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Contents

I Acts whose publication is obligatory

Commission Regulation (EC) No 518/98 of 5 March 1998 establishing the standard import values for determining the entry price of certain fruit and vegetables	1
* Commission Regulation (EC) No 519/98 of 5 March 1998 amending Council Regulation (EC) No 934/95, establishing tariff ceilings and a Community statistical surveillance in the framework of reference quantities for a certain number of products originating in Cyprus, Egypt, Jordan, Israel, Tunisia, Syria, Malta, Morocco and the West Bank and the Gaza Strip	3
Commission Regulation (EC) No 520/98 of 5 March 1998 fixing export refunds on fruit and vegetables	8
Commission Regulation (EC) No 521/98 of 5 March 1998 fixing the maximum export refund on common wheat in connection with the invitation to tender issued in Regulation (EC) No 1339/97	12
Commission Regulation (EC) No 522/98 of 5 March 1998 concerning tenders notified in response to the invitation to tender for the export of barley issued in Regulation (EC) No 1337/97	13
Commission Regulation (EC) No 523/98 of 5 March 1998 fixing the maximum export refund on rye in connection with the invitation to tender issued in Regulation (EC) No 1338/97	14
Commission Regulation (EC) No 524/98 of 5 March 1998 fixing the maximum export refund on oats in connection with the invitation to tender issued in Regulation (EC) No 1773/97	15
Commission Regulation (EC) No 525/98 of 5 March 1998 concerning tenders notified in response to the invitation to tender for the export of maize issued in Regulation (EC) No 180/98	16



Commission Regulation (EC) No 526/98 of 5 March 1998 fixing the maximum reduction in the duty on maize imported in connection with the invitation to tender issued in Regulation (EC) No 2506/97 17

II *Acts whose publication is not obligatory*

Commission

98/182/EC:

- * **Commission Decision of 30 July 1997 concerning aid granted by the Friuli-Venezia Giulia Region (Italy) to road haulage companies in the Region ⁽¹⁾** 18
-

Corrigenda

- * **Corrigendum to Commission Regulation (EC) No 447/98 of 1 March 1998 on the notifications, time limits and hearings provided for in Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings (OJ L 61 of 2. 3. 1998)** 25

⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 518/98
of 5 March 1998
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 ⁽¹⁾, as last amended by Regulation (EC) No 2375/96 ⁽²⁾, 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 ⁽³⁾, as last amended by Regulation (EC) No 150/95 ⁽⁴⁾, 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 6 March 1998.

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

Done at Brussels, 5 March 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ L 325, 14. 12. 1996, p. 5.

⁽³⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 5 March 1998 establishing the standard import values for determining the entry price of certain fruit and vegetables

<i>(ECU/100 kg)</i>			<i>(ECU/100 kg)</i>		
CN code	Third country code ⁽¹⁾	Standard import value	CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	204	80,5		400	39,5
	624	175,5		600	82,3
	999	128,0		999	56,7
0707 00 05	068	93,1	0808 10 20, 0808 10 50, 0808 10 90	060	37,0
	999	93,1		388	123,8
0709 10 00	220	159,0		400	100,2
	999	159,0		404	103,1
0709 90 70	052	136,4		508	108,3
	204	131,1		512	82,3
	624	177,6		524	102,8
	999	148,4		528	95,7
0805 10 10, 0805 10 30, 0805 10 50	052	57,4	0808 20 50	728	81,0
	204	36,9		999	92,7
	212	40,4		388	74,2
	600	40,3		400	102,9
	624	52,9		512	80,0
	999	45,6		528	73,9
0805 30 10	052	67,1		999	82,8
	204	38,0			

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2317/97 (OJ L 321, 22. 11. 1997, p. 19). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 519/98
of 5 March 1998

amending Council Regulation (EC) No 934/95, establishing tariff ceilings and a Community statistical surveillance in the framework of reference quantities for a certain number of products originating in Cyprus, Egypt, Jordan, Israel, Tunisia, Syria, Malta, Morocco and the West Bank and the Gaza Strip

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 934/95 of 10 April 1995 establishing tariff ceilings and a Community statistical surveillance in the framework of reference quantities for a certain number of products originating in Cyprus, Egypt, Jordan, Israel, Tunisia, Syria, Malta, Morocco and the West Bank and the Gaza Strip ⁽¹⁾, as last amended by Regulation (EC) No 553/97 ⁽²⁾, and in particular Articles 3 and 4 thereof,

Whereas the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part ⁽³⁾, enters into force on 1 March 1998; whereas this agreement provides that certain products originating in Tunisia can benefit from tariff concessions within the framework of reference quantities, when imported into the Community and are subject to a Community statistical surveillance; whereas the agreement provides that the volumes of the reference quantities for these products are increased, between 1 January 1997 and 1 January 2000, in four yearly and equal steps, representing 3 % of these volumes; whereas the increases provided by the agreement for implementation in 1997 could not take place because of the entry into force of the agreement on 1 March 1998 and, consequently, the volumes of the reference quantities applicable in 1998 take account of two increases; whereas the new agreement provides a tariff concession for new potatoes from 1 January to 31 March, in the framework of a community tariff quota, but due to the entry into force of the agree-

ment on 1 March 1998, it seems desirable to maintain for January and February 1998 the current concession for these products in the framework of a reference quantity;

Whereas, as a means of implementing the new concessions provided in the above mentioned agreement, Regulation (EC) No 934/95 should be amended; whereas, for all the products listed in Annex II to Regulation (EC) No 934/95, this amendment must also take account of the necessary technical adjustments resulting from amendments of the Combined Nomenclature and of TARIC subdivisions;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to Regulation (EC) No 934/95 shall be replaced by the Annex to this Regulation.

Article 2

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

It shall apply from 1 January 1998, except for the reference quantities with order numbers 18.0110, 18.0125 and 18.0145, which shall apply from 1 March 1998.

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

Done at Brussels, 5 March 1998.

For the Commission

Mario MONTI

Member of the Commission

⁽¹⁾ OJ L 96, 28. 4. 1995, p. 6.

⁽²⁾ OJ L 85, 27. 3. 1997, p. 10.

⁽³⁾ Not yet published in the Official Journal.

ANNEX

'ANNEX II

Notwithstanding the rules for the interpretation of the Combined Nomenclature, the wording for the description of the products is to be considered as having no more than an indicative value, the preferential scheme being determined, within the context of this Annex, by the coverage of the CN codes as they exist at the time of adoption of the current Regulation. Where ex CN codes are indicated, the preferential scheme is to be determined by application of the CN code and corresponding description taken together

Order Number	CN code	Taric subdivision	Description	Period per year	Origin	Reference quantity per indicated period (in tonnes)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
18.0010	ex 0701 90 51		New potatoes, fresh or chilled	from 1.1 to 28.2.1998	Tunisia	1 941
18.0015	0701 90 51 ex 0701 90 59		New potatoes, fresh or chilled	from 1.1 to 15.5 from 16.5 to 31.5	Malta	3 360
18.0030	ex 0703 20 00		Garlic, fresh or chilled	from 1.2 to 31.5	Egypt	1 920
18.0040	ex 0707 00 05	01 to 06	Cucumbers of a length not exceeding 15 cm, fresh or chilled	from 1.1 to the end of February from 1.1 to the end of February from 1.1 to the end of February	Egypt Jordan Malta	120 120 60
18.0050	ex 0709 10 00	50 70 72 74 76 78 80	Globe artichokes, fresh or chilled	from 1.10 to 31.12	Egypt Cyprus	120 120
18.0060	ex 0709 30 00		Aubergines (egg-plants), fresh or chilled	from 1.12 to 30.4	Israel	1 440
18.0070	0709 60 10		Sweet peppers, fresh or chilled	from 1.1 to 31.12	Morocco	1 200
18.0080	0712 20 00		Dried onions	from 1.1 to 31.12	Syria	840
18.0090	ex 0712 90 90	20	Dried garlic	from 1.1 to 31.12	Egypt	1 200
18.0100	0713 10 10		Peas (<i>Pisum sativum</i>), for sowing	from 1.1 to 31.12	Morocco	500
18.0110	0802 11 90 0802 12 90		Almonds, other than bitter almonds, whether or not shelled	from 1.3 to 31.12.1998 from 1.1 to 31.12.1999 from 1.1 to 31.12 of the following years	Tunisia	1 060 1 090 1 120

Order Number	CN code	Taric subdivision	Description	Period per year	Origin	Reference quantity per indicated period (in tonnes)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
18.0120	0804 40		Avocados	from 1.1 to 31.12	Israel	37 200
18.0125	ex 0805 10 82	90	Oranges, other than fresh	from 1.3 to 31.12.1998	Tunisia	1 590
	ex 0805 10 84	90		from 1.1 to 31.12.1999		1 635
	ex 0805 10 86	90		from 1.1 to 31.12 of the following years		1 680
18.0130	ex 0806 10 10	30	Table grapes, fresh	from 15.5 to 11.7	Israel	2 280
18.0140	ex 0807 19 00	10	Other melons weighing 600 grams, or less, fresh	from 1.1 to 31.3	Egypt	120
		91		from 1.1 to 31.3	Jordan	120
18.0145	0809 10 00		Apricots, fresh	from 1.3 to 31.12.1998	Tunisia	2 120
				from 1.1 to 31.12.1999		2 180
				from 1.1 to 31.12 of the following years		2 240
18.0150	ex 0810 50 10		Kiwifruit, fresh	from 1.1 to 30.4	Israel	240
				from 1.1 to 30.4	Cyprus	240
				from 1.1 to 30.4	Morocco	240
18.0160	ex 0812 90 95	11 20	Other citrus fruit, comminuted, provisionally preserved	from 1.1 to 31.12	Israel	1 320
18.0190	2008 30 51 2008 30 71		Grapefruit and pomelo segments	from 1.1 to 31.12	Israel	16 440
18.0200	2008 50 61 2008 50 69		Apricots	from 1.1 to 31.12	Morocco	7 560
18.0215	ex 2008 30 79	10	Grapefruit and pomelos, other than in segments	from 1.1 to 31.12	Israel	2 400
18.0220	ex 2008 30 91	11 12 13 19 91 92	Grapefruit and pomelo segments; Grapefruit and pomelos, other than in segments; Citrus pulp; Comminuted ground citrus fruit	from 1.1 to 31.12	Israel	3 480
18.0225	ex 2008 30 99	11	Grapefruit and pomelo segments	from 1.1 to 31.12	Israel	5 000
18.0230	ex 2008 50 99 ex 2008 70 99	10 10	Apricot halves and peach halves (including nectarines)	from 1.1 to 31.12	Morocco	7 200
18.0240	2009 20 11 2009 20 19 2009 20 99		Grapefruit and pomelo juice	from 1.1 to 31.12	Israel	34 440

Order Number	CN code	Taric subdivision	Description	Period per year	Origin	Reference quantity per indicated period (in tonnes)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
18.0245	2009 20 99		Grapefruit and pomelo juice	from 1.1 to 31.12	Morocco	960
18.0310	ex 0702 00 00	01 to 06 08 to 13 60 to 65 68 to 73 80 to 85 88 to 93	Tomatoes, fresh or chilled	from 1.12 to 31.3	West Bank and the Gaza Strip	1 000
18.0320	ex 0709 30 00		Aubergines (egg-plants), fresh or chilled	from 15.1 to 30.4	West Bank and the Gaza Strip	3 000
18.0330	0709 60 10		Sweet peppers, fresh or chilled	from 1.1 to 30.4	West Bank and the Gaza Strip	1 000
18.0340	ex 0709 90 70	01, 03, 05, 07, 08, 09, 10, 12, 14, 16, 17, 19, 70, 72, 74, 76, 77, 79	Courgettes, fresh or chilled	from 1.12 to the end of February	West Bank and the Gaza Strip	300
18.0350	0805 10 10 0805 10 30 0805 10 50 ex 0805 10 82 ex 0805 10 84 ex 0805 10 86	10 10 10	Oranges, fresh	from 1.1 to 31.12	West Bank and the Gaza Strip	25 000
18.0360	ex 0805 20 10 ex 0805 20 30 ex 0805 20 50 ex 0805 20 70 ex 0805 20 90	10, 12, 14, 16, 18, 20, 30, 40, 42, 44, 46, 48, 50 10, 12, 14, 16, 18, 20, 30, 40, 42, 44, 46, 48, 50 10, 12, 14, 16, 18, 20, 30, 40, 42, 44, 46, 48, 50 10, 12, 14, 16, 18, 20, 30, 40, 42, 44, 46, 48, 50 10 to 15, 17 to 22, 24 to 29, 31, 33, 35, 37 to 42	Mandarins (including tangerines and satsumas), clementines, wilkings and similar citrus hybrids, fresh	from 1.1 to 31.12	West Bank and the Gaza Strip	500

Order Number	CN code	Taric subdivision	Description	Period per year	Origin	Reference quantity per indicated period (in tonnes)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
18.0370	ex 0805 30 10	10 to 19 25 to 34 40 to 45	Lemons (<i>Citrus limon</i> , <i>Citrus limonum</i>), fresh	from 1.1 to 31.12	West Bank and the Gaza Strip	800
18.0380	ex 0807 19 00		Other melons, fresh	from 1.11 to 31.5	West Bank and the Gaza Strip	10 000'

COMMISSION REGULATION (EC) No 520/98
of 5 March 1998
fixing export refunds on fruit and vegetables

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 organisation of the market in fruit and vegetables ⁽¹⁾, as amended by Commission Regulation (EC) No 2520/97 ⁽²⁾, and in particular Article 35 (11) thereof,

Whereas Commission Regulation (EC) No 2190/96 ⁽³⁾, as last amended by Regulation (EC) No 213/98 ⁽⁴⁾, lays down detailed rules on export refunds on fruit and vegetables;

Whereas Article 35 (1) of Council Regulation (EC) No 2200/96, provides that, to the extent necessary for economically significant quantities of the products listed in that Article to be exported, the difference between the international market prices for those products and their prices in the Community may be covered by export refunds;

Whereas Article 35 (4) of Regulation (EC) No 2200/96 provides that refunds must be fixed in the light of the existing situation or the outlook for fruit and vegetable prices on the Community market and supplies available on the one hand, and prices on the international market on the other hand; whereas account must also be taken of the costs referred to in Article 35 (4) (b) of that Regulation and of the economic aspect of the exports planned;

Whereas, pursuant to Article 35 (1) of Regulation (EC) No 2200/96, refunds are to be set with due regard to the limits resulting from agreements concluded in accordance with Article 228 of the Treaty;

Whereas, in accordance with Article 35 (5) of Regulation (EC) No 2200/96, prices on the Community market are to be established in the light of the most favourable prices from the export standpoint; whereas international

trade prices are to be established in the light of the prices referred to in the second subparagraph of that paragraph;

Whereas the international trade situation or the special requirements of certain markets may call for the refund on a given product to vary according to its destination;

Whereas tomatoes, lemons, oranges and apples of classes Extra, I and II of the common quality standards, shelled almonds, hazelnuts and walnuts in shell can currently be exported in economically significant quantities;

Whereas the representative market rates as defined in Article 1 of Council Regulation (EEC) No 3813/92 ⁽⁵⁾, as last amended by Regulation (EC) No 150/95 ⁽⁶⁾, are used to convert amounts expressed in currencies of third countries and provide the basis for determining the agricultural conversion rates for the Member States' currencies; whereas rules for determining and applying those conversion rates are laid down in Commission Regulation (EEC) No 1068/93 ⁽⁷⁾, as last amended by Regulation (EC) No 1482/96 ⁽⁸⁾;

Whereas the application of the abovementioned rules to the present and forecast market situation, and in particular to fruit and vegetable prices in the Community and international trade, gives the refund rates set out in the Annex hereto;

Whereas, pursuant to Article 35 (2) of Regulation (EC) No 2200/96, the resources available should be used as efficiently as possible while avoiding discrimination between traders; whereas, therefore, care should be taken not to disturb the trade flows previously induced by the refund arrangements; whereas, for those reasons and because of the seasonal nature of exports of fruit and vegetables, quotas should be fixed for each product;

Whereas Commission Regulation (EEC) No 3846/87 ⁽⁹⁾, as last amended by Regulation (EC) No 409/98 ⁽¹⁰⁾, establishes an agricultural product nomenclature for export refunds;

⁽¹⁾ OJ L 297, 21. 11. 1996, p. 1.

⁽²⁾ OJ L 346, 17. 12. 1997, p. 41.

⁽³⁾ OJ L 292, 15. 11. 1996, p. 12.

⁽⁴⁾ OJ L 22, 29. 1. 1998, p. 8.

⁽⁵⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁶⁾ OJ L 22, 31. 1. 1995, p. 1.

⁽⁷⁾ OJ L 108, 1. 5. 1993, p. 106.

⁽⁸⁾ OJ L 188, 27. 7. 1996, p. 22.

⁽⁹⁾ OJ L 366, 24. 12. 1987, p. 1.

⁽¹⁰⁾ OJ L 55, 25. 2. 1998, p. 1.

Whereas Commission Regulation (EEC) No 3719/88 ⁽¹⁾, as last amended by Regulation (EC) No 1404/97 ⁽²⁾, lays down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products;

Whereas, owing to the market situation, in order to make the most efficient use of the resources available and given the structure of Community exports, the most appropriate method should be selected for export refunds on certain products and certain destinations and consequently refunds under the A1 and A2 licence arrangements referred to in Article 1 of Regulation (EC) No 2190/96 should not be fixed simultaneously for the export period in question;

Whereas the quantities laid down for the various products should be distributed in accordance with the different systems for the grant of the refund, taking account in particular of their perishability;

Whereas account should be taken of the definitive rates under the A2 system fixed for the preceding licence application period;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Products Processed from Fruit and Vegetables,

HAS ADOPTED THIS REGULATION:

Article 1

1. The export refunds on fruit and vegetables shall be as set out in the Annex hereto.
2. Quantities covered by licences issued for food aid as referred to in Article 14a of Regulation (EEC) No 3719/88 shall not count against the eligible quantities covered by paragraph 1.
3. Without prejudice to the application of Article 4 (5) of Regulation (EC) No 2190/96, the term of validity of A1 and A2 licences shall be two months.

Article 2

This Regulation shall enter into force on 11 March 1998.

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

Done at Brussels, 5 March 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 331, 2. 12. 1988, p. 1.

⁽²⁾ OJ L 194, 23. 7. 1997, p. 5.

(¹) The destination codes are defined as follows:

- X: Norway, Iceland, Greenland, Faeroes, Poland, Hungary, Romania, Bulgaria, Albania, Estonia, Latvia, Lithuania, Bosnia-Herzegovina, Croatia, Slovenia, Former Yugoslav Republic of Macedonia, Federal Republic of Yugoslavia (Serbia and Montenegro), Malta.
- Y: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan, Ukraine, destinations referred to in Article 34 of Commission Regulation (EEC) No 3665/87, as amended.
- Z: African countries and territories except South Africa, countries of the Arabian Peninsula (Saudi Arabia, Bahrain, Qatar, Oman, United Arab Emirates (Abu Dhabi, Dubai, Sharjah, Ajman, Umm al Qaiwain, Ras al Khaimah, Fujairah), Kuwait, Yemen), Syria, Iran, Jordan, Bolivia, Brazil, Venezuela, Peru, Panama, Ecuador, Colombia.
- C: Switzerland, Czech Republic, Slovakia.
- D: Hong Kong SAR, Singapore, Malaysia, Indonesia, Thailand, Taiwan, Papua New Guinea, Laos, Cambodia, Vietnam, Uruguay, Paraguay, Argentina, Mexico, Costa Rica.
- E: All destinations except Switzerland.
- F: All destinations.
-

COMMISSION REGULATION (EC) No 521/98
of 5 March 1998

fixing the maximum export refund on common wheat in connection with the invitation to tender issued in Regulation (EC) No 1339/97

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 organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 923/96 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 2052/97 ⁽⁴⁾, and in particular Article 7 thereof,

Whereas an invitation to tender for the refund and/or the tax for the export of common wheat to all third countries was opened pursuant to Commission Regulation (EC) No 1339/97 ⁽⁵⁾, as amended by Regulation (EC) No 507/98 ⁽⁶⁾;

Whereas Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to fix a maximum export refund taking account of the criteria referred to in Article 1 of Regulation (EC) No

1501/95; whereas in that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund, as well as to any tenderer whose bid relates to an export tax;

Whereas the application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund being fixed at the amount specified in Article 1;

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 27 February to 5 March 1998, pursuant to the invitation to tender issued in amended Regulation (EC) No 1339/97, the maximum refund on exportation of common wheat shall be ECU 18,93 per tonne.

Article 2

This Regulation shall enter into force on 6 March 1998.

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

Done at Brussels, 5 March 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 147, 30. 6. 1995, p. 7.

⁽⁴⁾ OJ L 287, 21. 10. 1997, p. 14.

⁽⁵⁾ OJ L 184, 12. 7. 1997, p. 7.

⁽⁶⁾ OJ L 63, 4. 3. 1998, p. 20.

COMMISSION REGULATION (EC) No 522/98
of 5 March 1998
concerning tenders notified in response to the invitation to tender for the export
of barley issued in Regulation (EC) No 1337/97

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 organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 923/96 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 2052/97 ⁽⁴⁾, and in particular Article 7 thereof,

Whereas an invitation to tender for the refund and or the tax for the export of barley to all third countries was opened pursuant to Commission Regulation (EC) No 1337/97 ⁽⁵⁾;

Whereas Article 7 of Regulation (EC) No 1501/95, allows the Commission to decide, in accordance with the procedure laid down in Article 23 of Regulation (EEC)

No 1766/92 and on the basis of the tenders notified, to make no award;

Whereas on the basis of the criteria laid down in Article 1 of Regulation (EC) No 1501/95 a maximum refund or a minimum tax should not be fixed;

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

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders notified from 27 February to 5 March 1998 in response to the invitation to tender for the refund or the tax for the export of barley issued in Regulation (EC) No 1337/97.

Article 2

This Regulation shall enter into force on 6 March 1998.

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

Done at Brussels, 5 March 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 147, 30. 6. 1995, p. 7.

⁽⁴⁾ OJ L 287, 21. 10. 1997, p. 14.

⁽⁵⁾ OJ L 184, 12. 7. 1997, p. 1.

COMMISSION REGULATION (EC) No 523/98
of 5 March 1998

**fixing the maximum export refund on rye in connection with the invitation to
tender issued in Regulation (EC) No 1338/97**

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 organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 923/96 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 2052/97 ⁽⁴⁾, and in particular Article 7 thereof,

Whereas an invitation to tender for the refund and/or the tax for the export of rye to all third countries was opened pursuant to Commission Regulation (EC) No 1338/97 ⁽⁵⁾;

Whereas Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to fix a maximum export refund taking account of the criteria referred to in Article 1 of Regulation (EC) No

1501/95; whereas in that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund, as well as to any tenderer whose bid relates to an export tax;

Whereas the application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund being fixed at the amount specified in Article 1;

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 27 February to 5 March 1998, pursuant to the invitation to tender issued in Regulation (EC) No 1338/97, the maximum refund on exportation of rye shall be ECU 39,95 per tonne.

Article 2

This Regulation shall enter into force on 6 March 1998.

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

Done at Brussels, 5 March 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 147, 30. 6. 1995, p. 7.

⁽⁴⁾ OJ L 287, 21. 10. 1997, p. 14.

⁽⁵⁾ OJ L 184, 12. 7. 1997, p. 4.

COMMISSION REGULATION (EC) No 524/98
of 5 March 1998

**fixing the maximum export refund on oats in connection with the invitation to
tender issued in Regulation (EC) No 1773/97**

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 organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 923/96 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 2052/97 ⁽⁴⁾,

Having regard to Commission Regulation (EC) No 1773/97 of 12 September 1997 on a special intervention measure for cereals in Finland and Sweden ⁽⁵⁾, as last amended by Regulation (EC) No 366/98 ⁽⁶⁾, and in particular Article 8 thereof,

Whereas an invitation to tender for the refund for the export of oats produced in Finland and Sweden for export from Finland or Sweden to all third countries was opened pursuant to Regulation (EC) No 1773/97;

Whereas Article 8 of Regulation (EC) No 1773/97 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid

down in Article 23 of Regulation (EEC) No 1766/92, decide to fix a maximum export refund taking account of the criteria referred to in Article 1 of Regulation (EC) No 1501/95; whereas in that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund;

Whereas the application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund being fixed at the amount specified in Article 1;

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 27 February to 5 March 1998, pursuant to the invitation to tender issued in Regulation (EC) No 1773/97, the maximum refund on exportation of oats shall be ECU 33,95 per tonne.

Article 2

This Regulation shall enter into force on 6 March 1998.

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

Done at Brussels, 5 March 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 147, 30. 6. 1995, p. 7.

⁽⁴⁾ OJ L 287, 21. 10. 1997, p. 14.

⁽⁵⁾ OJ L 250, 13. 9. 1997, p. 1.

⁽⁶⁾ OJ L 46, 17. 2. 1998, p. 3.

COMMISSION REGULATION (EC) No 525/98
of 5 March 1998
concerning tenders notified in response to the invitation to tender for the export
of maize issued in Regulation (EC) No 180/98

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 organisation of the market in cereals⁽¹⁾, as last amended by Commission Regulation (EC) No 923/96⁽²⁾,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals⁽³⁾, as last amended by Regulation (EC) No 2052/97⁽⁴⁾, and in particular Article 7 thereof,

Whereas an invitation to tender for the refund for the export of maize from Greece to all third countries was opened pursuant to Commission Regulation (EC) No 180/98⁽⁵⁾;

Whereas Article 7 of Regulation (EC) No 1501/95, allows the Commission to decide, in accordance with the procedure laid down in Article 23 of Regulation (EEC)

No 1766/92 and on the basis of the tenders notified, to make no award;

Whereas on the basis of the criteria laid down in Article 1 of Regulation (EC) No 1501/95 a maximum refund should not be fixed;

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

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders notified from 27 February to 5 March 1998 in response to the invitation to tender for the refund for the export of maize issued in Regulation (EC) No 180/98.

Article 2

This Regulation shall enter into force on 6 March 1998.

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

Done at Brussels, 5 March 1998.

For the Commission
Franz FISCHLER
Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 147, 30. 6. 1995, p. 7.

⁽⁴⁾ OJ L 287, 21. 10. 1997, p. 14.

⁽⁵⁾ OJ L 19, 24. 1. 1998, p. 47.

COMMISSION REGULATION (EC) No 526/98
of 5 March 1998

**fixing the maximum reduction in the duty on maize imported in connection
with the invitation to tender issued in Regulation (EC) No 2506/97**

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 organisation of the market in cereals⁽¹⁾, as last amended by Commission Regulation (EC) No 923/96⁽²⁾, and in particular Article 12(1) thereof,

Whereas an invitation to tender for the maximum reduction in the duty on maize imported into Portugal was opened pursuant to Commission Regulation (EC) No 2506/97⁽³⁾;

Whereas, pursuant to Article 5 of Commission Regulation (EC) No 1839/95⁽⁴⁾, as amended by Regulation (EC) No 1963/95⁽⁵⁾, the Commission, acting under the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, may decide to fix maximum reduction in the import duty; whereas in fixing this maximum the criteria provided for in Articles 6 and 7 of Regulation (EC) No 1839/95 must be taken into account; whereas a

contract is awarded to any tenderer whose tender is equal to or less than the maximum reduction in the duty;

Whereas the application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum reduction in the import duty being fixed at the amount specified in Article 1;

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 27 February to 5 March 1998, pursuant to the invitation to tender issued in Regulation (EC) No 2506/97, the maximum reduction in the duty on maize imported shall be ECU 51,47 per tonne and be valid for a total maximum quantity of 29 000 tonnes.

Article 2

This Regulation shall enter into force on 6 March 1998.

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

Done at Brussels, 5 March 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 345, 16. 12. 1997, p. 28.

⁽⁴⁾ OJ L 177, 28. 7. 1995, p. 4.

⁽⁵⁾ OJ L 189, 10. 8. 1995, p. 22.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 30 July 1997

concerning aid granted by the Friuli-Venezia Giulia Region (Italy) to road haulage companies in the Region

(Only the Italian text is authentic)

(Text with EEA relevance)

(98/182/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93(2) thereof,

Having given the interested parties notice to submit their comments pursuant to the abovementioned Article (¹),

Whereas:

I

The Commission first became aware of the existence of Regional Law No 4 of 7 January 1985 of the Italian Region of Friuli-Venezia Giulia (hereinafter referred to as 'Law No 4/85') through another aid case. As the aid scheme provided for by that law had never been notified to the Commission under Article 93(3) of the Treaty, it was regarded as a case of non-notified aid.

On 29 September 1995 the Commission wrote asking the Italian authorities for further information. By fax of 27 October 1995 the Italian authorities asked for an extension of the time allowed for replying to the letter. This was agreed to by the Commission on 9 November 1995. A reply was received after the prescribed period in two letters dated 10 January 1996 registered at the Directorate-General for Transport on 11 January 1996.

However, those letters contained only incomplete information about the aid scheme introduced by Law No 4/85.

In response to a letter dated 30 May 1996 from the Italian authorities, the Commission, in a letter dated 19 June 1996, again pointed out that not all the information requested in the letter dated 29 September 1995 had been provided, in particular as regards the text of Law No 4/85. A meeting was held in Brussels on 18 July 1996 between the Commission and the Italian authorities, at which the text of Law No 4/85 was finally communicated. On 18 November 1996 the Commission received further information relating to another aid case, but which also directly concerned the aid in question.

On 13 February 1997 a meeting was held between the Italian authorities and the Commission, at which the former again referred to the specific problems facing regional hauliers. They also presented the draft restructuring plan for road haulage in the Region, the outline of which was contained in the report sent in November 1996.

By letter dated 14 February 1997, the Commission informed the Italian Government of its decision to initiate a procedure against the aid scheme for commercial road hauliers in the Friuli-Venezia Giulia Region.

⁽¹⁾ OJ C 98, 26. 3. 1997, p. 16.

The Commission invited the Italian authorities to comment on that decision and informed the other Member States and interested parties by publishing the letter⁽¹⁾ in the *Official Journal of the European Communities*.

The Italian authorities sent their comments in a letter dated 27 March 1997, registered at the Commission on 3 April 1997. The Commission did not receive comments from any third party.

II

Law No 4/85 replaces the scheme introduced in 1981 by Regional Law No 28/81, but most of the information that the Commission has relates to the Law No 4/85. The two aid schemes, which are aimed at promoting the development of the commercial road haulage sector in the Friuli-Venezia Giulia Region, comprise the following three measures:

Article 4 provides for a reduction of interest of up to 60 % (70 % in the case of associated undertakings) on loans of less than 10 years' duration aimed at developing companies' infrastructure, that is, premises for warehousing, storage and handling of goods, and fixed and mobile equipment.

According to the Italian authorities' report of 18 November 1996, the budget for the period 1985 to 1995 was ITL 13 000 million (ECU 6,7 million), 155 applications were accepted and the average rate of subsidies actually granted ranged from 13 % to 26 % of the total cost of the loans and interest. The budget for the period 1981 to 1985, under the previous aid scheme, was ITL 930 million (ECU 0,4 million) and 14 applications were accepted.

Article 5 provides for financing the cost of leasing new vehicles and computer technology, where they are acquired through leases of three or five years duration. Up to 25 % of the cost of purchasing the goods is covered (30% in the case of cooperatives and consortiums). Regional Law No 3/88 subsequently reduced the maximum to 20% for all beneficiaries and it was reduced to 15 % by Regional Law No 2/89.

According to the Italian authorities' report of November 1996, the budget for this measure for the period 1985 to

1995 was ITL 23 300 million (ECU 11,8 million). During that period, 1 691 applications were accepted and the average financing rate was around 19 %. In 1993, 83 applications were accepted and the average financing rate was restricted to 10 %. Under the previous scheme, ITL 5 790 million (ECU 2,9 million) was granted in subsidies, for a total of 305 applications.

Article 6 of Law No 4/1985 provides for the financing of up to 50 % of the cost of operating and replacing fixed and mobile equipment for cooperatives and consortia. The investment must be intended for the construction or purchase of facilities or equipment needed to fulfil the aims of the cooperative or consortium, or must contribute to the operation and development of service centres for housing, maintenance and repair of vehicles, or to related facilities and equipment. According to the limited information received from the Italian authorities, grants have been made for investment in company headquarters, and for lorry and trailer parks, offices, swap-bodies and warehousing premises.

Following initiation of the procedure, the Italian authorities reported that aid for investment in combined transport equipment had been granted under Article 6 of Law No 4/85. According to that information, between 10 % and 15 % of the total subsidies granted under the scheme was for the purchase of swap-bodies and corresponding attachment devices for intermodal vehicles and semi-trailers.

According to the abovementioned report, a budget of ITL 1 074 million (ECU 0,5 million) was committed for the period 1985-1995 and 14 applications were accepted, the average financing rate being 32 %. For the scheme introduced by Law No 28/81 the budget was ITL 480 million (ECU 0,2 million) for a total of 23 applications accepted.

On several occasions the Italian authorities stressed that, although budgets are indeed scheduled up to the year 2004 for financing of interest payments and up to 1999 for leasing transactions, the granting of subsidies has been suspended since 1995 following the Commission's comments on the aid scheme established by that law.

Potential beneficiaries of the aid scheme are commercial haulage companies, cooperatives and companies associated as cooperatives or consortia which are registered in the register of road hauliers for Friuli-Venezia Giulia and registered with the Friuli-Venezia Giulia Regional

⁽¹⁾ OJ C 98, 26. 3. 1997, p. 16.

Chamber of Commerce, Industry, Craft Trades and Agriculture. Potential beneficiaries of the measures set out in Article 6 of Law No 4/85 are transport cooperatives and consortia which have their registered office in the Region, and also any affiliated companies whose registered office may be outside the Region, provided they do not comprise more than 20% of the associates.

2 202 applications have been accepted since 1981, the majority of them (over 80%, according to the Italian authorities) from very small firms possessing a single vehicle and involved solely in local or regional transport.

III

Road haulage cabotage was closed to Community competition until 1 July 1990, when Council Regulation (EEC) No 4059/89 of 21 December 1989 entered into force. That Regulation laid down the conditions under which non-resident carriers can operate national road haulage services within a Member State⁽¹⁾, and introduced cabotage quotas, Italy being allocated 1 767 authorisations.

That Regulation was replaced by Council Regulation (EEC) No 3118/93⁽²⁾, which is currently in force, which set 1 July 1998 as the date for full liberalisation of cabotage operations, established a transitional period as of 1 January 1994 and set an initial Community-wide quota of 30 000 authorisations, to be increased annually by 30 %.

Between 1990 and 1993, 14% of Community road cabotage operations in tonne-kilometre terms was carried out in Italy, which means that it was the second most attractive country in the Community for Community carriers.

The international road haulage market has been open to Community competition since 1969, when Council Regulation (EEC) No 1018/68 of 19 July 1968 on the establishment of a Community quota for the carriage of goods by road between Member States⁽³⁾ entered into force, although even before that date there were a number of bilateral agreements between Member States. Participation in international haulage was subject to Community quotas until the adoption of Council Regulation (EEC) No 881/92 of 26 March 1992 on access to the market in the carriage of goods by road within the Community to

or from the territory of a Member State or passing across the territory of one or more Member States⁽⁴⁾. The market has thus been fully open to competition since 1 January 1993.

According to the report received by the Commission on 18 November 1996, in the Friuli-Venezia Giulia Region there are approximately 31 700 own-account hauliers compared with 3 250 commercial haulage companies; however, the latter's share of the total regional load capacity is 56 %.

Following initiation of the procedure, the Italian authorities stated that in 1993 international road haulage operations carried out by carriers from Friuli-Venezia Giulia represented 4 % of total haulage in Italy (based on tonnage; the figure is 16 % calculated on the basis of tonne-kilometres). International haulage operations where the Region was the point of departure or destination represented only 5,4 % (in tonnes) of all transport operations in the Region carried out by regional, national and foreign carriers. Expressed in tonne-kilometres the figure would probably be greater⁽⁵⁾.

IV

Article 92 of the Treaty states that aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market. This concept of aid therefore calls for analysis of three fundamental factors: use of State resources, distortion of competition and effect on trade.

V

The concept of State aid applies just as much to aid granted by regional or local authorities as it does to aid granted by central authorities of a Member States⁽⁶⁾. In the present case, Article 1 of Regional Law No 4/85 and Article 1 of Regional Law No 28/81 explicitly authorize the regional authorities to allocate funds to road haulage companies with the aim of promoting and developing the Friuli-Venezia Giulia Region. The funds are therefore State resources within the meaning of Article 92(1) of the Treaty.

⁽⁴⁾ OJ L 95, 9. 4. 1992, p. 1.

⁽⁵⁾ Data obtained from an article on road haulage operations in 1993 published in the July-September 1995 issue of the quarterly review *Sistemi di Trasporto*.

⁽⁶⁾ Judgments of the Court of Justice in Case C-323/82 *Inter-mills v. Commission* [1984] ECR 3809 and in Case C-284/84 *Germany v. Commission* [1987] ECR 4013.

⁽¹⁾ OJ L 390, 30. 12. 1989, p. 3.

⁽²⁾ OJ L 279, 12. 11. 1993, p. 1.

⁽³⁾ OJ L 175, 23. 7. 1968, p. 13.

VI

In initiating the procedure, the Commission contended that the aid scheme may produce distortion of competition, since it seeks to improve the competitive position of commercial road haulage companies in the Friuli-Venezia Giulia Region by reducing their normal business running costs, whereas such costs have to be borne in full by their competitors, namely own-account hauliers and commercial haulage companies outside the Region.

In their letter dated 27 March 1997, the Italian authorities emphasised the huge costs which regional carriers have had to meet in order to adapt their fleets to environmental protection requirements imposed by neighbouring Austria, which has greatly benefited carriers in that country, especially *vis-a-vis* carriers from the neighbouring Friuli-Venezia Giulia Region. They also made reference to the favourable conditions enjoyed by Austrian carriers as compared to Italian carriers in general, and to those of Friuli-Venezia Giulia in particular, arising from the fact that, prior to its accession to the European Union in 1994, Austria was able to grant considerable State aid to its carriers without conditions, leading to an imbalance in the market in their favour.

However, account must be taken of the fact that Austria, as a member of the EEA, has been subject to Community rules on State aid, as transposed in the EEA Agreement, since 1994; furthermore, even prior to its accession, a number of agreements were made between the member countries of EFTA and the Community, which have included rules in this sector since 1972.

As regards the information given by the Italian authorities relating to Austrian legislation, it transpires that this is a reference to the system of transit rights (ecopoints), set up under the Agreement of 2 May 1992 between the European Community and the Republic of Austria on transit of goods by rail and road. It is not, therefore, a unilateral measure imposed by Austria, but rather an agreement approved by Council Decision 92/577/EEC of 27 November 1992 concerning the conclusion of the Agreement between the Community and the Republic of Austria on the transit of goods by road and rail⁽¹⁾, which affects all Member States, and whereby certain advantages are conferred on Italy due to its proximity to Austria.

⁽¹⁾ OJ L 373, 21. 12. 1992, p. 4.

The Italian authorities also argued that the carriers of the Region are at a disadvantage as compared with carriers from Slovenia and Croatia, since the latter countries can freely intervene in the transport sector as they are not subject to the rules on State aid. According to the Italian authorities, that unfavourable situation for the Region of Friuli-Venezia Giulia justifies their request to continue with short-term aid measures, in order to prevent the sector from becoming completely uncompetitive. It would appear from this that the Italian authorities thus regard the subsidies not as aid but rather as compensation for the disadvantages in question.

However, the Court of Justice has confirmed (see in particular its judgment in Joined Cases 6 and 11/69 *Commission v. France*⁽²⁾) that disparities in legislation giving rise to distortions of competition cannot be regarded as justifying compensatory State aid.

The Commission considers that even if distortions did indeed exist as a result of external factors, all Community carriers would have been on an equal competitive footing as regards such distortions and that they cannot therefore serve to justify the introduction of an aid scheme which distorts competition between carriers within the Community. Also, the current competition conditions for transport operations carried out in Italy by Croatian and Slovenian carriers are governed by bilateral agreements between Italy and those third countries, including practical measures for the monitoring of the agreements.

The Commission considers that the aid therefore benefits operators engaged in a specific activity (namely commercial road haulage) in a specific Region, by reducing the normal business running costs in such a way as to engender a distortion of competition.

VII

Furthermore, commercial road haulage companies in the Friuli-Venezia Giulia Region are in competition with road haulage companies from the rest of Italy and from other countries, as well as with own-account hauliers.

The Italian authorities asked for the *de minimis* rule to be applied, since the subsidies involved are relatively small. However, the Community guidelines on aid to

⁽²⁾ [1969] ECR 523.

SMEs and the *de minimis* rule were not adopted until 1992 ⁽¹⁾, were modified in 1996 ⁽²⁾, and, in accordance with point 2.2 of those guidelines, are not applicable to the transport sector since there are specific rules on competition in that sector.

A distinction must be made between companies exclusively engaged in transport operations at national, regional or local level, and those engaged in international transport.

The former are in competition with other Italian carriers and with Community carriers engaged in cabotage in Italy.

However, it must be taken into account that before Regulation (EEC) No 4059/89 entered into force, the national haulage market was not open to Community competition, as explained above. In view of the absence of Community competition, the granting of aid to companies exclusively engaged in transport operations at national, regional or local level could not have had any effect on intra-Community trade.

The Commission therefore considers that the subsidies granted between 1981 and 1 July 1990 under Regional Laws No 28/81 and No 4/85 to transport companies in Friuli-Venezia Giulia exclusively engaged in transport operations at national, regional or local level do not constitute State aid within the meaning of Article 92(1) of the Treaty.

However, aid granted to commercial road haulage companies in the Friuli-Venezia Giulia Region from the date on which Regulation (EEC) No 4059/89 entered into force, that is from 1 July 1990 onwards, are to be regarded as State aid within the meaning of Article 92 of the Treaty, since it may have affected trade between Member States.

Following initiation of the procedure, the Italian authorities stated that over 80 % of beneficiaries were very small firms possessing a single vehicle and involved solely in local or regional transport. Nevertheless, because of cabotage, the Commission considers that the local nature of the activity cannot be taken as a criterion for ruling out any effect on trade, even though cabotage is subject to quotas.

Companies from the Friuli-Venezia Giulia Region engaged in international transport have since 1969 been in competition with other Italian companies involved in the same activity.

According to the Italian authorities, hauliers from the Region play only a very small part in international transport operations, and can therefore be regarded as having little significant effect on competition in this sector. The Commission, however, considers that the limited nature of the competition cannot preclude the application of Article 92(1) of the Treaty to the road haulage sector.

Where the position of companies in a particular sector involved in trade between Member States is strengthened, this trade must be considered to be affected within the meaning of Article 92(1) of the Treaty. The aid provided for under Laws No 4/85 and No 28/81 strengthens the financial position and hence the scope of commercial haulage companies in the Friuli-Venezia Giulia Region *vis-a-vis* their competitors since 1 July 1990 for companies engaged in national transport and since 1969 for companies engaged in international transport and may accordingly affect trade between Member States.

VIII

Since some of the financial measures in favour of commercial road haulage companies thus constitute aid within the meaning of Article 92(1) of the Treaty, it must be considered whether any of the derogations provided for in Articles 77, 92 and 93 of the Treaty apply.

Article 3(1)(d) of Council Regulation (EEC) No 1107/70 of 4 June 1970 on the granting of aid for transport by rail, road and inland waterway ⁽³⁾, as last amended by Regulation (EC) No 543/97 ⁽⁴⁾, authorises such aid 'until the entry into force of Community rules on access to the transport market, where aid is granted as an exceptional and temporary measure in order to eliminate, as part of a reorganisation plan, excess capacity causing serious structural problems, and thus to contribute towards meeting more effectively the needs of the transport market'.

The Italian authorities stated, in their response to the initiation of the procedure, that there is no problem of excess capacity in the haulage sector in the Friuli-Venezia Giulia Region, but rather an undercapacity in vehicle fleets of about 20 % as compared to real needs — in other words, an excessive workload is being placed on existing equipment and personnel in the Region, with a potentially adverse impact on safety.

The Commission therefore considers that the aid in question is not covered by the exemption set out in Article 3(1)(d) of the above Regulation, since it is not part of any

⁽¹⁾ OJ C 213, 19. 8. 1992, p. 2.

⁽²⁾ OJ C 213, 23. 7. 1996, p. 4, and OJ C 68, 6. 3. 1996, p. 9.

⁽³⁾ OJ L 130, 15. 6. 1970, p. 1.

⁽⁴⁾ OJ L 84, 26. 3. 1997, p. 6.

reorganisation plan for the sector within the meaning of that provision, and it is not in response to excess capacity in the sector. The conditions for applying that provision are therefore not fulfilled.

In their response to the initiation of the procedure, the Italian authorities argued that the vehicle fleets in the Region are very old, giving rise to detrimental effects as regards atmospheric pollution, noise and safety. This requires a financial input for vehicle replacement, which the operators in the sector would have difficulty in providing. The Italian authorities also maintained that the granting of aid for fleet replacement was apparently not disallowed by the Commission in the past, as evidenced by its answer to parliamentary question No E/1883/96.

The Commission considers that subsidies for vehicle leasing constitute aid of a type which is difficult to reconcile with the common market, notably because it involves an increase in capacity, which is contrary to the spirit of Article 3(1)(d) of Regulation (EEC) No 1107/70. Furthermore, the Commission's answer to the parliamentary question cited by the Italian authorities confined itself to stating that any such aid must be submitted for Commission approval, pursuant to Article 93 of the Treaty, which does not in any way imply that the Commission would be in favour of aid for vehicle replacement.

As mentioned above, between 10 % and 15 % of the subsidies were for the financing of combined transport equipment. Provided such subsidies are of a temporary nature and are aimed at encouraging the development of combined transport, they are exempt under Regulation (EEC) No 1107/70, as amended by Regulations (EEC) No 1658/82 ⁽¹⁾ and No 1100/89 ⁽²⁾ in the case of aid granted up to 31 December 1992, and under Regulation (EEC) No 1107/70, as amended by Regulations (EEC) No 3578/92 ⁽³⁾ and (EC) No 543/97 in the case of aid granted after that date, insofar as they concern investment in transport equipment specifically adapted for, and used solely for, combined transport.

The aid for combined transport under the scheme set up by Laws No 28/81 and No 4/85 was for the purchase of swap-bodies and corresponding attachment devices for intermodal vehicles and semi-trailers. This aid thus fulfils

the conditions for exemption outlined above, aimed at encouraging the development of combined transport.

The Commission therefore considers that such aid may benefit from the exemption provided for in Article 3(1)(e) of Regulation (EEC) No 1107/70 until 31 December 1997.

The Commission considers that the exemptions under Article 92(2)(a) and (b), and Article 92(3)(b) and (d) of the Treaty are not applicable in this case, because the aid in question cannot be regarded as aid of a social character granted to individual consumers, aid to make good the damage caused by natural disasters or other exceptional occurrences, aid towards a project of common European interest, and is not aid to promote culture and heritage conservation.

Article 92(3)(a) and (c) provide for exemptions for aid to promote the economic development of certain areas. The Italian authorities stated in their letter in response to the initiation of the procedure that two-thirds of the Region's territory is in areas of industrial decline (Objective 2) or less-favoured areas (Objective 5b).

First, however, the planned aid is not part of a regional development plan covering all sectors of the Region's economy, but rather is a purely sectoral measure affecting only the commercial road haulage sector in the Friuli-Venezia Giulia Region; secondly, not all the territory in the Region is in areas qualifying for the exemptions. The Commission therefore considers that the exemptions under Article 92(3)(a) and (c) are not applicable in this case.

The exemption provided for in Article 92(3)(c) of the Treaty applies to aid aimed at facilitating the development of certain economic activities, where this does not adversely affect trading conditions to an extent contrary to the common interest. However, aid for leasing vehicles as referred to in Article 5 of Law No 4/85 is operating aid, which, according to the judgment of the Court of First Instance in Case T-459/93 *Siemens v. Commission* ⁽⁴⁾, is aid which is intended to relieve an undertaking of expenses it would normally have to bear in its day-to-day management or its usual activities, and therefore is not in principle covered by the abovementioned Article 92(3).

⁽¹⁾ OJ L 184, 29. 6. 1982, p. 1.

⁽²⁾ OJ L 116, 28. 4. 1989, p. 24.

⁽³⁾ OJ L 364, 12. 12. 1992, p. 11.

⁽⁴⁾ [1995] ECR II-1679.

Furthermore, such an exemption cannot apply to the scheme under review since the latter involves measures which are not accompanied by any action aimed at an objective of common interest, such as a restructuring plan. While the Italian authorities did indeed make reference to restructuring the sector in their reply to the initiation of the procedure, that related to future restructuring and rationalization plans for the sector, which they plan to implement through new legislative aid measures for the Region.

Lastly, the Italian authorities have not claimed or demonstrated that the aid fulfils the conditions for any other derogation provided for in the Treaty or in Regulation (EEC) No 1107/70.

In view of the foregoing, the Commission considers that aid granted under Laws No 28/81 and No 4/85 to commercial road haulage companies in the Friuli-Venezia Giulia Region engaged in national transport operations from 1 July 1990 onwards, as well as for those engaged in international transport operations, is incompatible with the common market within the meaning of Article 92 of the Treaty.

IX

Under Article 93(3) of the Treaty, such aid should have been notified to the Commission in good time. Since the Italian Government implemented the aid scheme without having fulfilled this obligation, the scheme should be regarded as illegal.

In initiating the procedure, as communicated to the Italian authorities in its letter dated 14 February 1997, the Commission drew their attention to the Communication ⁽¹⁾ reminding Member States that any aid illegally granted is liable to be the subject of a Commission decision requiring the Member State to recover it. Such action is considered necessary by the Commission in this instance in order to restore the fair conditions of competition which existed before the aid was granted,

HAS ADOPTED THIS DECISION:

Article 1

Subsidies granted under Laws No 28/1981 and No 4/1985 of the Friuli-Venezia Giulia Region (hereinafter referred to as 'the subsidies') up to 1 July 1990 to companies exclusively engaged in transport operations at local, regional or national level do not constitute State aid within the meaning of Article 92(1) of the Treaty.

Article 2

The subsidies not covered by Article 1 of this Decision constitute aid within the meaning of Article 92(1) of the Treaty and are illegal since they were introduced in breach of Article 93(3).

Article 3

The subsidies for financing equipment specifically adapted for, and used solely for, combined transport constitute aid within the meaning of Article 92(1) of the Treaty but are compatible with the common market by virtue of Article 3(1)(e) of Regulation (EEC) No 1107/70.

Article 4

The subsidies granted from 1 July 1990 onwards to companies engaged in transport operations at a local, regional or national level and to companies engaged in transport operations at an international level are incompatible with the common market since they do not fulfil any of the conditions for derogation provided for in Article 92(2) and (3) of the Treaty, or the conditions provided for in Regulation (EEC) No 1107/70.

Article 5

Italy shall abolish and recover the aid referred to in Article 4. The aid shall be reimbursed in accordance with the provisions of domestic law, together with interest, calculated by applying the reference rates used for assessment of regional aid, as from the date on which the aid was granted and ending on the date on which it is actually repaid.

Article 6

Italy shall inform the Commission within two months of the date of notification of this Decision of the measures taken to comply with it.

Article 7

This Decision is addressed to the Italian Republic

Done at Brussels, 30 July 1997.

For the Commission

Emma BONINO

Member of the Commission

⁽¹⁾ OJ C 318, 24. 11. 1983, p. 3.

CORRIGENDA

Corrigendum to Commission Regulation (EC) No 447/98 of 1 March 1998 on the notifications, time limits and hearings provided for in Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings

(Official Journal of the European Communities No L 61 of 2 March 1998)

Page 9, Article 25, date of entry into force:

for: '... 21 March 1998.'

read: '... 2 March 1998.'
