ports of shipment not necessarily belonging to the same port area.
- (<sup>9</sup>) Notwithstanding OJ No C 114, point V.A (3) (c) is replaced by the following: 'the words "European Community"'.
  - (<sup>10</sup>) Shipment to take place in 20-foot containers, condition FCL/FCL, each containing 18 tonnes net.

The supplier shall be responsible for the cost of making the containers available in the stack position at the container terminal at the port of shipment. The recipient shall be responsible for all subsequent loading costs, including the cost of moving the containers from the container terminal. The provisions of Article 13 (2), second paragraph, of Regulation (EEC) No 2200/87 shall not apply.

The supplier has to submit to the recipient's agent a complete packing list of each container, specifying number of bags belonging to each shipping number as specified in the invitation to tender.

The supplier has to seal each container with a numbered locktainer (Sysko locktainer 180 seal), the number of which to be provided to the beneficiary's forwarder.

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**COMMISSION REGULATION (EC) No 1557/97**  
**of 1 August 1997**  
**on the supply of milk products as food aid**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,  
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food security<sup>(1)</sup>, and in particular Article 24 (1) (b) thereof,

Whereas the abovementioned Regulation lays down the list of countries and organizations eligible for food-aid operations and specifies the general criteria on the transport of food aid beyond the fob stage;

Whereas, following the taking of a number of decisions on the allocation of food aid, the Commission has allocated milk powder to certain beneficiaries;

Whereas it is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community food aid<sup>(2)</sup>, as amended by Regulation (EEC) No 790/91<sup>(3)</sup>; whereas it is necessary to specify the time limits and conditions of supply and the procedure to be followed to determine the resultant costs;

Whereas, for a given lot, given the large number of destinations of the supplies, provision should be made for

the possibility for tenderers to indicate two ports of loading, where necessary not belonging to the same port area,

HAS ADOPTED THIS REGULATION:

*Article 1*

Milk products shall be mobilized in the Community, as Community food aid for supply to the recipient listed in the Annex, in accordance with Regulation (EEC) No 2200/87 and under the conditions set out in the Annex. Supplies shall be awarded by the tendering procedure.

For lot A, notwithstanding Article 7 (3) (d) of Regulation (EEC) No 2200/87, the tender may indicate two ports of shipment not necessarily belonging to the same port area.

The successful tenderer is deemed to have noted and accepted all the general and specific conditions applicable. Any other condition or reservation included in his tender is deemed unwritten.

*Article 2*

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

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

Done at Brussels, 1 August 1997.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ No L 166, 5. 7. 1996, p. 1.

<sup>(2)</sup> OJ No L 204, 25. 7. 1987, p. 1.

<sup>(3)</sup> OJ No L 81, 28. 3. 1991, p. 108.

## ANNEX

## LOT A

1. **Operation Nos** <sup>(1)</sup>: 370/96 (A1); 371/96 (A2); 372/96 (A3)
2. **Programme**: 1996
3. **Recipient** <sup>(2)</sup>: Euronaid, PO Box 12, NL-2501 CA Den Haag (tel.: (31-70) 330 57 57; fax: 364 17 01; telex: 30960 EURON NL)
4. **Representative of the recipient**: to be designated by the recipient
5. **Place or country of destination**: A1: Angola; A2: Madagascar; A3: Bangladesh
6. **Product to be mobilized**: vitaminized skimmed-milk powder
7. **Characteristics and quality of the goods** <sup>(3)</sup> <sup>(4)</sup>: see OJ No C 114, 29. 4. 1991, p. 1 (I.B (1))
8. **Total quantity (tonnes)**: 105
9. **Number of lots**: one in three parts (A1: 15 tonnes; A2: 15 tonnes; A3: 75 tonnes)
10. **Packaging and marking** <sup>(7)</sup> <sup>(8)</sup>: see OJ No C 267, 13. 9. 1996, p. 1 (6.3 (A) and B (2))  
see OJ No C 114, 29. 4. 1991, p. 1 (I.B (3))  
Language to be used for the marking: A1: Portuguese; A2: French; A3: English  
Supplementary markings: 'Expiry date ...' (A3)
11. **Method of mobilization**: the Community market  
The manufacture of the skimmed-milk powder, and the incorporation of vitamins, must be carried out after the award of the tender
12. **Stage of supply**: free at port of shipment <sup>(6)</sup>
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: —
16. **Address of the warehouse and, if appropriate, port of landing**: —
17. **Period for making the goods available at the port of shipment**: 8 to 28. 9. 1997
18. **Deadline for the supply**: —
19. **Procedure for determining the costs of supply**: invitation to tender
20. **Date of expiry of the period allowed for submission of tenders**: 18. 8. 1997 (12 noon (Brussels time))
21. **In the case of a second invitation to tender**:
  - (a) deadline for the submission of tenders: 1. 9. 1997 (12 noon (Brussels time))
  - (b) period for making the goods available at the port of shipment: 22. 9 to 12. 10. 1997
  - (c) deadline for the supply: —
22. **Amount of tendering security**: ECU 20 per tonne
23. **Amount of delivery security**: 10 % of the amount of the tender in ecus
24. **Address for submission of tenders and tendering securities** <sup>(1)</sup>:  
Bureau de l'aide alimentaire, Attn Mr T. Vestergaard  
Bâtiment Loi 130, bureau 7/46  
Rue de la Loi/Wetstraat 200, B-1049 Brussels  
Telex: 2 56 70 AGREC B; fax: (32-2) 296 70 03/296 70 04 (exclusively)
25. **Refund payable on application by the successful tenderer** <sup>(4)</sup>: refund applicable on 23. 7. 1997, fixed by Commission Regulation (EC) No 1171/97 (OJ No L 169, 27. 6. 1997, p. 28)

*Notes:*

- (<sup>1</sup>) The operation number should be mentioned in all correspondence.
- (<sup>2</sup>) The successful tenderer shall contact the recipient as soon as possible to establish which consignment documents are required.
- (<sup>3</sup>) The successful tenderer shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.
- (<sup>4</sup>) Commission Regulation (EEC) No 2330/87 (OJ No L 210, 1. 8. 1987, p. 56), as last amended by Regulation (EEC) No 2226/89 (OJ No L 214, 25. 7. 1989, p. 10), is applicable as regards the export refund. The date referred to in Article 2 of the said Regulation is that referred to in point 25 of this Annex.
- The amount of the refund shall be converted into national currency by applying the agricultural conversion rate applicable on the day of completion of the customs export formalities. The provisions of Articles 13 to 17 of Commission Regulation (EEC) No 1068/93 (OJ No L 108, 1. 5. 1993, p. 106), as last amended by Regulation (EC) No 1482/96 (OJ No L 188, 27. 7. 1996, p. 22), shall not apply to this amount.
- (<sup>5</sup>) The successful tenderer shall supply to the beneficiary or its representative, on delivery, the following documents:
- health certificate issued by an official entity stating that the product was processed under excellent sanitary conditions which are supervised by qualified technical personnel. The certificate must state the temperature and duration of the pasteurization, the temperature and duration in the spray-drying-tower and the expiry date for consumption,
  - veterinary certificate issued by an official entity stating that the area of production of raw milk had not registered foot-and-mouth disease nor any other notifiable infectious/contagious disease during the 12 months prior to the processing.
- (<sup>6</sup>) Notwithstanding Article 7 (3) (d) of Regulation (EEC) No 2200/87, the tender may indicate two ports of shipment not necessarily belonging to the same port area.
- (<sup>7</sup>) Notwithstanding OJ No C 114, point I.A.3 (c) is replaced by the following: 'the words "European Community"'.
- (<sup>8</sup>) Shipment to take place in 20-foot containers, condition FCL/FCL each containing 15 tonnes net. The supplier shall be responsible for the cost of making the containers available in the stack position at the container terminal at the port of shipment. The recipient shall be responsible for all subsequent loading costs, including the cost of moving the containers from the container terminal. The provisions of Article 13 (2), second paragraph, of Regulation (EEC) No 2200/87 shall not apply.

The supplier has to submit to the recipient's agent a complete packing list of each container, specifying the number of bags belonging to each operation number as specified in the invitation to tender.

The supplier has to seal each container with a numbered locktainer (Sysko locktainer 180 seal), the number of which is to be provided to the beneficiary's forwarder.

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## COMMISSION REGULATION (EC) No 1558/97

of 1 August 1997

**fixing the maximum buying-in price and the quantities of beef to be bought in under the 186th partial invitation to tender as a general intervention measure pursuant to Regulation (EEC) No 1627/89**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal <sup>(1)</sup>, as last amended by Regulation (EC) No 2222/96 <sup>(2)</sup>, and in particular Article 6 (7) thereof,

Whereas, pursuant to Commission Regulation (EEC) No 2456/93 of 1 September 1993 laying down detailed rules for the application of Council Regulation (EEC) No 805/68 as regards the general and special intervention measures for beef <sup>(3)</sup>, as last amended by Regulation (EC) No 1304/97 <sup>(4)</sup>, an invitation to tender was opened pursuant to Article 1 (1) of Commission Regulation (EEC) No 1627/89 of 9 June 1989 on the buying in of beef by invitation to tender <sup>(5)</sup>, as last amended by Regulation (EC) No 1298/97 <sup>(6)</sup>;

Whereas, in accordance with Article 13 (1) of Regulation (EEC) No 2456/93, a maximum buying-in price is to be fixed for quality R3, where appropriate, under each partial invitation to tender in the light of tenders received; whereas, in accordance with Article 14 of that Regulation, only tenders quoting prices not exceeding the maximum buying-in price and not exceeding the average national or regional market price, plus the amount referred to in paragraph 1 of that Article, are to be accepted;

Whereas, once tenders submitted in respect of the 186th partial invitation to tender have been considered and taking account, pursuant to Article 6 (1) of Regulation (EEC) No 805/68, of the requirements for reasonable support of the market and the seasonal trend in slaughtering, the maximum buying-in price and the quantities which may be bought in should be fixed;

Whereas the quantities offered at present exceed the quantities which may be bought in; whereas a reducing coefficient or, where appropriate, depending on the differences in prices and the quantities tendered for, several reducing coefficients should accordingly be applied to the quantities which may be bought in in accordance with Article 13 (3) of Regulation (EEC) No 2456/93;

Whereas the scale of the quantities awarded warrants the application of the possibility provided for in Article 16 (2) of Regulation (EEC) No 2456/93 of extending the period during which the intervention products are to be delivered;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Beef and Veal,

HAS ADOPTED THIS REGULATION:

*Article 1*

Under the 186th partial invitation to tender opened pursuant to Regulation (EEC) No 1627/89:

(a) for category A:

- the maximum buying-in price shall be ECU 269,99 per 100 kg of carcasses or half-carcasses of quality R3,
- the maximum quantity of carcasses, half-carcasses or forequarters accepted shall be 9 386 tonnes,
- the quantities offered at a price greater than ECU 255 and less than or equal to ECU 265,50 shall be multiplied by a coefficient of 30 % in accordance with Article 13 (3) of Regulation (EEC) No 2456/93 and those offered at a price greater than ECU 265,50 shall be multiplied by a coefficient of 12 %;

(b) for category C:

- the maximum buying-in price shall be ECU 269,99 per 100 kg of carcasses or half-carcasses of quality R3,
- the maximum quantity of carcasses, half-carcasses or forequarters accepted shall be 7 215 tonnes,
- the quantities offered at a price less than or equal to ECU 255 shall be multiplied by a coefficient of 75 %,
- the quantities offered at a price greater than ECU 255 and less than or equal to ECU 265,50 shall be multiplied by a coefficient of 30 %, in accordance with Article 13 (3) of Regulation (EEC) No 2456/93, and those offered at a price greater than ECU 265,50 shall be multiplied by a coefficient of 12 %.

<sup>(1)</sup> OJ No L 148, 28. 6. 1968, p. 24.

<sup>(2)</sup> OJ No L 296, 21. 11. 1996, p. 50.

<sup>(3)</sup> OJ No L 225, 4. 9. 1993, p. 4.

<sup>(4)</sup> OJ No L 177, 5. 7. 1997, p. 8.

<sup>(5)</sup> OJ No L 159, 10. 6. 1989, p. 36.

<sup>(6)</sup> OJ No L 176, 4. 7. 1997, p. 36.

*Article 2*

The first sentence of Article 16 (2) of Regulation (EEC) No 2456/93 notwithstanding, the time limit for delivery to intervention stores is extended by one week.

*Article 3*

This Regulation shall enter into force on 4 August 1997.

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

Done at Brussels, 1 August 1997.

*For the Commission*

Monika WULF-MATHIES

*Member of the Commission*

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## COMMISSION REGULATION (EC) No 1559/97

of 1 August 1997

**altering the rates of the refunds applicable to certain milk products exported in the form of goods not covered by Annex II to the Treaty**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,  
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products <sup>(1)</sup>, as last amended by Regulation (EC) No 1587/96 <sup>(2)</sup>, and in particular Article 17 (3) thereof,

Whereas Commission Regulation (EC) No 1524/97 <sup>(3)</sup> has fixed the rates of the refunds applicable from 1 August 1997 to certain dairy products exported in the form of goods not covered by Annex II to the Treaty;

Whereas it follows from applying the rules and criteria contained in Commission Regulation (EC) No 1222/94 of 30 May 1994, laying down common detailed rules for the application of the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex II to the Treaty, and the

criteria for fixing the amount of such refunds <sup>(4)</sup>, as last amended by Regulation (EC) No 1341/97 <sup>(5)</sup>, in particular Article 4 (2) (b) thereof, to the information at present available to the Commission that the export refunds at present applicable should be altered as shown in the Annex hereto,

HAS ADOPTED THIS REGULATION:

*Article 1*

The rates of the refunds applicable to certain milk products exported in the form of the products which appear in the Annex to Regulation (EC) No 1524/97 are hereby altered as shown in the Annex to this Regulation.

*Article 2*

This Regulation shall enter into force on 2 August 1997.

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

Done at Brussels, 1 August 1997.

*For the Commission*

Martin BANGEMANN

*Member of the Commission*

<sup>(1)</sup> OJ No L 148, 28. 6. 1968, p. 13.

<sup>(2)</sup> OJ No L 206, 16. 8. 1996, p. 21.

<sup>(3)</sup> OJ No L 204, 31. 7. 1997, p. 38.

<sup>(4)</sup> OJ No L 136, 31. 5. 1994, p. 5.

<sup>(5)</sup> OJ No L 184, 12. 7. 1997, p. 12.

## ANNEX

to the Commission Regulation of 1 August 1997 altering the rates of the refunds applicable to certain milk products exported in the form of goods not covered by Annex II to the Treaty

| (ECU/100 kg)  |                                                                                                                                                                                 |                |
|---------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| CN code       | Description                                                                                                                                                                     | Rate of refund |
| ex 0402 10 19 | Powdered milk, obtained by the spray process, with a fat content of less than 1,5 % by weight and with a water content of less than 5 % by weight (PG 2):                       |                |
|               | (a) On exportation of goods of CN code 3501                                                                                                                                     | —              |
|               | (b) On exportation of other goods                                                                                                                                               | 59,85          |
| ex 0402 21 19 | Powdered milk, obtained by the spray process, with a fat content of 26 % by weight and a water content of less than 5 % by weight (PG 3):                                       |                |
|               | (a) Where goods containing reduced-price butter or cream which have been manufactured in accordance with the conditions provided for in Regulation (EEC) No 570/88 are exported | 61,89          |
|               | (b) On exportation of other goods                                                                                                                                               | 102,60         |
| ex 0405 00    | Butter, with a fat content by weight of 82 % (PG 6):                                                                                                                            |                |
|               | (a) Where goods containing reduced-price butter or cream which have been manufactured in accordance with the conditions provided for in Regulation (EEC) No 570/88 are exported | 55,50          |
|               | (b) On exportation of goods of CN code 2106 90 98 containing 40 % or more by weight of milk fat                                                                                 | 187,75         |
|               | (c) On exportation of other goods                                                                                                                                               | 180,52         |

**COMMISSION REGULATION (EC) No 1560/97****of 1 August 1997****on the issue of import licences for frozen thin skirt of bovine animals**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,  
Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 996/97 of 3 June 1997 on the opening and administration of an import tariff quota for frozen thin skirt of bovine animals falling within CN code 0206 29 91 <sup>(1)</sup>, and in particular Article 8 (3) thereof,

Whereas Article 1 (3) (b) of Regulation (EC) No 996/97 fixes the amount of frozen thin skirt which may be imported on special terms in 1997/98 at 800 tonnes;

Whereas Article 8 (3) of Regulation (EC) No 996/97 lays down that the quantities applied for may be reduced; whereas the applications lodged relate to total quantities which exceed the quantities available; whereas, under

these circumstances and taking care to ensure an equitable distribution of the available quantities, it is appropriate to reduce proportionally the quantities applied for,

HAS ADOPTED THIS REGULATION:

*Article 1*

All applications for import licences made pursuant to Article 8 of Regulation (EC) No 996/97 are hereby met to the extent of 0,0534479 % of the quantity requested.

*Article 2*

This Regulation shall enter into force on 2 August 1997.

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

Done at Brussels, 1 August 1997.

*For the Commission*

Monika WULF-MATHIES

*Member of the Commission*

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<sup>(1)</sup> OJ No L 144, 4. 6. 1997, p. 6.

## COMMISSION REGULATION (EC) No 1561/97

of 1 August 1997

establishing the standard import values for determining the entry price of  
certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,  
Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables<sup>(1)</sup>, as last amended by Regulation (EC) No 2375/96<sup>(2)</sup>, and in particular Article 4 (1) thereof,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy<sup>(3)</sup>, as last amended by Regulation (EC) No 150/95<sup>(4)</sup>, and in particular Article 3 (3) thereof,

Whereas Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commis-

sion fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto;

Whereas, in compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

*Article 1*

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 2 August 1997.

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

Done at Brussels, 1 August 1997.

*For the Commission*

Monika WULF-MATHIES

*Member of the Commission*

<sup>(1)</sup> OJ No L 337, 24. 12. 1994, p. 66.

<sup>(2)</sup> OJ No L 325, 14. 12. 1996, p. 5.

<sup>(3)</sup> OJ No L 387, 31. 12. 1992, p. 1.

<sup>(4)</sup> OJ No L 22, 31. 1. 1995, p. 1.

## ANNEX

to the Commission Regulation of 1 August 1997 establishing the standard import values for determining the entry price of certain fruit and vegetables

(ECU/100 kg)

| CN code                            | Third country code <sup>(1)</sup> | Standard import value |
|------------------------------------|-----------------------------------|-----------------------|
| ex 0707 00 25                      | 052                               | 73,0                  |
|                                    | 999                               | 73,0                  |
| 0709 90 79                         | 052                               | 65,7                  |
|                                    | 999                               | 65,7                  |
| 0805 30 30                         | 388                               | 61,2                  |
|                                    | 524                               | 58,5                  |
|                                    | 528                               | 50,2                  |
|                                    | 999                               | 56,6                  |
| 0806 10 40                         | 052                               | 120,4                 |
|                                    | 400                               | 228,6                 |
|                                    | 412                               | 124,1                 |
|                                    | 512                               | 114,3                 |
|                                    | 600                               | 139,6                 |
|                                    | 624                               | 169,6                 |
|                                    | 999                               | 149,4                 |
| 0808 10 92, 0808 10 94, 0808 10 98 | 388                               | 82,5                  |
|                                    | 400                               | 68,3                  |
|                                    | 508                               | 60,1                  |
|                                    | 512                               | 51,5                  |
|                                    | 528                               | 57,4                  |
|                                    | 800                               | 142,7                 |
|                                    | 804                               | 85,5                  |
|                                    | 999                               | 78,3                  |
| 0808 20 57                         | 052                               | 94,7                  |
|                                    | 388                               | 57,2                  |
|                                    | 512                               | 59,7                  |
|                                    | 528                               | 33,6                  |
|                                    | 999                               | 61,3                  |
| 0809 20 69                         | 052                               | 236,2                 |
|                                    | 400                               | 214,2                 |
|                                    | 616                               | 166,0                 |
|                                    | 999                               | 205,5                 |
| 0809 40 30                         | 064                               | 110,1                 |
|                                    | 066                               | 100,4                 |
|                                    | 624                               | 185,5                 |
|                                    | 999                               | 132,0                 |

<sup>(1)</sup> Country nomenclature as fixed by Commission Regulation (EC) No 68/96 (OJ No L 14, 19. 1. 1996, p. 6). Code '999' stands for 'of other origin'.

**COMMISSION REGULATION (EC) No 1562/97****of 1 August 1997****on the issue of system B export licences in the fruit and vegetables sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,  
Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 2190/96 of 14 November 1996 on detailed rules for implementing Council Regulation (EEC) No 1035/72 as regards export refunds on fruit and vegetables<sup>(1)</sup>, as last amended by Regulation (EC) No 610/97<sup>(2)</sup>, and in particular Article 5 (5) thereof,

Whereas Commission Regulation (EC) No 1120/97<sup>(3)</sup> fixes the indicative quantities for system B export licences other than those sought in the context of food aid;

Whereas, in the light of the information available to the Commission today, there is a risk that the indicative quantities laid down for the current export period for lemons will shortly be exceeded; whereas this overrun will prejudice the proper working of the export refund scheme in the fruit and vegetables sector;

Whereas, to avoid this situation, applications for system B licences for lemons, exported after 1 August 1997 should be rejected until the end of the current export period,

HAS ADOPTED THIS REGULATION:

*Article 1*

Applications for system B licences for lemons, submitted pursuant to Article 1 of Regulation (EC) No 1120/97, export declarations for which are accepted after 1 August 1997 and before 17 September 1997, are hereby rejected.

*Article 2*

This Regulation shall enter into force on 2 August 1997.

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

Done at Brussels, 1 August 1997.

*For the Commission*

Monika WULF-MATHIES

*Member of the Commission*

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<sup>(1)</sup> OJ No L 292, 15. 11. 1996, p. 12.

<sup>(2)</sup> OJ No L 93, 8. 4. 1997, p. 16.

<sup>(3)</sup> OJ No L 163, 20. 6. 1997, p. 12.

**COMMISSION REGULATION (EC) No 1563/97**  
**of 1 August 1997**  
**amending the import duties in the cereals sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,  
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals<sup>(1)</sup>, as last amended by Commission Regulation (EC) No 923/96<sup>(2)</sup>,

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector<sup>(3)</sup>, as amended by Regulation (EC) No 641/97<sup>(4)</sup>, and in particular Article 2 (1) thereof,

Whereas the import duties in the cereals sector are fixed by Commission Regulation (EC) No 1529/97<sup>(5)</sup>;

Whereas Article 2 (1) of Regulation (EC) No 1249/96 provides that if during the period of application, the

average import duty calculated differs by ECU 5 per tonne from the duty fixed, a corresponding adjustment is to be made; whereas such a difference has arisen; whereas it is therefore necessary to adjust the import duties fixed in Regulation (EC) No 1529/97,

HAS ADOPTED THIS REGULATION:

*Article 1*

Annexes I and II to Regulation (EC) No 1529/97 are hereby replaced by Annexes I and II to this Regulation.

*Article 2*

This Regulation shall enter into force on 2 August 1997.

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

Done at Brussels, 1 August 1997.

*For the Commission*

Monika WULF-MATHIES

*Member of the Commission*

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<sup>(1)</sup> OJ No L 181, 1. 7. 1992, p. 21.

<sup>(2)</sup> OJ No L 126, 24. 5. 1996, p. 37.

<sup>(3)</sup> OJ No L 161, 29. 6. 1996, p. 125.

<sup>(4)</sup> OJ No L 98, 15. 4. 1997, p. 2.

<sup>(5)</sup> OJ No L 206, 1. 8. 1997, p. 6.

## ANNEX I

## Import duties for the products listed in Article 10 (2) of Regulation (EEC) No 1766/92

| CN code    | Description                                                    | Import duty<br>by land inland waterway<br>or sea from<br>Mediterranean,<br>the Black Sea or<br>Baltic Sea ports (ECU/tonne) | Import duty by air or<br>by sea from other<br>ports <sup>(2)</sup><br>(ECU/tonne) |
|------------|----------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|
| 1001 10 00 | Durum wheat <sup>(1)</sup>                                     | 0,00                                                                                                                        | 0,00                                                                              |
| 1001 90 91 | Common wheat seed                                              | 22,98                                                                                                                       | 12,98                                                                             |
| 1001 90 99 | Common high quality wheat other than for sowing <sup>(3)</sup> | 22,98                                                                                                                       | 12,98                                                                             |
|            | medium quality                                                 | 46,44                                                                                                                       | 36,44                                                                             |
|            | low quality                                                    | 53,91                                                                                                                       | 43,91                                                                             |
| 1002 00 00 | Rye                                                            | 72,39                                                                                                                       | 62,39                                                                             |
| 1003 00 10 | Barley, seed                                                   | 72,39                                                                                                                       | 62,39                                                                             |
| 1003 00 90 | Barley, other <sup>(3)</sup>                                   | 72,39                                                                                                                       | 62,39                                                                             |
| 1005 10 90 | Maize seed other than hybrid                                   | 86,80                                                                                                                       | 76,80                                                                             |
| 1005 90 00 | Maize other than seed <sup>(3)</sup>                           | 86,80                                                                                                                       | 76,80                                                                             |
| 1007 00 90 | Grain sorghum other than hybrids for sowing                    | 84,33                                                                                                                       | 74,33                                                                             |

<sup>(1)</sup> In the case of durum wheat not meeting the minimum quality requirements referred to in Annex I to Regulation (EC) No 1249/96, the duty applicable is that fixed for low-quality common wheat.

<sup>(2)</sup> For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal (Article 2 (4) of Regulation (EC) No 1249/96), the importer may benefit from a reduction in the duty of:

— ECU 3 per tonne, where the port of unloading is on the Mediterranean Sea, or

— ECU 2 per tonne, where the port of unloading is in Ireland, the United Kingdom, Denmark, Sweden, Finland or the Atlantic Coasts of the Iberian Peninsula.

<sup>(3)</sup> The importer may benefit from a flat-rate reduction of ECU 14 or 8 per tonne, where the conditions laid down in Article 2 (5) of Regulation (EC) No 1249/96 are met.

## ANNEX II

## Factors for calculating duties

(for 31 July 1997)

1. Averages over the two-week period preceding the day of fixing:

| Exchange quotations                   | Minneapolis | Kansas City  | Chicago | Chicago | Minneapolis           | Minneapolis          |
|---------------------------------------|-------------|--------------|---------|---------|-----------------------|----------------------|
| Product (% proteins at 12 % humidity) | HRS2. 14 %  | HRW2. 11,5 % | SRW2    | YC3     | HAD2                  | US barley 2          |
| Quotation (ECU/tonne)                 | 129,83      | 121,89       | 123,10  | 96,74   | 200,03 <sup>(1)</sup> | 99,00 <sup>(1)</sup> |
| Gulf premium (ECU/tonne)              | —           | 12,79        | 4,54    | 9,95    | —                     | —                    |
| Great lake premium (ECU/tonne)        | 18,59       | —            | —       | —       | —                     | —                    |

<sup>(1)</sup> Fob Duluth.

2. Freight/cost: Gulf of Mexico — Rotterdam: ECU 13,19 per tonne; Great Lakes — Rotterdam: ECU 22,44 per tonne.

3. Subsidy within the meaning of the third paragraph of Article 4 (2) of Regulation (EC) No 1249/96: ECU 0,00 per tonne (HRW2)
- 
- : ECU 0,00 per tonne (SRW2).

## COMMISSION REGULATION (EC) No 1564/97

of 1 August 1997

amending for the ninth time Regulation (EC) No 413/97 adopting exceptional support measures for the market in pigmeat in the Netherlands

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

aid schemes<sup>(1)</sup>, as last amended by Regulation (EC) No 2015/95<sup>(2)</sup>, by analogy;

Having regard to the Treaty establishing the European Community,

Whereas the aid for non-covered sows replaces to a certain extent the aid granted for delivery of very young piglets to the competent authorities; whereas it is therefore justified to restrict Community expenditure on the new aid scheme for non-covered sows to the level incurred in granting the aid for the delivery of very young piglets;

Having regard to Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organization of the market in pigmeat<sup>(3)</sup>, as last amended by Regulation (EC) No 3290/94<sup>(4)</sup>, and in particular Article 20 thereof,

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Pigmeat,

Whereas exceptional measures to support the market in pigmeat were adopted for the Netherlands by Commission Regulation (EC) No 413/97<sup>(5)</sup>, as last amended by Regulation (EC) No 1498/97<sup>(6)</sup>, in response to the outbreak of classical swine fever in certain production regions in that country;

HAS ADOPTED THIS REGULATION:

Whereas it is certain that the veterinary and trading restrictions and the market support measures laid down in Regulation (EC) No 413/97 must continue for several months; whereas it is therefore reasonable and justified to interrupt the production of piglets by banning the insemination of sows, thus avoiding the need to slaughter piglets in a few months' time, and reducing the pig density and thus the risk of future spread of the disease;

*Article 1*

The following Article 4a is hereby inserted in Regulation (EC) No 413/97:

*Article 4a*

Whereas the Dutch authorities introduced such a ban on insemination in regions with a high pig density from 3 June 1997; whereas producers must keep non-covered sows on their holding until the ban is lifted and they may recommence the production of piglets; whereas it is therefore justified to offset the costs incurred in maintaining those sows by means of aid granted for each month of the period in which the ban on insemination applies;

1. Producers may benefit, on request, from aid granted by the competent Dutch authorities for sows on their holding which are subject to the ban on insemination introduced from 3 June 1997 by the Dutch regulation "Regulation banning pig breeding 1997 — *Regeling fokverbod varkens 1997*".

2. The aid shall be ECU 32 per sow per month. It shall be granted for eligible sows kept on the applicant's holding throughout the duration of the ban on insemination and inseminated within four months of the lifting of the ban. Each sow shall remain uncovered for a period at least as long as the ban on insemination. The number of months for which the aid is granted shall be equal to the duration of the ban on insemination. The aid may be paid out six months after the entry into force of the ban on insemination at the earliest.

<sup>(1)</sup> OJ No L 282, 1. 11. 1975, p. 1.<sup>(2)</sup> OJ No L 349, 31. 12. 1994, p. 105.<sup>(3)</sup> OJ No L 62, 4. 3. 1997, p. 26.<sup>(4)</sup> OJ No L 202, 30. 7. 1997, p. 40.<sup>(5)</sup> OJ No L 391, 31. 12. 1992, p. 36.<sup>(6)</sup> OJ No L 197, 22. 8. 1995, p. 2.

3. The Dutch authorities shall adopt all necessary measures to apply the aid referred to in paragraph 1, in particular provisions relating to the definition of eligible animals and their identification.

As regards the lodging of applications, inspection measures and penalties, Article 5, Article 6 (1), (3) and (4) and the first subparagraph of Article 6 (5), Article 8, Article 10 (2) and (5) and Articles 11, 12, 13 and 14 of Commission Regulation (EEC) No 3887/92 (\*) laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes shall apply *mutatis mutandis*.

4. The Dutch authorities shall notify the Commission within 30 days of the adoption of this Regulation of the measures they have taken. They shall inform the Commission regularly of the application of the aid scheme set up under this Article.

5. Seventy per cent of the expenditure on this aid shall be covered by the Community budget, for a total maximum number of 220 000 sows.

However, the Community financial contribution may not exceed the Community expenditure which would

have been incurred in granting the aid referred to in Article 1 (4) for the delivery of very young piglets produced by an equal number of sows in a period equal to the duration of the ban on insemination, less 116 days.

Advance payments exceeding the definitively eligible amount in accordance with the preceding subparagraph calculated after the lifting of the ban on insemination shall be reimbursed to the EAGGF in the month following the decision fixing that eligible amount.

(\*) OJ No L 391, 31. 12. 1992, p. 36.'

#### Article 2

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

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

Done at Brussels, 1 August 1997.

*For the Commission*

Monika WULF-MATHIES

*Member of the Commission*

## COMMISSION REGULATION (EC) No 1565/97

of 1 August 1997

authorizing the processing into alcohol of table grapes withdrawn from the market in the 1997/98 marketing year

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organization of the market in fruit and vegetables<sup>(1)</sup>, and in particular Articles 23, 30 and 57 thereof,

Whereas Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine<sup>(2)</sup>, as last amended by Regulation (EC) No 1417/97<sup>(3)</sup>, prohibits the making of wine from grape varieties classed as table grapes from 1 August 1997; whereas the abolition of this possible alternative use for table grapes is causing serious difficulties on the fresh fruit market in some regions of the Community where large quantities of the product were turned into wine and then distilled; whereas these difficulties are likely to result in a marked increase in withdrawals with no possibility of disposal for the producer organizations concerned; whereas it therefore appears justified to implement a transitional measure under the common organization of the market in fresh produce where the abovementioned difficulties arise;

Whereas provision should be made, for a transitional period, for the Member States to be able to distil table grapes withdrawn from the market; whereas such distillation must be carried out by authorized distilleries providing the guarantees required as regards technical equipment and controls;

Whereas measures should be laid down ensuring effective controls to prevent such grapes withdrawn from the market from being used for winemaking or as a fermented product in the wine sector; whereas such measures relate to the requirement to restrict the movement of grapes withdrawn to distilleries and add an identifier to the grapes to enable them to be identified and prevent their use in the wine sector; whereas provision should also be made for the denaturing of the alcohol obtained from distillation of such grapes and to allow disposal of the alcohol only outside the agricultural and spirit drink sectors;

Whereas Member States are required to ensure equal access to all operators concerned by means of appropriate procedures such as invitations to tender or public auctions; whereas they are also required to prevent any distortion of the wine and alcohol market; whereas they must also ensure that the method by which the alcohol is obtained is controlled;

Whereas the Management Committee for Fresh Fruit and Vegetables has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

*Article 1*

For the 1997/98 marketing year, table grapes withdrawn from the market pursuant to Article 23 (1) of Regulation (EC) No 2200/96 may be processed into alcohol of a strength of more than 80 % vol by direct distillation of the product under the conditions laid down in this Regulation.

*Article 2*

Table grapes withdrawn from the market and intended for processing into alcohol shall be distilled before the end of the 1997/98 marketing year.

*Article 3*

1. The table grapes referred to in Article 1 shall be delivered to authorized distilleries. Member States shall communicate to the Commission a list of authorized distilleries.

2. The authorized distilleries shall carry out the distillation into alcohol of table grapes received in accordance with Article 4, under official control.

*Article 4*

1. Table grapes withdrawn from the market and intended for distillation may not be moved except to an authorized distillery.

2. An identifier, authorized by national provisions, shall be added to the table grapes withdrawn from the market, to enable them to be identified at any moment and prevent their use in the wine sector.

<sup>(1)</sup> OJ No L 297, 21. 11. 1996, p. 1.

<sup>(2)</sup> OJ No L 84, 27. 3. 1987, p. 1.

<sup>(3)</sup> OJ No L 196, 24. 7. 1997, p. 10.

*Article 5*

1. The alcohol obtained from distillation of the table grapes shall be denatured from the moment it is obtained with the markers laid down for that purpose in Regulation (EC) No 3199/93<sup>(1)</sup>.

2. The alcohol resulting from such distillation shall not be used for food purposes or used in the spirit drink sector.

*Article 6*

Alcohol obtained from table grapes withdrawn from the market shall be excluded from the grant of any Community financing.

*Article 7*

1. Member States shall take all measures necessary
  - to ensure equal access for operators to the measure provided for in this Regulation; to that end, they may use a tendering procedure or public auctions,
  - to avoid distortion on the wine and alcohol market.
2. Member States shall take the measures necessary to ensure that the method used for obtaining alcohol from table grapes withdrawn from the market is controlled.

*Article 8*

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

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

Done at Brussels, 1 August 1997.

*For the Commission*

Monika WULF-MATHIES

*Member of the Commission*

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<sup>(1)</sup> OJ No L 288, 23. 11. 1993, p. 12.

## COMMISSION REGULATION (EC) No 1566/97

of 1 August 1997

derogating from Regulation (EC) No 762/94 laying down detailed rules for the application of Council Regulation (EEC) No 1765/92 with regard to the set-aside scheme

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops <sup>(1)</sup>, as last amended by Regulation (EC) No 1422/97 <sup>(2)</sup>, and in particular Article 12 thereof,

Whereas Commission Regulation (EC) No 762/94 <sup>(3)</sup>, as last amended by Regulation (EC) No 2930/95 <sup>(4)</sup>, lays down detailed rules for the application of Regulation (EEC) No 1765/92 with regard to the set-aside scheme and provides in particular that areas set aside are to remain set aside until 31 August at the earliest;

Whereas some regions in the Community were affected by exceptional floods in July 1997; whereas this makes it difficult to graze livestock in the usual places; whereas temporary alternatives should therefore be found for sheltering and feeding livestock; whereas the use of land set aside under the arable crop scheme could relieve the situation; whereas, however, measures should be provided for to ensure that such land is not put to any lucrative use;

Whereas it is therefore necessary to derogate from Regulation (EC) No 762/94 with effect from 23 July 1997;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Joint Management Committee for Cereals, Oils and Fats and Dried Fodder,

HAS ADOPTED THIS REGULATION:

*Article 1*

For the 1997/98 marketing year and notwithstanding Article 3 (3) and the second indent of Article 3 (4) of Regulation (EC) No 762/94, the deadline 31 August is hereby brought forward to 22 July 1997 in the regions referred to in the Annex.

*Article 2*

The Member States concerned shall take all the measures necessary to ensure that the set-aside land made available to breeders in the regions referred to for use as pasture-land is not put to any lucrative use.

*Article 3*

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

It shall apply with effect from 23 July 1997.

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

Done at Brussels, 1 August 1997.

*For the Commission*

Monika WULF-MATHIES

*Member of the Commission*

<sup>(1)</sup> OJ No L 181, 1. 7. 1992, p. 12.

<sup>(2)</sup> OJ No L 196, 24. 7. 1997, p. 18.

<sup>(3)</sup> OJ No L 90, 7. 4. 1994, p. 8.

<sup>(4)</sup> OJ No L 307, 20. 12. 1995, p. 8.

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*ANNEX*

## 1. AUSTRIA

**Niederösterreich***Verwaltungsbezirke:*

- Gänserndorf
- Bruck/Leitha
- Baden
- Mödling
- Wiener Neustadt
- Neunkirchen
- Lilienfeld
- St Pölten
- Tulln
- Wien-Umgebung

## 2. GERMANY

**Brandenburg***Landkreise:*

- Uckermark
  - Barnim
  - Märkisch-Oderland
  - Oder-Spree
  - Oberhavel
  - Dahme-Spreewald
  - Spree-Neiße
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**COUNCIL REGULATION (EC) No 1567/97  
of 1 August 1997**

**imposing a definitive anti-dumping duty on imports of leather handbags  
originating in the People's Republic of China and terminating the proceeding  
concerning imports of plastic and textile handbags originating in the People's  
Republic of China**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community <sup>(1)</sup>, and in particular Articles 9 (2), 9 (4) and 10 (2) thereof,

Having regard to the proposal presented by the Commission after consulting the Advisory Committee,

Whereas:

of provisional measures, the Commission exceptionally agreed to include these parties in the investigation regarding Community interest.

- (4) Upon request, parties were informed in writing of the essential facts and considerations on the basis of which it was intended to recommend both the imposition of definitive duties and the definitive collection of the amounts secured by way of provisional duty with respect to leather handbags, and further to terminate the proceeding with respect to plastic and textile handbags.
- (5) The oral and written comments presented by the parties were considered, and, where appropriate, the Commission's findings were modified to take account of them.

**A. PROVISIONAL MEASURES**

- (1) By Regulation (EC) No 209/97 <sup>(2)</sup> the Commission imposed a provisional anti-dumping duty on imports into the Community of handbags originating in the People's Republic of China and falling within CN codes 4202 21 00 (leather), 4202 22 10 (plastic) and 4202 22 90 (textiles).

**C. SUPPORT FOR THE COMPLAINT**

- (6) Some interested parties have claimed that the complaint did not receive support from a major proportion of total Community production because there was no evidence that individual producers accounting for a major proportion gave such support. They also pointed out that the opposition of several National Federations affects the representativeness of the complainant.
- (7) After examination prior to the initiation of the proceeding, it was determined that the National Federations of Belgium, France, Greece, Italy, Portugal, Spain and the United Kingdom supported the complaint. The production of their associated members accounts for a major proportion (around 70 %) of total Community production under the terms of Article 5 (4) of Regulation (EC) No 384/96 (hereinafter referred to as 'the basic regulation').
- (8) The support of the members of the National Federations (i.e. the individual companies) was obtained by the European Committee of National Federations of the Leather, Travel Goods and Allied Industries (CEDIM) through the abovementioned National Federations, which have the legal capacity to represent their members.

**B. SUBSEQUENT PROCEDURE**

- (2) Subsequent to the imposition of the provisional anti-dumping duty, the interested parties who so requested were granted an opportunity to be heard by the Commission. A number of these parties also made written submissions making their views on the findings known.
- (3) The Commission's services investigated further aspects of the Community interest and sought and verified all information deemed necessary for the definitive findings. Because of the large number of parties which made themselves known well after the expiry of the deadline and the arguments raised by interested parties at a very advanced stage of the investigation and immediately after the imposition

<sup>(1)</sup> OJ No L 56, 6. 3. 1996, p. 1.

<sup>(2)</sup> OJ No L 33, 4. 2. 1997, p. 11.

- (9) No opposition was registered prior to initiation of the investigation as three other National Federation members of CEDIM (Austria, Germany and the Netherlands) agreed within CEDIM not to oppose the complaint. Finally no company or National Federation from the remaining five other Member States (Denmark, Finland, Ireland, Luxembourg and Sweden) expressed opposition to the complaint.
- (10) Subsequent to the initiation of the proceeding, the British Federation decided to withdraw its support. The Austrian, German and Dutch Federations, which initially abstained, also decided to oppose the proceeding. This change in position cannot throw into question retrospectively the validity of the initiation of the proceeding. Given the low production in these countries (less than 7 % of total Community production) such opposition does not call into question the fact that the complainant continues to represent a major proportion of total Community production.
- (11) Finally, almost all companies which expressed opposition to the proceeding are importers and retailers of handbags, which are not producing the product concerned. Their opposition is therefore irrelevant for evaluating the representativeness of the complaint.
- (12) It can therefore be concluded that, prior to the initiation of the proceeding, the Commission sought and obtained, from the complainant, evidence that it fulfilled the requirement of Article 5 (4) of the basic regulation with regard to representativeness and that the required degree of support was maintained throughout the proceeding.
- National Federations were thus allowed to pre-select only Community producers who supported the complaint, those whose financial indicators facilitated findings of injury or those willing to cooperate.
- (14) The sample of Community producers was based on detailed information previously not available to the National Federations with that degree of detail or for the period in question. Therefore, it is considered that a valid sample of Community producers could not have been selected on the basis of the list of members submitted by the National Federations as the basis for the complaint.
- (15) The argument that the National Federations could have pre-selected those Community producers whose indicators facilitated findings of injury is also incorrect. Indeed, it should be recalled that general data concerning production, sales, consumption and employment have been assessed at total Community industry level where no pre-selection is possible. As far as data concerning the sampled Community producers are concerned, this information is of such a detailed and confidential nature that it is not normally submitted to the National Federations and therefore leaves no scope for any pre-selection by any National Federations. Thus, this argument should also be rejected.
- (16) Some parties have also argued that the non-disclosure of the identity of the sampled Community producers has resulted in a denial of their right of defence.

#### D. INVESTIGATION

- (13) Some interested parties have claimed that the sample of Community producers as described in recital 5 of Commission Regulation (EC) No 209/97 is neither representative nor statistically valid because the sampled companies were selected from a separate list of companies submitted by the respective National Federations and not from the membership lists used to assess the representativeness of the complaint. These parties claim that the
- (17) The threat of commercial retaliation is considered to be a serious commercial pressure justifying the non-disclosure of the identity of the Community producers. Moreover, it is not considered that the lack of knowledge of the identity of the sample Community producers hampers the rights of defence of interested parties who have access to the non-confidential versions of the responses to the questionnaires submitted by other interested parties during the proceeding.
- (18) One interested party has claimed that the sample of unrelated importers is distorted by the fact that only large unrelated importers have been sampled. Because of their bargaining power these importers tend to import at lower prices, which has resulted in a distortion in the dumping margins found.

- (19) This claim is unfounded; unrelated importers were sampled according to their volume of imports and employment, to reflect large, medium and small importers.

The names of the sampled unrelated importers in France in recital 10 of Regulation (EC) No 209/97 should be amended as follows: 'Dané & Galiay (Paris)' should read 'Pollyconcept SA'. This does not affect the validity of the findings of the Commission, since the data of the latter has been used consistently.

Some parties have also claimed that a distinction should further be made between leather handbags, patch leather handbags and polyurethane (PU) coated split leather handbags in view of the alleged differences in style, quality, finish, use, price and consumer perception.

- (20) Subsequent to the imposition of the provisional anti-dumping measures, a producer/exporter (Gebr. Picard International Ltd) was sent, on its request, an exporter's questionnaire and it submitted a complete reply. This producer/exporter had not been investigated prior to Regulation (EC) No 209/97 as it had initially focused on its role as an importer, and not as a related exporter, although it had as such manifested itself within the time-limits established in paragraph 7 of the Notice of Initiation.

- (21) A large number of producers/exporters manifested themselves and offered to cooperate immediately before or following the publication of Regulation (EC) No 209/97, i.e. well beyond the time-limit established in paragraph 7 of the Notice of Initiation. Accordingly, these companies have not been considered to be interested parties in the proceeding and their requests for individual treatment have been dismissed as being inadmissible on these grounds.

- (24) It should be recalled that it is the standard practice of the Commission, as confirmed by the European Court of Justice, that the product under consideration be defined according to its basic physical characteristics, use, interchangeability and consumer perception.

- (25) In this respect, the investigation has shown that the different types of raw materials used in the manufacture of leather and synthetic handbags confer on the product distinctly different physical characteristics.

While their general use is the same, it has now been found that the consumer has a clearly different perception of leather handbags and synthetic handbags respectively, consumer choice being governed mainly by the type of external raw material of the handbag.

- (26) The investigation has also shown that in the handbag market stable consumer preferences exist. Therefore, the interchangeability of the two types of handbags is almost non-existent, except to a very limited extent in the sector of leather-look plastic handbags. This has allowed a notable price differential between leather handbags and synthetic handbags, resulting in two different market segments, separated by clear dividing lines between which it is not considered that interchangeability can take place to a significant degree.

## E. PRODUCT UNDER CONSIDERATION — LIKE PRODUCT

- (27) Therefore, and in accordance with the well-established practice of the institutions concerning the product definition, leather and synthetic handbags are to be considered different products.

### 1. Product under consideration

- (22) For the purpose of the preliminary findings, the Commission considered leather, plastic and textile handbags to be one product, given the fact that they were considered to possess the same characteristics and be intended for the same use.
- (23) After the imposition of provisional measures, several interested parties claimed that a distinction should be made between leather handbags on the one hand and synthetic handbags (plastic/textile) on the other.

### 2. Like product

- (28) Several parties have argued that the leather handbags manufactured in the Community and those imported from the People's Republic of China are not like products in the sense of Article 1 (4) of the basic regulation due to the differences in quality, design and use. It has also been argued that the differences in quality between the imported handbags and those manufactured in the Community are such that both products are not in competition.

- (29) The investigation has further shown that, within each of the two products under consideration (leather handbags/synthetic handbags), imported handbags cover the full range of types, from higher to lower quality, and as such are in direct competition with the entire range of the Community production. These findings are supported by the information supplied on this issue by several cooperating importing-Community producers on this issue showing that the handbags manufactured in the Community and those imported from the People's Republic of China do not have quality differences, both items belong to the same collections and are sold to the same customers. Therefore, across the range there are no quality differences for comparable models.
- (30) Concerning differences in design, it cannot be concluded that these would be such as to constitute a different like product. In this respect, some importers have even acknowledged that they design their handbags in the Community, following the fashion of the season, as is the case with Community manufacturers.
- (33) In view of the fact that leather handbags and synthetic handbags have been considered to be different products, separate normal values were constructed for leather and synthetic handbags, in accordance with Article 2 (7) of the basic regulation, on the basis of the cost of production for these two products of the two cooperating Indonesian producers, to which a reasonable amount for profit and selling, general and administrative costs ('SGA') was added. The findings in the fourth indent of recital 28 of Regulation (EC) No 209/97 on the representativeness of the two Indonesian producers are confirmed in respect of both like products.
- (34) It has been alleged that the cost of production of the cooperating Indonesian producers should be adjusted to take into account the fact the Chinese exporters predominantly import raw materials under inward processing relief procedures. In this respect it should be noted that the raw materials for both like products used by the cooperating Indonesian producers were found to be of non-Indonesian origin and imported into Indonesia free of customs duties under a procedure of inward processing relief. It follows that the procurement patterns in Indonesia and in China are the same and that therefore no adjustment is warranted in this respect.

## F. DUMPING

### 1. Normal value

- (31) As to the selection of the analogue country, one importer alleged that neither Regulation (EC) No 209/97 nor the disclosure documents sufficiently explained why India or Taiwan were not selected as analogue countries. The Council considers however that recitals 24 to 26 of Regulation (EC) No 209/97 are sufficiently precise on this point.
- (32) Several interested parties have requested that the names of the two cooperating Indonesian companies be disclosed alleging that this would be necessary to exercise their rights of defence effectively. The Council, however, does not consider it possible to disclose the names of these companies, as the cooperation of these companies could only be secured provided a strict guarantee of confidential treatment of the identity of the companies were given by the Commission. In addition, supplying the actual names of the companies involved would not add to the rights of defence of these interested parties. In this regard, the essential economic facts characterizing the situation of these two exporters have been set out in recitals 28 and 29 of Regulation (EC) No 209/97.
- (35) It was submitted by one exporter that the percentage of SGA used by the Commission was not representative of the SGA incurred by the Chinese exporters. Accordingly, the SGA has been reviewed on the basis of the actual SGA incurred by the Indonesian exporters of handbags at the level of trade comparable to that of sales made by the Chinese exporters.

### 2. Export price

- (36) In view of the low level of cooperation of Chinese exporters (including exports of Gebr. Picard International Ltd.) in this proceeding, which amounts to only 1,58 % of all exports from the People's Republic of China, the export prices of the cooperating exporters could not be considered representative of the prices charged by exporters which did not cooperate.
- (37) For the purpose of the definitive findings, export prices of the cooperating companies Shilton and Lee & Man in respect of the two like products were established using the same method as for the provisional findings. With regard to these companies,

the findings set out in recitals 33 and 34 of Regulation (EC) No 209/97 are confirmed.

(i.e. separately for leather handbags and synthetic handbags).

- (38) The third cooperating exporter (Gebr. Picard International Ltd), not granted individual treatment by Regulation (EC) No 209/97, was found to make all of its exports to the Community via a related company established in the Community; thus its export prices were constructed on the basis of Article 2 (9) of the basic regulation by deducting, from the prices charged by the related importer to its first independent customers, its SGA and a profit margin based on the average profit of unrelated importers.
- (39) Export prices of the non-cooperating Chinese exporters were established as explained under recital 32 of Regulation (EC) No 209/97. This methodology is herewith confirmed.

### 3. Comparison

- (40) The weighted average normal value fob Indonesia for each of the leather and synthetic handbags was compared with the weighted average export price fob China with respect to each of the two like products concerned. For the purpose of ensuring a fair comparison between normal value and the export price, due allowance in the form of adjustments was made in accordance with Article 2 (10) of the basic regulation, where claims were made and satisfactory evidence was supplied demonstrating that such differences affected price comparability.
- (41) It was argued by one exporter that the comparison of normal value and export price should be made in respect of every single handbag model or catalogue number (commonly referred to as 'style number') rather than on the basis of averages of each like product. The Council considers, however, that as a practical matter a comparison at this level is not possible in view of the extreme variety of model numbers, each having different physical characteristics and combinations of features and accessories. In addition, no objective criteria were found to exist for distinguishing particular categories or models within the respective like product; for similar reasons, it was not possible for the Commission to compare normal value and export price on the basis of categories regrouping model or catalogue numbers. It follows that the only reasonable method for the Commission was to compare normal value and export price in respect of averages for each of the two products concerned

### 4. Dumping margins

- (42) As indicated above, three cooperating producers/exporters — all privately-owned companies based in Hong Kong with handbag factories in China — presented admissible requests for individual treatment i.e. the establishment of separate export prices and thus of individual dumping and injury margins.
- (43) The findings set out in recitals 37 to 40 of Regulation (EC) No 209/97, with regard to the two companies having been provisionally granted individual treatment, are confirmed.
- (44) In addition, the claim for individual treatment of a third exporter/producer (Gebr. Picard International Ltd) was investigated. It was found that its factual situation was very similar to that of the two companies having been provisionally granted individual treatment and described in recitals 38 and 39 of Regulation (EC) No 209/97.
- (45) The Council considers that the three cooperating companies claiming individual treatment enjoyed a degree of genuine independence from the public Chinese authorities comparable to that which would prevail in a market economy country, and thus that the risk of channelling exports through these sources with individual anti-dumping duty rates would seem to be very limited. Accordingly, separate export prices and individual dumping and injury margins have been established for the three exporters concerned, as an exception to the principle of calculating country-wide dumping margins in respect of non-market economy countries (Article 9 (5) of the basic regulation). It should be pointed out that individual treatment is granted only in respect of the like product which was actually produced and exported to the Community by the exporter concerned during the investigation period, i.e. leather handbags in respect of Shilton and Gebr. Picard International Ltd. and synthetic handbags in respect of Lee & Man.
- (46) The dumping margins established for the companies granted individual treatment have been established as follows:
- Shilton, in respect of leather handbags: nil,
  - Gebr. Picard International Ltd, in respect of leather handbags: 7,7 %,
  - Lee & Man, in respect of synthetic handbags: 64,7 %.

- (47) The weighted average dumping margin for the exporters not granted individual treatment has been established at:

- 83,5 % in respect of leather handbags, and
- 151 % in respect of synthetic handbags

of the cif export price Community frontier duty unpaid.

## G. LEATHER HANDBAGS

### A. INJURY

#### 1. Consumption in the Community market

- (48) Between 1992 and the investigation period, the consumption of leather handbags in the Community increased from around 51 million units to 52,3 million units, i.e. an increase of approximately 2,5 %.

#### 2. Volume and market share of imports

- (49) Between 1992 and the investigation period, imports of leather handbags originating in the People's Republic of China increased from 8,2 million units to 10,4 million units, i.e. by 27 %. When measured in value, the increase amounts to 15 %, from ECU 43,6 million in 1992 to ECU 50 million in the investigation period.
- (50) The share of the Community market taken up by imports of leather handbags originating in the People's Republic of China increased from 16 % in 1992 to 20 % in the investigation period.

#### 3. Prices of dumped imports and undercutting

- (51) As mentioned in the provisional regulation, due to the non-cooperation by the Chinese exporters, official statistical data have been used for the analysis of the price evolution of imported leather handbags. Thus, the average cif import price of leather handbags has decreased by 9 %, from ECU 5,29 per unit in 1992 to ECU 4,79 per unit in the investigation period.
- (52) The calculation of the price undercutting has followed the methodology used in Regulation (EC) No 209/97, that is, the cif imports prices of the sampled unrelated importers, adjusted to customer deliver level, were compared to the selling prices in the Community of those Community producers whose production comprised the most basic types sold, at the same level of trade.

- (53) When expressed as a percentage of the Community producers' selling prices, the comparison with import prices of unrelated importers, as recalculated following substantiated arguments submitted by interested parties after the imposition of provisional measures, show an undercutting for leather handbags amounting to 31,4 %.

## 4. Situation of the Community industry

### (a) Production

- (54) Production of leather handbags by the Community industry increased from an estimated 26,5 million units in 1992 to 30,3 million units in the investigation period. When measured in value, production increased from an estimated ECU 905 million in 1992 to ECU 1 100 million in the investigation period, i.e. by 21 %.

### (b) Sales volume

- (55) A decline in sales volume in the Community of output manufactured by the Community industry between 1992 and the investigation period has been established. Indeed, sales decreased from around 21 million units in 1992 to 20 million units in the investigation period, i.e. a decrease of around 5 %. When measured in value, sales decreased by around 8 %, from around ECU 600 million in 1992 to ECU 550 million in the investigation period.

### (c) Market share

- (56) The share of the Community market occupied by the Community industry when measured in units decreased from around 41 % in 1992 to around 39 % during the investigation period.

### (d) Profitability and employment

- (57) Following Article 3 (8) of the basic regulation, profitability and employment of Community producers has been calculated for the narrowest group of products for which information has been provided by the sampled Community producers, that is, handbags made of both leather and synthetics.

The revised weighted average profitability concerning sales in the Community shows a decline from 5,9 % in 1992 to 1,3 % during the investigation period.

On all sales, the Community industry achieved an overall profit of around 5 %.

- (58) Employment figures in the handbag sector as extrapolated from the information received by Community producers in the Community interest

analysis show that employment declined from about 18 600 people in 1992 to 14 000 people in the investigation period, a drop of 25 %.

### 5. Conclusion on injury

- (59) The economic indicators of the Community industry examined in conjunction with the conclusions drawn in respect of the volume of imports and their prices show that the Community producers' situation has deteriorated between 1992 and the investigation period in respect of leather handbags. As has been demonstrated, the Community industry as a whole suffered declining sales volume, loss of market share, declining employment and declining profitability in the Community market.
- (60) As far as production is concerned, further reference is made to the fact that exports of the Community producers increased significantly.
- (61) It is therefore the view of the Council that the situation of the Community industry is clearly precarious and the trend points to a further deterioration.

## B. CAUSATION

### 1. Effects on the dumped imports

- (62) The penetration of the Community market by imports of leather handbags from the People's Republic of China at dumped prices which significantly undercut the prices of Community producers coincided with a loss of market share and a deterioration of the financial situation of the Community industry. Given the increasing volume of low priced, dumped handbags, it became apparent during the investigation that many Community producers were unable to compete against the dumped imports.
- (63) Moreover, due to the fact that competition takes place across the range and to the fact that the distribution system is shared by products both manufactured in the Community and imported from the People's Republic of China, the high price differential in the form of undercutting is a direct cause of the precarious situation of the Community industry.
- (64) Accordingly, it is considered that dumped imports from the People's Republic of China increased at a significant rate and are likely to enter at prices which will prevent price increases.

### 2. Effects of other factors

- (65) Care was taken to ensure that any impact on the Community industry caused by other factors was not attributed to the imports concerned.
- (66) In this respect, particular reference was made by certain interested parties to imports into the Community of handbags originating in India.

Available Eurostat data shows that the volume of imports of leather handbags from India has remained stable between 1992 and the investigation period at around 5 million units. As regards the prices of these imports, these have increased from around ECU 8 in 1992 to around ECU 9,2 in the investigation period, an increase of 15 %, well above the prices of Chinese handbags. The share of volume of the Community market occupied by imports of handbags from India has decreased by 4 % from 1992 to the investigation period.

- (67) As to imports of leather handbags from Hong Kong, when measured in units, these have increased from around 400 000 units in 1992 to around 750 000 units in the investigation period. With respect to total imports of handbags into the Community, Hong Kong increased its share of the volume of Community handbag imports from 1,9 % in 1992 to 3,3 % in the investigation period. However, the share of the Community market occupied by imports of handbags originating in Hong Kong has remained at relatively low levels, increasing from 0,6 % in 1992 to 1,4 % in volume in the investigation period.
- (68) As to imports from other third countries, their share of total imports has decreased from 32 % in 1992 to 30 % in the investigation period. The share of the Community market occupied by these imports has decreased from 12 % of volume in 1992 to 11 % in the investigation period.

It should be noted that the Community market share of imports from all third countries, excluding the People's Republic of China, has remained stable from 1992 to the investigation period, at 23 %, when measured in units.

### 3. Conclusion on causation

- (69) Although certain other factors may have contributed to the precarious situation of the Community industry, taken in isolation, the high volumes of dumped imports from the People's Republic of China are threatening to cause material injury to

the Community industry. This conclusion is based on the various elements set out above and in particular the level of price undercutting, the market share gained by imports of handbags from this country, at the expense of the Community industry, and the deterioration of the profitability of the Community producers.

### C. COMMUNITY INTEREST

#### 1. General considerations

- (70) It should be recalled from recitals 76 *et seq.* of Regulation (EC) No 209/97 that an appreciation of the various interests, including the interests of the Community industry, importers, distributors and retailers was made, and that the Commission provisionally concluded that there were no compelling reasons not to take action against the imports in question. Furthermore, the Commission undertook to conduct an examination of certain issues concerning Community interest which had not been sufficiently substantiated when the provisional determination took place.

#### 2. Impact on the Community industry

##### (a) *Current situation of the industry*

- (71) The information received from the 50 Community producers responding to the questionnaire on Community interest addressed to interested parties and representing around 20 % of total handbag Community production shows that a major proportion of the production in the Community is of leather handbags. In terms of value, 93 % of the total Community production is of leather handbags.
- (72) Substantial creative value is added to the product in the Community in the form of design, innovation and quality. Community producers have a special know-how in working the leather, which is the result of a long tradition in this sector in the Community.
- (73) The share of the Community leather handbag market held by the Community industry was 39 % in the investigation period, a sign of its economic importance.
- (74) The viability of the Community industry is also evident from its performance on the export markets, significant and increasing due to the loco-

motive effect of the brand names promoting handbags 'made in Europe'. Exports of leather handbags by the Community industry have increased from around 6 million units in 1992 to around 10 million units in the investigation period.

##### (b) *Effects of the imposition/non-imposition of measures*

- (75) In the absence of anti-dumping measures, there is no element that indicates that the negative situation of the Community industry would not continue, to the detriment of an industry that is inherently both viable and competitive.
- (76) The situation of importing producers in the Community has been examined and it is concluded that the majority of the companies investigated by the Commission manufacture leather handbags in the Community and import synthetic handbags from the People's Republic of China. In those cases where such importing producers imported leather handbags, such imports are, in general, ancillary.
- #### 3. Impact on importers-traders
- (77) Further investigation has shown that the full amount of the provisional anti-dumping duty (39,2 %) is being shared, generally in an equal proportion, by the different steps in the distribution chain: in particular the importer, the retailer and, finally, the consumer. This seems to be possible due to the average mark up of importers and retailers respectively of around 70 % on cif including a profit of 14 % on turnover.
- (78) The impact of any definitive measures on importers and traders has to be seen in the light of the findings of the product concerned. Indeed, a reduction in the scope of application of the measures to leather handbags only (see recitals 118 *et seq.*) will minimize the impact of measures on these interested parties.
- (79) Some importers have claimed that they had to cease their activity or are experiencing financial difficulties. Since importers are generally purchasing in US dollars, they are currently suffering from the strength of the US dollar against European currencies. It is concluded, therefore, that the weak financial situation of certain importers/traders is also attributable to currency fluctuations.

(80) As to the argument that the imposition of anti-dumping duties will not have the effect of increasing sales of the Community producers but would make importers purchase from other third countries, it should be mentioned that it is not the purpose of any anti-dumping measure to limit imports from third countries at non-dumped prices. Moreover, the investigation has confirmed that it is not likely that a major proportion of importers will source leather handbags from other third countries, due to the skilled labour and know-how necessary to manufacture leather handbags currently available in the People's Republic of China.

(81) Given the above, measures on imports of leather handbags are not likely to endanger the business performance of the distribution chain.

#### 4. Impact on consumers

(82) As has been mentioned above, the full amount of the duty is currently being shared by the different steps in the distribution chain. Therefore, the effect of the duty on the consumer in the form of a price increase is not likely to exceed 9 %.

(83) Furthermore, leather handbags being a fashion product not purchased on regular basis, a moderate increase in the prices for the consumer should be seen in the light of the lack of a clear perception of the appropriate price for a handbag for a consumer, which is not likely to affect demand substantially in the long term.

(84) In view of this, it is not expected that definitive measures on imports of leather handbags will have a significant impact on the consumer.

#### 5. Conclusion on Community interest

(85) In the light of the above, it is considered that the conclusions drawn by the Commission in Regulation (EC) No 209/97 concerning Community interest should be confirmed with respect to leather handbags. There are no compelling reasons which would lead to the conclusion that adopting definitive measures would not be in the interest of the Community.

### H. SYNTHETIC HANDBAGS

#### A. INJURY

##### 1. Consumption in the Community market

(86) Between 1992 and the investigation period, the consumption of synthetic handbags in the

Community increased from 73 million units to 96 million units, i.e. an increase of approximately 31 %.

##### 2. Volume and market share of imports

(87) Between 1992 and the investigation period, imports of synthetic handbags originating in the People's Republic of China increased from 53 million units to 78 million units, i.e. by 47 %. When measured in value, the increase amounts to 31 %, from ECU 152 million in 1992 to ECU 199 million in the investigation period.

(88) The share of the Community market taken by imports of handbags originating in the People's Republic of China increased from 73 % in 1992 to 81 % in the investigation period.

##### 3. Prices of dumped imports and undercutting

(89) The average cif import price of synthetic handbags as reported by Eurostat has decreased by 10 %, from ECU 2,8 per unit in 1992 to ECU 2,5 per unit in the investigation period.

(90) The undercutting margin amounts to 27,8 % for synthetic handbags.

##### 4. Situation of the Community industry

###### (a) Production

(91) The estimated production of synthetic handbags by the Community industry has remained stable at around 14 million units between 1992 and the investigation period.

###### (b) Sales volume

(92) A decline in sales volume in the Community of handbags manufactured by the Community industry of around 70 % between 1992 and the investigation period has been established. Indeed, sales decreased from around 6 million units in 1992 to around 2 million units in the investigation period.

###### (c) Market share

(93) The share of the Community market occupied by the Community industry when measured in units decreased from around 9 % in 1992 to around 3 % during the investigation period.

(d) *Profitability and employment*

- (94) The overall profitability of Community producers declined progressively from 5,9 % in 1992 to 1,3 % during the investigation period.
- (95) Employment figures in the handbag sector declined from about 18 600 people in 1992 to 14 000 people in the investigation period, a drop of 25 %.

**5. Conclusion on injury**

- (96) It is considered that the Community industry of synthetic handbags suffered material injury within the meaning of Article 3 of the basic regulation.
- (97) This stems from the deterioration of the economic factors of the Community industry during the period 1992 to the investigation period, namely declining sales volume, loss of market share, declining employment and declining profitability, as seen in the light of the increase in the volume of imports of synthetic handbags from the People's Republic of China and its prices.

**B. CAUSATION**

**1. Effects of the dumped imports**

- (98) Given the above findings, it is considered that the imports of synthetic handbags from the People's Republic of China had, taken in isolation, a material impact on the situation of the Community industry.
- (99) Indeed, given that synthetic handbags manufactured in the Community and those imported from the People's Republic of China compete across the range, where the distribution system is common to both products, the undercutting found indicates that, taken in isolation, imports of synthetic handbags from the People's Republic of China caused material injury to the Community industry.

**2. Effects of other factors: imports from third countries**

- (100) The Commission has examined the impact on the Community industry of factors other than imports of synthetic handbags from the People's Republic of China, namely, imports from other third countries.

- (101) Concerning India, available Eurostat data shows that even if the volume of imports from India has increased from 1,6 million units in 1992 to 3,4 million units in the investigation period, their share of total imports of synthetic handbags into the Community has increased only from 2,6 % in 1992 to 3,6 % in the investigation period. The share of the Community synthetic handbag market occupied by these imports has remained at a low level, being 3,5 % in the investigation period.
- (102) Imports of synthetic handbags from Hong Kong, when measured in units, have increased from 1,5 million units in 1992 to 6,5 million units in the investigation period. However, their share of the Community synthetic handbag market has remained at a relatively low level, increasing from 2 % in 1992 to 7 % in the investigation period.
- (103) As to imports from other third countries, their share of the total import of synthetic handbags into the Community has decreased from 11 % in 1992 to 5,5 % in the investigation period. The share of the Community synthetic handbags market occupied by these imports has decreased from 9,7 % in 1992 to 5 % in the investigation period.

**3. Conclusion on causation**

- (104) The above analysis shows that, even if certain other factors might have contributed to the injury suffered by the Community industry, it is considered that, taken in isolation, the high volume of synthetic handbags imported from the People's Republic of China at dumped prices have caused material injury to the Community industry.

**C. COMMUNITY INTEREST**

**1. Community industry**

- (105) The indicators of the Community synthetic handbag industry show that it is not likely that the Community industry would benefit from any anti-dumping measure imposed. The imposition of measures would not have the effect of increasing the sales of the Community synthetic handbags manufacturers, given that it is likely that synthetic handbags will be sourced from other third countries in the medium term. Indeed, it has been ascertained that the production process in the synthetic sector is of such a nature that it can be transferred to another third country within a relatively short period of time. In this respect, evidence

has been provided by some interested parties showing that this has already taken place in some instances. There are, therefore, strong reasons to expect that most of the volume and price benefits which anti-dumping measures may have will not go to the Community industry but to imports from other third countries.

hand, the employment levels of the Community synthetic handbags manufacturers are not expected to decrease to a significant extent, in view of the fact that the Community industry is concentrating on the export markets.

- (106) In addition, the consequences of the non-imposition of measures on the employment levels of the Community synthetic handbag producers is relatively limited, given the low sales volume in the Community of Community produced synthetic handbags and the estimated employment figures for synthetic handbags of around 500 employees. While these jobs may be exposed to competition from dumped imports of handbags from the People's Republic of China, this figure has to be compared to a total employment figure for the entire Community handbags sector of around 14 000 employees. In this respect, it is expected that an increase in the sales volume of the Community manufacturers of leather handbags may have the effect of offsetting this negative impact, if any.

## 2. Impact on importers/traders

- (107) In view of the high share of the Community synthetic handbag market held by imports from the People's Republic of China, if definitive anti-dumping measures of the provisional amount were to be imposed, a substantial impact on Community importers and traders would be expected.
- (108) Indeed, a comparison of the market shares held respectively by the Community industry (around 2 % in the investigation period) and the imports from the People's Republic of China (around 80 % in the investigation period) indicate that the resulting negative impact on importers and traders of the product would be clearly disproportionate to any possible benefit in the short term to the Community industry which would be gained through the imposition of anti-dumping measures.
- (109) The estimated employment for the distribution chain of synthetic handbags has been estimated at around 4 100 employees. It is considered that the imposition of anti-dumping measures on imports of synthetic handbags will have, at least in the medium term, a negative impact on this employment. Indeed, since the expected switch in the source of supply to other third countries will take place in the medium term, it is expected that in the meantime a certain number of jobs in the distribution sector will be at risk. On the other

## 3. Impact on consumers

- (110) In this respect, it has to be recalled that, should a definitive duty be imposed, a shortage in supply will occur, at least in the short term, thus restricting consumer choice.

The effect on the consumer in the form of a certain price increase should also be seen in the light of the likely absence of any benefit for the Community producer and the negative impact on the distribution chain.

## 4. Conclusion on Community interest

- (111) In view of the abovementioned facts and trends which differ significantly from those established in respect of leather handbags, it is considered that there are compelling reasons why the imposition of definitive measures on imports of synthetic handbags is not in the interest of the Community. The negative impact of definitive anti-dumping measures on imports of synthetic handbags from the People's Republic of China would be disproportionate to any actual benefit to the Community industry.

## I. DUTY

### 1. Leather handbags

- (112) Some interested parties have argued that the duty should take the form of a variable duty. However, given the wide variety of leather handbags and the fact that it is considered that competition is taking place across the whole range of leather handbags and not among those in the lower price range, it is considered that measures should take the form of an *ad valorem* duty.

The provisional conclusions with respect to the type of duty to be applied are therefore confirmed.

- (113) As for the calculation of the injury threshold, i.e. price underselling, the Council confirms the methodology followed by Regulation (EC) No 209/97 (recitals 103 to 105). Thus, the weighted average profit shortfall of the sampled Community

producers during the investigation period was added to the percentage of the undercutting found. On this basis, the weighted average injury margin for leather handbags, expressed as a percentage of the free-at-Community-frontier price, amounts to 38 %.

- (114) For the companies which requested and were granted individual treatment, their injury margin, when expressed as a percentage of the free-at-Community-frontier price amounts to the following:

— for Shilton, given that the dumping margin found is nil, in accordance with Article 7 (2) of the basic regulation, it was not considered necessary to calculate an individual injury margin,

— for Picard, the injury margin amounts to 32,7 %.

- (115) In accordance with Article 7 (2) of the basic regulation, as the injury elimination level is below the dumping margin found, the anti-dumping duty calculated on the basis of the free-at-frontier price should amount to 38 %.

- (116) For the companies which requested and were granted individual treatment, the anti-dumping duty should amount to the following:

— for Shilton: nil,

— for Picard: 7,7 %, which is the dumping margin established for this company.

## 2. Synthetic handbags

- (117) In view of the fact that it is considered that there are compelling reasons not to adopt anti-dumping measures concerning synthetic handbags, the proceeding with respect to imports of plastic handbags (CN code 4202 22 10) and textile handbags (CN code 4202 22 90) should be terminated.

## J. COLLECTION OF PROVISIONAL DUTIES

- (118) Concerning leather handbags, since the Community industry is suffering a threat of material injury, the Council considers it appropriate to decide that, pursuant to Article 10 (2) of the basic

regulation, the amounts secured by way of provisional anti-dumping duty under Regulation (EC) No 209/97 for leather handbags be released.

- (119) The provisional duties secured with respect to plastic and textile handbags should also be released,

HAS ADOPTED THIS REGULATION:

### *Article 1*

1. A definitive anti-dumping duty is hereby imposed on imports of handbags with outer surface of leather, of composition leather or patent leather falling within CN code 4202 21 00 originating in the People's Republic of China.

2. For the purpose of this Regulation, leather handbags shall be understood to mean bags, whether or not with shoulder strap, including those without handle, with outer surface of leather, of composition leather or patent leather, designed primarily to contain small objects for personal use, such as keys, purses, make-up and cigarettes, regardless of their size and form.

3. The rate of the duty shall be 38 % of the net, free-at-frontier price, before duty (Taric 8900), with the exception of imports of leather handbags which are manufactured by the following companies, which shall be subject to the following rates of the duty:

— Jane Shilton (Pacific) Ltd: 0,0 % (Taric additional code 8961),

— Gebr. Picard International Ltd: 7,7 % (Taric additional code 8087).

### *Article 2*

1. The anti-dumping proceeding concerning imports of handbags with outer surface of plastic sheeting or with outer surface of textile materials falling within CN codes 4202 22 10 and 4202 22 90 is hereby terminated.

2. The amounts secured by way of provisional anti-dumping duties under Commission Regulation (EC) No 209/97 shall be released.

### *Article 3*

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

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

Done at Brussels, 1 August 1997.

*For the Council*

*The President*

J. POOS

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## II

*(Acts whose publication is not obligatory)*

## COMMISSION

## COMMISSION DECISION

of 9 July 1997

**on a common technical regulation for the general attachment requirements for terminal equipment to interface to Open Network Provision (ONP) two-wire analogue leased lines**

**(Text with EEA relevance)**

(97/486/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/263/EEC of 29 April 1991 on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity<sup>(1)</sup>, as amended by Directive 93/68/EEC<sup>(2)</sup>, and in particular Article 6 (2), second indent, thereof,

Whereas the Commission has adopted the measure identifying the type of terminal equipment for which a common technical regulation is required, as well as the associated scope statement;

Whereas the corresponding harmonized standards, or parts thereof, implementing the essential requirements which are to be transformed into common technical regulations should be adopted;

Whereas the common technical regulation adopted in this Decision is in accordance with the opinion of ACTE,

HAS ADOPTED THIS DECISION:

*Article 1*

1. This Decision shall apply to terminal equipment intended to be connected to the public telecommunica-

tions network termination point of ONP ordinary quality or special quality voice bandwidth, two-wire analogue leased lines, and falling within the scope of the harmonized standard identified in Article 2 (1).

2. This Decision establishes a common technical regulation covering the general attachment requirements for terminal equipment referred to in paragraph 1.

*Article 2*

1. The common technical regulation shall include the harmonized standard prepared by the relevant standardization body implementing to the extent applicable the essential requirements referred to in Article 4 (c), (d) and (f) of Directive 91/263/EEC. The reference to the standard is set out in the Annex.

2. Terminal equipment covered by this Decision shall comply with the common technical regulation referred to in paragraph 1, shall meet the essential requirements referred to in Article 4 (a) and (b) of Directive 91/263/EEC, and shall meet the requirements of any other applicable Directives, in particular Council Directives 73/23/EEC<sup>(3)</sup> and 89/336/EEC<sup>(4)</sup>.

<sup>(1)</sup> OJ No L 128, 23. 5. 1991, p. 1.

<sup>(2)</sup> OJ No L 220, 31. 8. 1993, p. 1.

<sup>(3)</sup> OJ No L 77, 26. 3. 1973, p. 29.

<sup>(4)</sup> OJ No L 139, 23. 5. 1989, p. 19.

*Article 3*

Notified Bodies designated for carrying out the procedures referred to in Article 9 of Directive 91/263/EEC shall, as regards terminal equipment covered by Article 1 (1) of this Decision, use or ensure the use of the harmonized standard referred to in Article 2 (1) within one year after the notification of this Decision at the latest.

*Article 4*

This Decision is addressed to the Member States.

Done at Brussels, 9 July 1997.

*For the Commission*

Martin BANGEMANN

*Member of the Commission*

*ANNEX***Reference to the applicable harmonized standard**

The harmonized standard referred to in Article 2 of the Decision is:

Business TeleCommunications (BTC);  
Open Network Provision (ONP) technical requirements;  
Ordinary and Special Quality Voice Bandwidth two-wire analogue leased lines (A20 and A2S)  
Attachment requirements for terminal equipment interface

ETSI

European Telecommunications Standards Institute

ETSI Secretariat

TBR 15 — January 1997

(excluding the foreword)

**Additional information**

The European Telecommunications Standards Institute is recognised according to Council Directive 83/189/EEC<sup>(1)</sup>.

The harmonized standard referred to above has been produced according to a Mandate issued in accordance with relevant procedures of Council Directive 83/189/EEC.

The full text of the harmonized standard referenced above can be obtained from:

European Telecommunications Standards Institute,  
650, Route des Lucioles,  
F-06921 Sophia Antipolis Cedex.

European Commission,  
DG XIII/A/2 — (BU 31, 1/7),  
Rue de la Loi/Wetstraat 200,  
B-1049 Brussels.

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<sup>(1)</sup> OJ No L 109, 26. 4. 1983, p. 8.

## COMMISSION DECISION

of 9 July 1997

on a common technical regulation for the general attachment requirements for terminal equipment to interface to Open Network Provision (ONP) four-wire analogue leased lines

(Text with EEA relevance)

(97/487/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/263/EEC of 29 April 1991 on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity<sup>(1)</sup>, as amended by Directive 93/68/EEC<sup>(2)</sup>, and in particular Article 6 (2), second indent, thereof,

Whereas the Commission has adopted the measure identifying the type of terminal equipment for which a common technical regulation is required, as well as the associated scope statement;

Whereas the corresponding harmonized standards, or parts thereof, implementing the essential requirements which are to be transformed into common technical regulations should be adopted;

Whereas the common technical regulation adopted in this Decision is in accordance with the opinion of ACTE,

HAS ADOPTED THIS DECISION:

*Article 1*

1. This Decision shall apply to terminal equipment intended to be connected to the public telecommunications network termination point of ONP ordinary quality or special quality voice bandwidth, four-wire analogue leased lines, and falling within the scope of the harmonized standard identified in Article 2 (1).

2. This Decision establishes a common technical regulation covering the general attachment requirements for terminal equipment referred to in paragraph 1.

*Article 2*

1. The common technical regulation shall include the harmonized standard prepared by the relevant standardization body implementing to the extent applicable the essential requirements referred to in Article 4 (c), (d) and (f) of Directive 91/263/EEC. The reference to the standard is set out in the Annex.

2. Terminal equipment covered by this Decision shall comply with the common technical regulation referred to in paragraph 1, shall meet the essential requirements referred to in Article 4 (a) and (b) of Directive 91/263/EEC, and shall meet the requirements of any other applicable Directives, in particular Council Directives 73/23/EEC<sup>(3)</sup> and 89/336/EEC<sup>(4)</sup>.

*Article 3*

Notified Bodies designated for carrying out the procedures referred to in Article 9 of Directive 91/263/EEC shall, as regards terminal equipment covered by Article 1 (1) of this Decision, use or ensure the use of the harmonized standard referred to in Article 2 (1) within one year after the notification of this Decision at the latest.

*Article 4*

This Decision is addressed to the Member States.

Done at Brussels, 9 July 1997.

*For the Commission*

Martin BANGEMANN

*Member of the Commission*

<sup>(1)</sup> OJ No L 128, 23. 5. 1991, p. 1.

<sup>(2)</sup> OJ No L 220, 31. 8. 1993, p. 1.

<sup>(3)</sup> OJ No L 77, 26. 3. 1973, p. 29.

<sup>(4)</sup> OJ No L 139, 23. 5. 1989, p. 19.

*ANNEX***Reference to the applicable harmonized standard**

The harmonized standard referred to in Article 2 of the Decision is:

Business TeleCommunications (BTC);  
Open Network Provision (ONP) technical requirements;  
Ordinary and Special Quality Voice Bandwidth four-wire analogue leased lines (A40 and A4S)  
Attachment requirements for terminal equipment interface

ETSI

European Telecommunications Standards Institute

ETSI Secretariat

TBR 17 — January 1997

(excluding the foreword)

**Additional information**

The European Telecommunications Standards Institute is recognised according to Council Directive 83/189/EEC<sup>(1)</sup>.

The harmonized standard referred to above has been produced according to a Mandate issued in accordance with relevant procedures of Council Directive 83/189/EEC.

The full text of the harmonized standard referenced above can be obtained from:

European Telecommunications Standards Institute,  
650, Route des Lucioles,  
F-06921 Sophia Antipolis Cedex.

European Commission,  
DG XIII/A/2 — (BU 31, 1/7),  
Rue de la Loi/Wetstraat 200,  
B-1049 Brussels.

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<sup>(1)</sup> OJ No L 109, 26. 4. 1983, p. 8.

## COMMISSION DECISION

of 28 July 1997

authorizing Member States to provide for derogations from certain provisions of Council Directive 77/93/EEC in respect of plants of strawberry (*Fragaria* L.), intended for planting, other than seeds, originating in the Republic of South Africa

(97/488/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community<sup>(1)</sup>, as last amended by Directive 97/14/EC<sup>(2)</sup>, and in particular Article 14 (1) thereof,

Having regard to the request made by the United Kingdom,

Whereas, under the provisions of Directive 77/93/EEC, plants of strawberry (*Fragaria* L.), intended for planting, other than seeds, originating in non-European countries, other than Mediterranean countries, Australia, New Zealand, Canada and the continental states of the USA, may in principle not be introduced into the Community;

Whereas, there is interest in the growing, in the Republic of South Africa, of plants of *Fragaria* L., intended for planting, other than seeds, from plants supplied by a Member State, in order to prolongate the growing season of the plants; whereas these plants could afterwards be re-exported to the Community in order to have them planted for the production of fruit;

Whereas, in respect of the said imports into the Community of the said plants, on the basis of the information supplied by the relevant Member State, it appears that the said strawberry plants can be grown under adequate health conditions in the Elliot district of the North Eastern Cape region, Republic of South Africa;

Whereas, on the basis of the information currently available, there is, under such circumstances, no risk of spreading harmful organisms, affecting plants of *Fragaria* L., provided that certain special technical conditions are satisfied;

Whereas the Commission shall ensure that the Republic of South Africa continues to make available all technical information necessary to assess the phytosanitary status of

strawberry plant production in the Republic of South Africa;

Whereas the measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plant Health,

HAS ADOPTED THIS DECISION:

*Article 1*

1. Member States are hereby authorized to provide, under the conditions laid down in paragraph 2, for a derogation from Article 4 (1) of Directive 77/93/EEC, with regard to the requirements referred to in Annex III (A) (18) for plants of strawberry (*Fragaria* L.), intended for planting, other than seeds, originating in the Republic of South Africa.

2. In addition to the requirements laid down in part A of the Annexes I, II and IV to Directive 77/93/EEC, in relation to plants of strawberry, the following specific conditions shall be satisfied:

(a) the plants shall be intended for fruit production within the Community and shall have been:

(i) produced exclusively from mother plants, certified under an approved certification scheme of a Member State and those mother plants shall have been imported from a Member State;

(ii) grown on land which is:

— situated in the Elliot district of the North Eastern Cape Region,

— situated in an area isolated from commercial strawberry production,

— situated at least 1 km from the nearest crop of strawberry plants for fruit or runner production which do not satisfy the conditions of this Decision,

— situated at least 200 m from any other plants of the genus *Fragaria* which do not satisfy the conditions of this Decision, and

<sup>(1)</sup> OJ No L 26, 31. 1. 1977, p. 20.

<sup>(2)</sup> OJ No L 87, 2. 4. 1997, p. 17.

- prior to planting and in the period after the previous crop was removed from the land, tested by appropriate methods or treated to ensure freedom from soil infesting harmful organisms, including *Globodera pallida* (Stone) Behrens and *Globodera rostochiensis* (Wollenweber) Behrens and;
- (iii) officially inspected by the Plant Protection Service of the Republic of South Africa, at least three times during the growing season and prior to export for the presence of both harmful organisms listed in part A of Annexes I and II to Directive 77/93/EEC, in particular,
  - *Aphelenchoides besseyi* Christie,
  - Arabis mosaic virus,
  - *Colletotrichum acutatum* Simmonds,
  - *Globodera pallida* (Stone) Behrens,
  - *Globodera rostochiensis* (Wollenweber) Behrens,
  - Strawberry crinkle virus,
  - Strawberry mild yellow edge virus,
  - *Xiphinema americanum* Cobb sensu lato (non European populations),
 and the following harmful organisms which are not known to occur in the Community:
  - *Eremnus setulosus* (Boheman)
  - *Graphognathus leucoloma* (Boheman)
  - *Heteronychus arator* (Fabricius);
- (iv) found free, in the inspections referred to in (iii) from the harmful organisms referred to in point (iii);
- (v) prior to export:
  - shaken free from soil or other growing medium,
  - cleaned (i.e. free from plant debris) and free from flowers and fruits;
- (b) the plants intended for the Community shall be accompanied by a phytosanitary certificate issued in the Republic of South Africa in accordance with Articles 7 and 12 of Directive 77/93/EEC, on the basis of the examination laid down therein, in particular freedom from the harmful organisms mentioned in (a) (iii), as well as to the requirements specified in (a) (i), (ii), (iv) and (v).
 

The certificate shall state:

  - under the rubric 'Disinfestation and/or disinfection treatment', the specification of the last treatment(s) applied prior to export,
  - under 'Additional Declaration', the indication 'This consignment meets the conditions laid down in Decision 97/488/EC', as well as the name of the variety and the Member State certification scheme under which the mother plants had been certified;
- (c) the plants shall be introduced through points of entry situated within the territory of a Member State making use of this derogation and designated for the purpose of this derogation by that Member State;
- (d) prior to introduction into the Community, the importer shall notify each introduction 10 days in advance to the responsible official bodies in the Member State of introduction and that Member State shall convey the details of the notification to the Commission, indicating:
  - the type of material,
  - the quantity,
  - the declared date of introduction and confirmation of the point of entry,
  - the names and addresses of the premises referred to in (f) where the plants will be planted.

At the time of import the importer shall provide confirmation of the details of the aforementioned advance notification. The importer shall be officially informed, prior to the introduction, of the conditions laid down in (a), (b), (c), (d), (e) and (f);
- (e) the inspections including testing, as appropriate, required pursuant to Article 12 of Directive 77/93/EEC shall be made by the responsible official bodies, referred to in the said Directive, of the Member States making use of this derogation, and where appropriate, in cooperation with the said bodies of the Member State in which the plants will be planted. Without prejudice to the monitoring referred to in Article 19a (3) second indent, first possibility, the Commission shall determine to what extent the inspections referred to in Article 19a (3) second indent, second possibility of the said Directive shall be integrated into the inspection programme in accordance with Article 19a (5) (c) of that Directive;
- (f) the plants shall be planted only at premises of which the name of the owner and address of site have been notified by the person who intends to plant the plants imported pursuant to this Decision, to the said responsible official bodies of the Member State in which the premises are situated; in those cases where the place of planting is situated in a Member State other than the Member State making use of this derogation, the said responsible official bodies of the Member State making use of this derogation, at the moment of receipt of the aforementioned advance notification from the importer, shall inform the said responsible official bodies of the Member State in which the plants will be planted giving the name and addresses of the premises where the plants will be planted;

(g) in the growing period following importation, a suitable proportion of the plants shall be inspected by the said responsible official bodies of the Member State in which the plants are planted, at appropriate times, at the premises referred to in (f).

#### *Article 2*

Member States shall inform the other Member States and the Commission of any use made of the authorization referred to in Article 1. They shall provide the Commission and the other Member States, before 1 November 1997, with the information on amounts imported pursuant to this Decision and with a detailed technical report of the official examination referred to in Article 1 (2) (e). Furthermore all Member States in which the plants are planted shall also provide the Commission and the other Member States, before 1 March after the year of importation, with a detailed technical report of the official examination referred to in Article 1 (2) (g).

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#### *Article 3*

The authorization granted in Article 1 shall apply during the period between 1 August 1997 and 31 August 1997. It shall be revoked if it is established that the conditions laid down in Article 1 (2) are not sufficient to prevent the introduction of harmful organisms or have not been complied with.

#### *Article 4*

This Decision is addressed to the Member States.

Done at Brussels, 28 July 1997.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

**COMMISSION RECOMMENDATION****of 30 July 1997****concerning transactions by electronic payment instruments and in particular the relationship between issuer and holder****(Text with EEA relevance)****(97/489/EC)****THE COMMISSION OF THE EUROPEAN COMMUNITIES,**

Having regard to the Treaty establishing the European Community and in particular Article 155, second indent, thereof,

- (1) Whereas one of the main objectives of the Community is to ensure the full functioning of the internal market of which payment systems are essential parts; whereas transactions made by electronic payment instruments account for an increasing proportion of the volume and the value of domestic and cross-border payments; whereas, given the current context of rapid innovation and technological progress, this trend is expected to accelerate notably as a consequence of the wide array of innovative businesses, markets and trading communities engendered by electronic commerce;
- (2) Whereas it is important for individuals and businesses to be able to use electronic payment instruments throughout the Community; whereas this recommendation seeks to follow up progress made towards the completion of the internal market, notably in the light of the liberalization of capital movements, and will also contribute to the implementation of economic and monetary union;
- (3) Whereas this recommendation covers transactions effected by electronic payment instruments; whereas, for the purposes of this recommendation, these include instruments allowing for (remote) access to a customer's account, notably payment cards and phone- and home-banking applications; whereas transactions by means of a payment card shall cover electronic and non-electronic payment by means of a payment card, including processes for which a signature is required and a voucher is produced; whereas, for the purposes of this recommendation, means of payment instruments also include reloadable electronic money instruments in the form of stored-value cards and electronic tokens stored on network computer memory; whereas reloadable electronic money instruments, because of their features, in particular the possible link to the holder's account, are those for which the need for customer protection is strongest; whereas, as far as electronic money instruments are concerned, coverage under this recommendation is therefore limited to instruments of the reloadable type;
- (4) Whereas this recommendation is intended to contribute to the advent of the information society and, in particular, electronic commerce by promoting customer confidence in and retailer acceptance of these instruments; whereas, to this end, the Commission will also consider the possibility of modernizing and updating its recommendation 87/598/EEC<sup>(1)</sup>, with a view to establishing a clear framework for the relationship between acquirers and acceptors in respect of electronic payment instruments; whereas, in line with those objectives, this recommendation sets out minimum information requirements which should be contained in the terms and conditions applied to transactions made by electronic payment instruments, as well as the minimum obligations and liabilities of the parties

<sup>(1)</sup> OJ No L 365, 24. 12. 1987, p. 72.

concerned; whereas such terms and conditions should be set out in writing, including where appropriate by electronic means, and maintain a fair balance between the interests of the parties concerned; whereas, in compliance with Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts<sup>(1)</sup>, such terms and conditions should in particular be in an understandable and comprehensible form;

- (5) Whereas, with a view to ensuring transparency, this recommendation sets out the minimum requirements needed to ensure an adequate level of customer information upon conclusion of a contract as well as subsequent to transactions effected by means of a payment instrument, including information on charges, exchange rates and interest rates; whereas, for the purpose of informing the holder of the manner of calculation of the interest rate, reference is to be made to Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit<sup>(2)</sup>, as amended by Directive 90/88/EEC<sup>(3)</sup>;
- (6) Whereas this recommendation sets out minimum requirements concerning the obligations and liabilities of the parties concerned; whereas information to a holder should include a clear statement of the extent of the customer's obligation as holder of an electronic payment instrument enabling him/her to make payments in favour of third persons, as well as to perform certain financial transactions for himself/herself;
- (7) Whereas, to improve customer's access to redress, this recommendation calls on Member States to ensure that there are adequate and effective means for the settlement of disputes between a holder and an issuer; whereas the Commission published on 14 February 1996 a plan of action on consumer access to justice and the settlement of consumer disputes in the internal market; whereas that plan of action includes specific initiatives to promote out-of-court procedures; whereas objective criteria (Annex II) are suggested to ensure the reliability of those procedures and provision is made for the use of standardized claims forms (Annex III);
- (8) Whereas this recommendation seeks to ensure a high level of consumer protection in the field of electronic payment instruments;
- (9) Whereas it is essential that transactions effected by means of electronic payment instruments should be the subject of records in order that transactions can be traced and errors can be rectified; whereas the burden of proof to show that a transaction was accurately recorded and entered into the accounts and was not affected by technical breakdown or other deficiency should lie upon the issuer;
- (10) Whereas, without prejudice to any rights of a holder under national law, payment instructions given by a holder in respect of transactions effected by means of an electronic payment instrument should be irrevocable, except if the amount was not determined when the order was given;
- (11) Whereas rules need to be specified concerning the issuer's liability for non-execution or for defective execution of a holder's payment instructions and for transactions which have not been authorized by him/her, subject always to the holder's own obligations in the case of lost or stolen electronic payment instruments;
- (12) Whereas the Commission will monitor the implementation of this Recommendation and, if it finds the implementation unsatisfactory, it intends to propose the appropriate binding legislation covering the issues dealt with in this recommendation,

<sup>(1)</sup> OJ No L 95, 21. 4. 1993, p. 29.

<sup>(2)</sup> OJ No L 42, 12. 2. 1987, p. 48.

<sup>(3)</sup> OJ No L 61, 10. 3. 1990, p. 14.

HEREBY RECOMMENDS:

## SECTION I

### SCOPE AND DEFINITIONS

#### *Article 1*

##### **Scope**

1. This Recommendation applies to the following transactions:
  - (a) transfers of funds, other than those ordered and executed by financial institutions, effected by means of an electronic payment instrument;
  - (b) cash withdrawals by means of an electronic payment instrument and the loading (and unloading) of an electronic money instrument, at devices such as cash dispensing machines and automated teller machines and at the premises of the issuer or an institution who is under contract to accept the payment instrument.
2. By way of derogation from paragraph 1, Article 4 (1), the second and third indents of Article 5 (b), Article 6, Article 7 (2) (c), (d) and the first indent of (e), Article 8 (1), (2) and (3) and Article 9 (2) do not apply to transactions effected by means of an electronic money instrument. However, where the electronic money instrument is used to load (and unload) value through remote access to the holder's account, this Recommendation is applicable in its entirety.
3. This recommendation does not apply to:
  - (a) payments by cheques;
  - (b) the guarantee function of certain cards in relation to payments by cheques.

#### *Article 2*

##### **Definitions**

For the purpose of this recommendation, the following definitions apply:

- (a) 'electronic payment instrument' means an instrument enabling its holder to effect transactions of the kind specified in Article 1 (1). This covers both remote access payment instruments and electronic money instruments;
- (b) 'remote access payment instrument' means an instrument enabling a holder to access funds held on his/her account at an institution, whereby payment is allowed to be made to a payee and usually requiring a personal identification code and/or any other similar proof of identity. This includes in particular payment cards (whether credit, debit, deferred debit or charge cards) and phone- and home-banking applications;
- (c) 'electronic money instrument' means a reloadable payment instrument other than a remote access payment instrument, whether a stored-value card or a computer memory, on which value units are stored electronically, enabling its holder to effect transactions of the kind specified in Article 1 (1);
- (d) 'financial institution' means an institution as defined in Article 4 (1) of Council Regulation (EC) No 3604/93 <sup>(1)</sup>;
- (e) 'issuer' means a person who, in the course of his business, makes available to another person a payment instrument pursuant to a contract concluded with him/her;
- (f) 'holder' means a person who, pursuant to a contract concluded between him/her and an issuer, holds a payment instrument.

<sup>(1)</sup> OJ No L 332, 31. 12. 1993, p. 4.

## SECTION II

## TRANSPARENCY OF CONDITIONS FOR TRANSACTIONS

*Article 3***Minimum information contained in the terms and conditions governing the issuing and use of an electronic payment instrument**

1. Upon signature of the contract or in any event in good time prior to delivering an electronic payment instrument, the issuer communicates to the holder the contractual terms and conditions (hereinafter referred to as 'the terms') governing the issue and use of that electronic payment instrument. The terms indicate the law applicable to the contract.
2. The terms are set out in writing, including where appropriate by electronic means, in easily understandable words and in a readily comprehensible form, and are available at least in the official language or languages of the Member State in which the electronic payment instrument is offered.
3. The terms include at least:
  - (a) a description of the electronic payment instrument, including where appropriate the technical requirements with respect to the holder's communication equipment authorized for use, and the way in which it can be used, including the financial limits applied, if any;
  - (b) a description of the holder's and issuer's respective obligations and liabilities; they include a description of the reasonable steps that the holder must take to keep safe the electronic payment instrument and the means (such as a personal identification number or other code) which enable it to be used;
  - (c) where applicable, the normal period within which the holder's account will be debited or credited, including the value date, or, where the holder has no account with the issuer, the normal period within which he/she will be invoiced;
  - (d) the types of any charges payable by the holder. In particular, this includes where applicable details of the following charges:
    - the amount of any initial and annual fees,
    - any commission fees and charges payable by the holder to the issuer for particular types of transactions,
    - any interest rate, including the manner of its calculation, which may be applied;
  - (e) the period of time during which a given transaction can be contested by the holder and an indication of the redress and complaints procedures available to the holder and the method of gaining access to them.
4. If the electronic payment instrument is usable for transactions abroad (outside the country of issuing/affiliation), the following information is also communicated to the holder:
  - (a) an indication of the amount of any fees and charges levied for foreign currency transactions, including where appropriate the rates;
  - (b) the reference exchange rate used for converting foreign currency transactions, including the relevant date for determining such a rate.

*Article 4***Information subsequent to a transaction**

1. The issuer supplies the holder with information relating to the transactions effected by means of an electronic payment instrument. This information, set out in writing, including where appropriate by electronic means, and in a readily comprehensible form, includes at least:

- (a) a reference enabling the holder to identify the transaction, including, where appropriate, the information relating to the acceptor at/with which the transaction took place;
- (b) the amount of the transaction debited to the holder in billing currency and, where applicable, the amount in foreign currency;
- (c) the amount of any fees and charges applied for particular types of transactions.

The issuer also provides the holder with the exchange rate used for converting foreign currency transactions.

2. The issuer of an electronic money instrument provides the holder with the possibility of verifying the last five transactions executed with the instrument and the outstanding value stored thereon.

**SECTION III****OBLIGATIONS AND LIABILITIES OF THE PARTIES TO A CONTRACT***Article 5***Obligations of the holder**

The holder:

- (a) uses the electronic payment instrument in accordance with the terms governing the issuing and use of a payment instrument; in particular, the holder takes all reasonable steps to keep safe the electronic payment instrument and the means (such as a personal identification number or other code) which enable it to be used;
- (b) notifies the issuer (or the entity specified by the latter) without delay after becoming aware of:
  - the loss or theft of the electronic payment instrument or of the means which enable it to be used,
  - the recording on his/her account of any unauthorized transaction,
  - any error or other irregularity in the maintaining of that account by the issuer;
- (c) does not record his personal identification number or other code in any easily recognizable form, in particular on the electronic payment instrument or on any item which he/she keeps or carries with the electronic payment instrument;
- (d) does not countermand an order which he/she has given by means of his/her electronic payment instrument, except if the amount was not determined when the order was given.

*Article 6***Liabilities of the holder**

1. Up to the time of notification, the holder bears the loss sustained in consequence of the loss or theft of the electronic payment instrument up to a limit, which may not exceed ECU 150, except where he/she acted with extreme negligence, in contravention of relevant provisions under Article 5 (a), (b) or (c), or fraudulently, in which case such a limit does not apply.

2. As soon as the holder has notified the issuer (or the entity specified by the latter) as required by Article 5 (b), except where he/she acted fraudulently, he/she is not thereafter liable for the loss arising in consequence of the loss or theft of his/her electronic payment instrument.

3. By derogation from paragraphs 1 and 2, the holder is not liable if the payment instrument has been used, without physical presentation or electronic identification (of the instrument itself). The use of a confidential code or any other similar proof of identity is not, by itself, sufficient to entail the holder's liability.

### *Article 7*

#### **Obligations of the issuer**

1. The issuer may alter the terms, provided that sufficient notice of the change is given individually to the holder to enable him/her to withdraw if he/she so chooses. A period of not less than one month is specified after which time the holder is deemed to have accepted the terms if he/she has not withdrawn.

However, any significant change to the actual interest rate is not subject to the provisions of the first subparagraph and comes into effect upon the date specified in the publication of such a change. In this event, and without prejudice to the right of the holder to withdraw from the contract, the issuer informs the holder individually thereof as soon as possible.

2. The issuer:

- (a) does not disclose the holder's personal identification number or other code, except to the holder;
- (b) does not dispatch an unsolicited electronic payment instrument, except where it is a replacement for an electronic payment instrument already held by the holder;
- (c) keeps for a sufficient period of time, internal records to enable the transactions referred to in Article 1 (1) to be traced and errors to be rectified;
- (d) ensures that appropriate means are available to enable the holder to make the notification required under Article 5 (b). Where notification is made by telephone, the issuer (or the entity specified by the latter) provides the holder with the means of proof that he/she has made such a notification;
- (e) proves, in any dispute with the holder concerning a transaction referred to in Article 1 (1), and without prejudice to any proof to the contrary that may be produced by the holder, that the transaction:
  - was accurately recorded and entered into accounts,
  - was not affected by technical breakdown or other deficiency.

### *Article 8*

#### **Liabilities of the issuer**

1. The issuer is liable, subject to Article 5, Article 6 and Article 7 (2) (a) and (e):

- (a) for the non-execution or defective execution of the holder's transactions referred to in Article 1 (1), even if a transaction is initiated at devices/terminals or through equipment which are not under the issuer's direct or exclusive control, provided that the transaction is not initiated at devices/terminals or through equipment unauthorized for use by the issuer;
- (b) for transactions not authorized by the holder, as well as for any error or irregularity attributable to the issuer in the maintaining of the holder's account.

2. Without prejudice to paragraph 3, the amount of the liability indicated in paragraph 1 consists of:
  - (a) the amount of the unexecuted or defectively executed transaction and, if any, interest thereon;
  - (b) the sum required to restore the holder to the position he/she was in before the unauthorized transaction took place.
3. Any further financial consequences, and, in particular, those concerning the extent of the damage for which compensation is to be paid, are borne by the issuer in accordance with the law applicable to the contract concluded between the issuer and the holder.
4. The issuer is liable to the holder of an electronic money instrument for the lost amount of value stored on the instrument and for the defective execution of the holder's transactions, where the loss or defective execution is attributable to a malfunction of the instrument, of the device/terminal or any other equipment authorized for use, provided that the malfunction was not caused by the holder knowingly or in breach of Article 3 (3) (a).

#### SECTION IV

### NOTIFICATION, SETTLEMENT OF DISPUTES AND FINAL PROVISION

#### *Article 9*

##### **Notification**

1. The issuer (or the entity specified by him) provides means whereby a holder may at any time of day or night notify the loss or theft of his/her electronic payment instrument.
2. The issuer (or the entity specified by him), upon receipt of notification, is under the obligation, even if the holder acted with extreme negligence or fraudulently, to take all reasonable action open to him to stop any further use of the electronic payment instrument.

#### *Article 10*

##### **Settlement of disputes**

Member States are invited to ensure that there are adequate and effective means for the settlement of disputes between a holder and an issuer.

#### *Article 11*

##### **Final provision**

Member States are invited to take the measures necessary to ensure that the issuers of electronic payment instruments conduct their activities in accordance with Articles 1 to 9 by not later than 31 December 1998.

Done at Brussels, 30 July 1997.

*For the Commission*

Mario MONTI

*Member of the Commission*

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