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Legislation

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(1) Text with EEA relevance

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 1005/98

of 14 May 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 Commission 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 15 May 1998.

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

Done at Brussels, 14 May 1998.

For the Commission
Franz FISCHLER
Member of the Commission

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[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 14 May 1998 establishing the standard import values for determining the entry price of certain fruit and vegetables

(ECU/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	204	143,0
	999	143,0
0707 00 05	052	94,8
	068	99,8
	999	97,3
0709 90 70	052	70,7
	204	87,8
	999	79,3
0805 10 10, 0805 10 30, 0805 10 50	052	39,0
	204	39,4
	212	66,4
	400	55,4
	600	54,4
	624	47,8
	999	50,4
0805 30 10	382	60,1
	388	60,1
	999	60,1
0808 10 20, 0808 10 50, 0808 10 90	060	42,3
	388	78,9
	400	110,3
	404	93,8
	508	81,0
	512	80,2
	524	94,3
	528	77,9
	804	105,9
	999	85,0

(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 1006/98

of 14 May 1998

amending Regulation (EC) No 939/97 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein [1], as last amended by Commission Regulation (EC) No 2307/97 [2], and in particular point 2 of Article 19 thereof,

Whereas Article 7(3) of Regulation (EC) No 338/97 provides for a derogation from Articles 4 and 5 of that Regulation for personal and household effects in compliance with provisions specified by the Commission; whereas the provisions concerned were laid down in Articles 27 and 28 of Commission Regulation (EC) No 939/97 [3], as amended by Regulation (EC) No 767/98 [4]; whereas those Articles need to be amended in order to prevent abuse of their provisions;

Whereas, in order to prevent abuse, the conditions for the application of the derogation regulated by Articles 27 and 28 of Regulation (EC) No 939/97 need to be clarified by referring to the definition laid down in Article 2(j) of Regulation (EC) No 338/97, regard being had to the objectives of the latter Regulation;

Whereas goods that are introduced into and/or exported or re-exported from the Community in order to be used for commercial gain, sold, displayed for commercial purposes, kept for sale, offered for sale or transported for sale, cannot be considered to be the belongings of a private individual that form or are intended to form part of his normal goods and chattels;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Committee on Trade in Wild Fauna and Flora,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 939/97 is hereby amended as follows:

1. The following text is inserted as the first subparagraph of Article 27(1):

   'For the purposes of the application of the derogation laid down in Article 7(3) of Regulation (EC) No 338/97 from Article 4 of that Regulation, goods that are introduced into the Community in order to be used for commercial gain, sold, displayed for commercial purposes, kept for sale, offered for sale or transported for sale cannot be considered to be personal or household effects.'

2. The following text is inserted as the first subparagraph of Article 28(1):

   'For the purposes of the application of the derogation laid down in Article 7(3) of Regulation (EC) No 338/97 from Article 5 of that Regulation, goods that are exported or re-exported from the Community in order to be used for commercial gain, sold, displayed for commercial purposes, kept for sale, offered for sale or transported for sale cannot be considered to be personal or household effects.'

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.*

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

Done at Brussels, 14 May 1998.

For the Commission

Ritt BJERREGAARD

Member of the Commission

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[1] OJ L 61, 3. 3. 1997, p. 1.
[2] OJ L 325, 27. 11. 1997, p. 1.
[3] OJ L 140, 30. 5. 1997, p. 9.
[4] OJ L 109, 8. 4. 1998, p. 7.

COMMISSION REGULATION (EC) No 1007/98

of 14 May 1998

fixing the compensatory aid for bananas produced and marketed in the Community in 1997, the deadline for payment of the balance of that aid and the unit amount of advances for 1998

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organisation of the market in bananas [1], as last amended by Regulation (EC) No 3290/94 [2], and in particular Articles 12(6) and 14 thereof,

Whereas Commission Regulation (EEC) No 1858/93 [3], as last amended by Regulation (EC) No 796/95 [4], lays down detailed rules for applying Regulation (EEC) No 404/93 as regards the aid scheme to compensate for loss of income from marketing in the banana sector;

Whereas, pursuant to Article 12 of Regulation (EEC) No 404/93, the compensatory aid is calculated on the basis of the difference between the flat-rate reference income and the average production income from bananas produced and marketed in the Community in a given year; whereas supplementary aid is granted in one or more producer regions where average income from production is significantly lower than the average Community income;

Whereas prices for bananas produced and marketed in the Community in 1997 were such that the average price for delivery to the first port of unloading in the rest of the Community, less the average costs of transport and delivery fob, is less than the flat-rate reference income fixed in Article 2(2) of Regulation (EEC) No 1858/93; whereas the compensatory aid for 1997 should be fixed accordingly;

Whereas the annual average production income from marketing bananas produced in Portugal proved significantly lower than the Community average in 1997; whereas supplementary aid should accordingly be granted in the producer regions of Portugal;

Whereas, furthermore, the unit amounts of advances and the corresponding security depend on the rate of aid fixed for the preceding year pursuant to Article 4(2) and (4) of Regulation (EEC) No 1858/93;

Whereas, since all the data required were not available, the compensatory aid for 1997 could not be determined earlier; whereas provision should be made for payment of the balance of the aid within two months of the date of publication of this Regulation; whereas, given the above, the Regulation should enter into force on the day following its publication;

Whereas the Management Committee for Bananas has not delivered an opinion within the time limit laid down by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

1. The compensatory aid provided for in Article 12 of Regulation (EEC) No 404/93 for bananas covered by CN code ex 0803, excluding plantains, produced and marketed fresh in the Community in 1997 shall be ECU 24,81 per 100 kg.

2. The aid fixed in paragraph 1 shall be increased by ECU 2,82 per 100 kg for bananas produced in the producer regions of Portugal.

3. Advances for bananas marketed from January to October 1998 shall be ECU 17,37 per 100 kg. The corresponding security shall be ECU 8,68 per 100 kg.

Article 2

Notwithstanding Article 10 of Regulation (EEC) No 1858/93, the competent authorities of the Member States shall pay the balance of the compensatory aid in respect of 1997 within two months of the entry into force of this Regulation.

Article 3

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

[1] OJ L 47, 25. 2. 1993, p. 1.
[2] OJ L 349, 31. 12. 1994, p. 105.
[3] OJ L 170, 13. 7. 1993, p. 5.
[4] OJ L 80, 8. 4. 1995, p. 17.

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

Done at Brussels, 14 May 1998.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 1008/98

of 14 May 1998

amending Regulation (EC) No 1371/95 laying down detailed rules for implementing the system of export licences in the egg sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2771/75 of 29 October 1975 on the common organisation of the market in eggs [1], as last amended by Commission Regulation (EC) No 1516/96 [2], and in particular Articles 3(2) and 8(13) thereof,

Whereas Commission Regulation (EC) No 1371/95 [3], as last amended by Regulation (EC) No 1157/96 [4], lays down detailed rules for implementing the system of export licences in the egg sector;

Whereas Commission Regulation (EEC) No 3665/87 [5], as last amended by Regulation (EC) No 604/98 [6], lays down common detailed rules for the application of the system of export refunds on agricultural products; whereas Article 3 thereof defines the day of export; whereas the text of Regulation (EC) No 1371/95 should be amended to adjust it to that definition;

Whereas Articles 4 and 9 of and Annex II to Regulation (EC) No 1371/95 contain errors which should be corrected;

Whereas the time limit for notification by Member States to the Commission of applications for 'ex-post' export licences should be the same as for other export licences;

Whereas it is necessary to adjust Annex III to Regulation (EC) No 1371/95 to take account of amendments to the differentiated refunds;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1371/95 is hereby amended as follows:

1. in Article 4(3)(a), the references to Sections 17 and 18 are replaced by references to Sections 15 and 16;

2. in Article 9:

   (a) in the first subparagraph of paragraph 2:

   — the reference to Section 22 is replaced by a reference to Section 20,

   — the phrase 'the date on which they took place' is replaced by 'the date of export within the meaning of Article 3 of Regulation (EEC) No 3665/87';

   (b) in the first subparagraph of paragraph 3, the first sentence is replaced by the following:

   'Member States shall communicate to the Commission, each Friday from 1 p.m., by fax, the number of "ex-post" export licences applied for or the absence of such applications, during the current week.';

   (c) in paragraph 4, the second subparagraph is replaced by the following:

   'This licence accords entitlement to payment of the refund applicable on the day of export within the meaning of Article 3 of Regulation (EEC) No 3665/87.';

3. in Annex II, Part A, 'ECU/100 kg' is replaced by 'ECU/100 kg or 100 pieces';

4. Annex III is replaced by the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 1 June 1998.

[1] OJ L 282, 1. 11. 1975, p. 49.
[2] OJ L 189, 30. 7. 1996, p. 99.
[3] OJ L 133, 17. 6. 1995, p. 16.
[4] OJ L 153, 27. 6. 1996, p. 19.
[5] OJ L 351, 14. 12. 1987, p. 1.
[6] OJ L 80, 18. 3. 1998, p. 19.

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

Done at Brussels, 14 May 1998.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX

'ANNEX III

Russia
Kuwait
Bahrain
Qatar
Oman
United Arab Emirates
Republic of Yemen
Hong Kong SAR
South Korea
Japan
Malaysia
Thailand
Taiwan
Philippines
Egypt'

COMMISSION REGULATION (EC) No 1009/98

of 14 May 1998

amending Regulation (EC) No 1372/95 laying down detailed rules for implementing the system of export licences in the poultrymeat sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organisation of the market in poultrymeat [1], as last amended by Commission Regulation (EC) 2916/95 [2], and in particular Article 3(2) thereof,

Whereas Commission Regulation (EC) No 1372/95 [3], as last amended by Regulation (EC) No 2370/96 [4], lays down detailed rules for implementing the system of export licences in the poultrymeat sector;

Whereas Commission Regulation (EEC) No 3665/87 [5], as last amended by Regulation (EC) No 604/98 [6], lays down common detailed rules for the application of the system of export refunds on agricultural products; whereas Article 3 thereof defines the day of export; whereas the text of Regulation (EC) No 1372/95 should be amended to adjust it to that definition;

Whereas Commission Regulation (EC) No 2448/95 of 10 October 1995 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff [7] establishes new subdivisions of CN code 0105 with effect from 1 January 1996; whereas Articles 1 and 9 of Regulation (EC) No 1372/95 should therefore be adjusted;

Whereas Articles 4 and 9 of and Annex II to Regulation (EC) No 1372/95 contain errors which should be corrected;

Whereas the time limit for notification by Member States to the Commission of applications for 'ex-post' export licences should be the same as for other export licences;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1372/95 is hereby amended as follows:

1. in Articles 1 and 9(1), 'CN codes 0105 11 and 0105 19' is replaced by 'CN codes 0105 11, 0105 12 and 0105 19';

2. in Article 4(3)(a), the references to Sections 17 and 18 are replaced by references to Sections 15 and 16;

3. in Article 9:

   (a) in the first subparagraph of paragraph 2:

   — the reference to Section 22 is replaced by a reference to Section 20,

   — the phrase 'the date on which they took place' is replaced by 'the date of export within the meaning of Article 3 of Regulation (EEC) No 3665/87';

   (b) in the first subparagraph of paragraph 3, the first sentence is replaced by the following:

   'Member States shall communicate to the Commission, each Friday from 1 p.m., by fax, the number of 'ex-post' export licences applied for or the absence of such applications, during the current week.';

   (c) in paragraph 4, the second subparagraph is replaced by the following:

   'This licence accords entitlement to payment of the refund applicable on the day of export within the meaning of Article 3 of Regulation (EEC) No 3665/87.';

4. in Annex II, Part A, 'ECU/100 kg' is replaced by 'ECU/100 kg or 100 pieces'.

Article 2

This Regulation shall enter into force on 1 June 1998.

[1] OJ L 282, 1. 11. 1975, p. 77.
[2] OJ L 305, 19. 12. 1995, p. 49.
[3] OJ L 133, 17. 6. 1995, p. 26.
[4] OJ L 323, 13. 12. 1996, p. 12.
[5] OJ L 351, 14. 12. 1987, p. 1.
[6] OJ L 80, 18. 3. 1998, p. 19.
[7] OJ L 259, 30. 10. 1995, p. 1.

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

Done at Brussels, 14 May 1998.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 1010/98

of 14 May 1998

allowing Germany an exemption from the quality standards for apricots

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 3(3) thereof,

Whereas Commission Regulation (EEC) No 1108/91 of 30 April 1991 laying down quality standards for apricots [3], as last amended by Regulation (EC) No 888/97 [4], contains precise rules on the sizing of those products;

Whereas Article 3(3) of Regulation (EC) No 2200/96 allows for an exemption from the quality standards where the fruit or vegetables of a given region are sold by the retail trade of the region for well-established traditional local consumption;

Whereas certain varieties of apricots produced in Germany, in particular in the Süßer See region, are characterised by a smaller size than that required by the quality standards; whereas those apricots are traditionally marketed in the production region; whereas, therefore, such an exemption should be authorised on the territory of Germany;

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. As an exemption from the Annex to Commission Regulation (EEC) No 1108/91, the minimum size of apricots produced in the Süßer See region may be less than the 5 mm given in the quality standards. However, such apricots may only be marketed in Saxony-Anhalt and Saxony.

2. For the purposes of applying paragraph 1, each consignment must carry, in addition to the other required information, the following indication on the document or notice as referred to in Article 5(2) of Regulation (EC) No 2200/96: 'Nur in Sachsen-Anhalt und Sachsen im Einzelhandel zu verkaufen' ('Only for retail sale in Saxony-Anhalt and Saxony').

Article 2

This Regulation shall enter into force on the third 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, 14 May 1998.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 297, 21. 11. 1996, p. 1.
[2] OJ L 346, 17. 12. 1997, p. 41.
[3] OJ L 110, 1. 5. 1991, p. 67.
[4] OJ L 126, 17. 5. 1997, p. 11.

COMMISSION REGULATION (EC) No 1011/98

of 14 May 1998

amending Regulation (EEC) No 1722/93 laying down detailed rules for the application of Council Regulations (EEC) No 1766/92 and (EEC) No 1418/76 concerning production refunds in the cereals and rice sectors respectively

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 (EEC) No 923/96 [2] and in particular Article 7(3) thereof,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice [3], as amended by Regulation (EC) No 192/98 [4], and in particular Article 7 thereof,

Whereas Regulation (EEC) No 1722/93 of the Commission of 30 June 1993 laying down detailed rules for the application of Council Regulations (EEC) No 1766/92 and (EEC) No 1418/76 concerning production refunds in the cereals and rice sectors respectively [5], as last amended by Commission Regulation (EC) No 1516/95 [6], envisages, for the calculating method of the production refund, a differentiation between starches containing maize, wheat, potatoes and rice on the one hand and starches containing barley and oats on the other; whereas experience has shown that the fixing of a specific amount for the product containing barley and oats is no longer necessary and that the single amount of the refund can hence apply to any starch without risk of inadequate compensation;

Whereas individual measures should be anticipated at the time of the change of the marketing year, concerning the term of validity of the refund certificates and the adjustment of the amount of the single refund;

Whereas, for the release of the individual guarantee in particular for esterified and etherified starches, it is advisable to specify the primary requirement to be fulfilled; whereas the special provisions applicable to these products still should be supplemented by certain measures aiming at the effectiveness of controls and the sanctions in the event of non-observance of the transformation or use of conditions;

Whereas the regulation stipulates currently that Member States notify each month to the Commission the statistical data covering at the same time the quantities of starch having benefited from the production refund and the products for which starch was used; whereas it appeared that this rhythm of information is too frequent and that it is advisable to replace it by a quarterly notification;

Whereas the Management Committee for Cereals has not delivered its opinion within the time limit fixed by its Chairman,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1722/93 is amended as follows:

1. Article 3 is replaced by the following text:

'*Article 3*

1. In cases where a refund is granted, it shall be fixed once a month. However, if the prices of maize and/or wheat in the Community or on the world market change in a significant way, the refund calculated in accordance with paragraph 2 can be modified during this month to take account of these changes.

2. The refund per tonne of starch of maize, wheat, barley, oats, potatoes, rice or broken rice is calculated in particular on the basis of the difference between:

(i) the maize market price in the Community, valid during the five days preceeding the day of fixing, taking into account the price levels noted for the wheat; and

(ii) the average of the representative cif import Rotterdam prices used for the determination of the import duties of the maize, noted during the five days preceding the day of the beginning of application,

multiplied by a coefficient of 1,60.

3. The refund payable shall be that calculated in accordance with paragraph 2 and multiplied by the coefficient indicated to Annex II which corresponds to the CN code of the starch actually used for the manufacture of the approved products.

[1] OJ L 181, 1. 7. 1992, p. 21.
[2] OJ L 126, 24. 5. 1996, p. 37.
[3] OJ L 329, 30. 12. 1995, p. 18.
[4] OJ L 20, 27. 1. 1998, p. 16.
[5] OJ L 159, 1. 7. 1993, p. 112.
[6] OJ L 147, 30. 6. 1995, p. 49.

4. The decisions provided for in this article shall be adopted by the Commission in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92.'

2. In Article 6, paragraphs 3 and 4 are replaced by the following text:

'3. The refund certificate shall include the information referred to in Article 5(2) as well as the rate of the refund payable and the final day of validity of the certificate which shall be the last day of the fifth month following the month of issue.

However, during July, August and until 24 of September included, the validity of the certificates requested during the periods in question is limited to 30 days as from the day on which they are issued, without being able to exceed the limit of 30 September.

4. The rate of the refund applicable and stated on the certificate corresponds to that valid the day of the receipt of the request.

However, where any of the quantities of starch quoted on the certificate is processed during the cereals marketing year following that in which the application was received, the refund payable for that starch which is processed in the new marketing year shall be adjusted according to the difference between the intervention price applicable during the month of delivery of the restitution certificate, and that applicable in the month of processing, multiplied by a coefficient of 1,60. The conversion rate to be used to express the amount of the refund in national currency shall be that valid on the day on which the starch was processed.'

3. In Article 9, paragraph 2 is supplemented by the following subparagraph:

'The primary requirement, within the meaning of Article 20 of Regulation (EEC) No 2220/85, constitutes the use or the export of the product in accordance with the respective provisions of subparagraphs (a) and (b) of paragraph 1 of Article 10 of this Regulation. The use or the export is to be effected within 12 months following the deadline of validity of the certificate. An extension of maximum six months of this deadline may be considered on the basis of a duly justified request presented to the competent authority.'

4. Article 10(4) is supplemented by following subparagraph:

'However, the buyers who, each quarter, use a quantity of the products within this CN code which is less than 1 000 kg, can be exempted from this obligation.'

5. Article 12 is replaced by the following text:

'Within three months from the end of each quarter of the calendar year, Member States shall notify the Commission of the type, quantities and origin of the starch (maize, wheat, potatoes, barley, oats or rice) for which refunds have been paid and the type and quantities of products for which the starch has been used.'

6. Footnote 4, mentioned in Annex II, is replaced by the following text:

'Directly produced from maize, wheat, barley, oats, rice or potatoes, with the exclusion of all use of by-products obtained at the time of the manufacture of other agricultural products or merchandise.'

Article 2

This Regulation enters into force on the third 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, 14 May 1998.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 1012/98

of 14 May 1998

opening and providing for the administration of tariff quotas for the import of bulls, cows and heifers, other than those intended for slaughter, of certain Alpine and mountain breeds

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1095/96 of 18 June 1996 on the implementation of the concessions set out in Schedule CXL drawn up in the wake of the conclusion of the GATT Article XXIV.6 negotiations [1], and in particular Article 1(1) thereof,

Whereas for bulls, cows and heifers, other than those intended for slaughter, of the mottled Simmental breed and the Schwyz and Fribourg breeds and for cows and heifers, other than those intended for slaughter, of the grey, brown, yellow and mottled Simmental breed and the Pinzgau breed, the Community has undertaken, in the framework of the World Trade Organisation (WTO), to open two annual tariff quotas each of 5 000 head at rates of duty of 6 and 4 % respectively; whereas those quotas should therefore be opened on a multiannual basis for 12-month periods starting from 1 July, hereinafter referred to as the 'year of import', and detailed rules adopted for their application;

Whereas there should be a guarantee in particular of equal and continuing access to the said quotas for all interested traders within the Community and of uninterrupted application of the customs duties laid down for those quotas to all imports of the animals in question until the quotas are exhausted;

Whereas experience has shown that limiting imports may lead to speculative import licence applications; whereas, in order to ensure that the planned measures function properly, the greater part of the quantities available should be allocated to 'traditional' importers of cows and heifers of specified mountain breeds; whereas, in order to avoid forcing trade relations in this product group into an excessively rigid mould, a second tranche should be made available to traders who are able to show that they are engaged in genuine trade of some scale with third countries; whereas, in this connection and in order to ensure efficient management, the trader concerned must be required to have imported at least 15 head in the year preceding the year of import; whereas a batch of 15 animals in principle constitutes a normal load; whereas experience shows that the sale or purchase of a single batch is a minimum requirement for a transaction to be considered genuine and viable; whereas verification of these criteria requires all applications from the same trade to be submitted in the same Member State where the importer is listed in the VAT register;

Whereas, in order to prevent speculation, traders no longer engaged in trade in beef and veal at 1 July of the year of import should be denied access to the quota;

Whereas, subject to the provisions of this Regulation, Commission Regulations (EEC) No 3719/88 of 16 November 1988 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products [2], as last amended by Regulation (EC) No 1404/97 [3], and (EC) No 1445/95 of 26 June 1995 on rules of application for import and export licences in the beef and veal sector and repealing Regulation (EEC) No 2377/80 [4], as last amended by Regulation (EC) No 759/98 [5], are applicable;

Whereas Article 82 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [6], as last amended by Regulation (EC) No 82/97 [7], provides for customs supervision of goods put into free circulation at a reduced rate of duty on account of their end-use; whereas imported animals should be monitored for a certain period to ensure they are not slaughtered; whereas, in order to ensure that the animals concerned are not slaughtered, a security should be required;

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

[1] OJ L 146, 20. 6. 1996, p. 1.

[2] OJ L 331, 2. 12. 1988, p. 1.
[3] OJ L 194, 23. 7. 1997, p. 5.
[4] OJ L 143, 27. 6. 1995, p. 35.
[5] OJ L 105, 4. 4. 1998, p. 7.
[6] OJ L 302, 19. 10. 1992, p. 1.
[7] OJ L 17, 21. 1. 1997, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

1. The following tariff quotas are opened on a multiannual basis for periods from 1 July to 30 June of the following year, hereinafter referred to as the 'year of import':

Order No	CN code (1)	Description	Quota volume (head of cattle)	Customs duty
09.0001	ex 0102 90 05 ex 0102 90 29 ex 0102 90 49 ex 0102 90 59 ex 0102 90 69	Cows and heifers, other than those intended for slaughter, of the following mountain breeds: grey, brown, yellow and mottled Simmental breed and Pinzgau breed	5 000	6 %
09.0003	ex 0102 90 05 ex 0102 90 29 ex 0102 90 49 ex 0102 90 59 ex 0102 90 69 ex 0102 90 79	Bulls, cows and heifers, other than those intended for slaughter, of the following breeds: mottled Simmental breed and Schwyz and Fribourg breeds	5 000	4 %

(1) TARIC code: see Annex I.

2. For the purposes of this Regulation, the animals referred to in paragraph 1 shall be considered not to be intended for slaughter if they are not slaughtered within four months of the date of acceptance of the declaration of release for free circulation.

Derogations may, however, be granted in the event of duly proven cases of *force majeure.*

3. To benefit from the tariff quota covered by order No 09.0003, the following must be presented:

— for bulls: a pedigree certificate,

— for female animals: a pedigree certificate or a certificate of registration in a herdbook certifying the purity of the breed.

Article 2

1. The two quota volumes referred to in Article 1(1) shall each be divided into two parts of 80 %, i.e. 4 000 head, and 20 %, i.e. 1 000 head:

(a) The first part, equal to 80 % of the quota volume, shall be allocated to importers from the Community who are able to furnish proof of having imported animals covered by the quotas during the 36 months preceding the year of import in question.

(b) The second part, equal to 20 % of the quota volume, shall be reserved for applicants who can furnish proof of having imported from third countries, during the 12 months preceding the year of import in question, at least 15 live bovine animals covered by CN code 0102.

Importers must be entered in a national VAT register.

2. Upon application for the right to import, the first part shall be allocated among importers in proportion to their imports of animals as referred to in paragraph 1(a) during the period referred to in that point.

3. Upon application for the right to import, the second part shall be allocated in proportion to the quantities applied for by importers as referred to in paragraph 1(b).

Applications for the right to import:

— must cover 15 head or more,

and

— may not exceed 50 head.

Applications for the right to import more than 50 head shall be reduced automatically to that number.

4. Any quantities of one of the two parts of the same tariff quota referred to in paragraph 1 not applied for shall be transferred automatically to the other part of the quota in question.

5. Proof of import shall be provided exclusively by means of the customs document of release for free circulation duly endorsed by the customs authorities.

Member States may accept a copy of the above document, duly certified by the issuing authority, if applicants can prove to the satisfaction of the competent authority that they were not able to obtain the original document.

Article 3

1. Importers who on 1 July of the year of import in question were no longer engaged in any activity in the beef and veal sector shall not qualify for an allocation pursuant to Article 2(1)(a).

2. Any company formed by the merger of companies each having rights pursuant to Article 2(2) shall benefit from the same rights as the companies from which it has been formed.

Article 4

1. An application for the right to import may only be submitted in the Member State in which the applicant is entered in a national VAT register.

2. An applicant may submit only one application per quota and that application shall refer to only one part of the quota.

Where an applicant submits more than one application for a quota, all applications from that person shall be considered invalid.

3. For the purposes of Article 2(2) and (3), all applications, accompanied by the proof referred to in Article 2(5), must reach the competent authorities not later than 15 July of each year of import.

After verifying the documents submitted, the Member States shall communicate to the Commission, not later than 1 August of each year of import:

— as regards the importers referred to in Article 2(1)(a), their names and addresses and the number of animals imported during the period referred to in Article 2(2),

— as regards the importers referred to in Article 2(1)(b), their names and addresses and the quantities applied for.

4. All notifications, including nil notifications, shall be made to the address given in Annex II.

Article 5

1. The Commission shall decide to what extent applications may be accepted.

2. As regards the applications referred to in the second indent of the second subparagraph of Article 3(3), if the quantities in respect of which applications are made exceed the quantities available, the Commission shall reduce the quantities applied for by a fixed percentage.

If the reduction referred to in the preceding subparagraph results in a quantity of less than 15 head per application, the allocation shall be by drawing lots, by batches of 15 head. If the remaining quantity is less than 15 head, a single licence shall be issued for that quantity.

Article 6

1. Imports of quantities allocated shall be subject to presentation of an import licence.

2. Import licence applications may only be submitted to the competent authority of the Member State in which the applicant is entered in a national VAT register.

3. After the notification of allocations from the Commission, in accordance with Article 5(1) import licences shall be issued as soon as possible on application by and in the names of the traders who have obtained rights to import.

4. Import licences shall be valid for 90 days from the date of issue within the meaning of Article 21(1) of Regulation (EEC) No 3719/88. They shall expire, however, on 30 June following their date of issue.

5. Without prejudice to the provisions of this Regulation, Regulations (EEC) No 3719/88 and (EC) No 1445/95 shall apply.

6. Notwithstanding Article 9(1) of Regulation (EEC) No 3719/88, import licences issued pursuant to this Regulation shall not be transferable and shall confer the right to use the tariff quota only if made out in the name entered on the declaration of release for free circulation accompanying them.

7. Article 8(4) of Regulation (EEC) No 3719/88 shall not apply.

Article 7

1. Checks to ensure that imported animals are not slaughtered within four months of release for free circulation shall be carried out in accordance with Article 82 of Regulation (EEC) No 2913/92.

2. Without prejudice to the provisions of Regulation (EEC) No 2913/92, to ensure compliance with the above obligation not to slaughter the imported animals importers must lodge a security with the competent customs authorities. This security shall equal the sum of customs duties laid down for the categories of animal in question under the common customs tariff.

The security shall be released immediately if proof is supplied to the customs authorities concerned that the animals:

(a) have not been slaughtered within four months of the date of release for free circulation;

or

(b) have been slaughtered within that period for reasons constituting a case of *force majeure* or for health reasons or have died as a result of sickness or an accident.

Article 8

On the licence application and the licence itself shall be entered:

(a) in Section 8, the country of origin;

(b) in Section 16, the CN codes given in Annex I;

(c) in Section 20, one of the following:

— Razas alpinas y de montaña [Reglamento (CE) nº 1012/98], año de importación: ...

— Alpine racer og bjergracer (forordning (EF) nr. 1012/98), importår: ...

— Höhenrassen (Verordnung (EG) Nr. 1012/98); Einfuhrjahr: ...

— Αλπικές και ορεσίβιες φυλές [κανονισμός (ΕΚ) αριθ. 1012/98], έτος εισαγωγής: ...

— Alpine and mountain breeds (Regulation (EC) No 1012/98), year of import: ...

— Races alpines et de montagne [règlement (CE) nº 1012/98], année d'importation: ...

— Razze alpine e di montagna [regolamento (CE) n. 1012/98], anno d'importazione: ...

— Bergrassen (Verordening (EG) nr. 1012/98), jaar van invoer: ...

— Raças alpinas e de montanha [Regulamento (CE) nº 1012/98], ano de importação: ...

— Alppi- ja vuoristorotuja (asetus (EY) N:o 1012/98), tuontivuosi: ...

— Alp- och bergraser (förordning (EG) nr 1012/98), importår: ...

Article 9

1. Quantities for which import licence applications have not been received by 31 March of the year of import shall be allocated to importers who have applied for import licences for the total quantity to which they are entitled, irrespective of the provisions of Article 2(1).

2. To that end, not later than 10 April of the year of import, Member States shall forward to the address given in Annex II details of the quantities for which no application has been received and the information referred to in the second subparagraph of Article 3(3). The Commission shall make the allocation by drawing lots by batches of 15 head. If the remaining quantity is less than 15 head, a single licence shall be issued for that quantity. It shall notify the Member States of the result not later than 17 April of the year of import.

3. For the purposes of this Article, Articles 6, 7 and 8 shall apply.

Article 10

This Regulation shall enter into force on 1 July 1998.

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

Done at Brussels, 14 May 1998.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

TARIC codes

Order No	CN code	Taric code
09.0001	ex 0102 90 05	0102 90 05*20
		*40
	ex 0102 90 29	0102 90 29*20
		*40
	ex 0102 90 49	0102 90 49*20
		*40
	ex 0102 90 59	0102 90 59*11
		*19
		*31
		*39
	ex 0102 90 69	0102 90 69*10
		*30
09.0003	ex 0102 90 05	0102 90 05*30
		*40
		*50
	ex 0102 90 29	0102 90 29*30
		*40
		*50
	ex 0102 90 49	0102 90 49*30
		*40
		*50
	ex 0102 90 59	0102 90 59*21
		*29
		*31
		*39
	ex 0102 90 69	0102 90 69*20
		*30
	ex 0102 90 79	0102 90 79*21
		*29

ANNEX II

COMMISSION OF THE EUROPEAN COMMUNITIES,
DG XXI-B.6 — Economic tariff questions;

fax: (32 2) 296 33 06.

COMMISSION REGULATION (EC) No 1013/98

of 14 May 1998

fixing the export refunds on eggs

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2771/75 of 29 October 1975 on the common organization of the market in eggs [1], as last amended by Commission Regulation (EC) No 1516/96 [2], and in particular Article 8 (3) thereof,

Whereas Article 8 of Regulation (EEC) No 2771/75 provides that the difference between prices on the world market for the products listed in Article 1 (1) of that Regulation and prices for those products within the Community may be covered by an export refund;

Whereas the present market situation in certain third countries and that regarding competition on particular third country markets make it necessary to fix a refund differentiated by destination for certain products in the egg sector;

Whereas it follows from applying these rules and criteria to the present situation on the market in eggs that the refund should be fixed at an amount which would permit Community participation in world trade and would also take account of the nature of these exports and their importance at the present time;

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

HAS ADOPTED THIS REGULATION:

Article 1

The list of codes of products for which, when they are exported, the export refund referred to in Article 8 of Regulation (EEC) No 2771/75 is granted, and the amount of that refund shall be as shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 15 May 1998.

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

Done at Brussels, 14 May 1998.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 282, 1. 11. 1975, p. 49.
[2] OJ L 189, 30. 7. 1996, p. 99.

ANNEX

to the Commission Regulation of 14 May 1998 fixing the export refunds on eggs

Product code	Destination (1)	Amount of refund
		ECU/100 units
0407 00 11 9000	02	3,30
0407 00 19 9000	02	1,50
		ECU/100 kg
0407 00 30 9000	03	18,00
	04	9,00
	05	17,00
0408 11 80 9100	01	58,00
0408 19 81 9100	01	27,00
0408 19 89 9100	01	27,00
0408 91 80 9100	01	43,00
0408 99 80 9100	01	11,00

(1) The destinations are as follows:

01 All destinations except Switzerland,

02 All destinations except the United States of America,

03 Kuwait, Bahrain, Oman, Qatar, the United Arab Emirates, Yemen, Hong Kong SAR and Russia,

04 All destinations except Switzerland and those of 03 and 05,

05 South Korea, Japan, Malaysia, Thailand, Taiwan, the Philippines and Egypt.

NB: The product codes and the footnotes are defined in amended Commission Regulation (EEC) No 3846/87.

COMMISSION REGULATION (EC) No 1014/98

of 14 May 1998

fixing representative prices and additional import duties in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2771/75 of 29 October 1975 on the common organization of the market in eggs [1], as last amended by Commission Regulation (EC) No 1516/96 [2], and in particular Article 5 (4) thereof,

Having regard to Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organization of the market in poultrymeat [3], as last amended by Commission Regulation (EC) No 2916/95 [4], and in particular Article 5 (4) thereof,

Having regard to Council Regulation (EEC) No 2783/75 of 29 October 1975 on the common system of trade for ovalbumin and lactalbumin [5], as last amended by Commission Regulation (EC) No 2916/95, and in particular Article 3 (4) thereof,

Whereas Commission Regulation (EC) No 1484/95 [6], as last amended by Regulation (EC) No 833/98 [7], fixes detailed rules for implementing the system of additional import duties and fixes additional import duties in the poultrymeat and egg sectors and for egg albumin;

Whereas it results from regular monitoring of the information providing the basis for the verification of the import prices in the poultrymeat and egg sectors and for egg albumin that the representative prices and additional duties for imports of certain products should be amended taking into account variations of prices according to origin; whereas, therefore, representative prices and corresponding additional duties should be published;

Whereas it is necessary to apply this amendment as soon as possible, given the situation on the market;

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

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 1484/95 is hereby replaced by the Annex hereto.

Article 2

This Regulation shall enter into force on 15 May 1998.

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

Done at Brussels, 14 May 1998.

For the Commission
Franz FISCHLER
Member of the Commission

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[1] OJ L 282, 1. 11. 1975, p. 49.
[2] OJ L 189, 30. 7. 1996, p. 99.
[3] OJ L 282, 1. 11. 1975, p. 77.
[4] OJ L 305, 19. 12. 1995, p. 49.
[5] OJ L 282, 1. 11. 1975, p. 104.
[6] OJ L 145, 29. 6. 1995, p. 47.
[7] OJ L 119, 22. 4. 1998, p. 6.

ANNEX

'ANNEX I

CN code	Description	Representative price ECU/100 kg	Additional duty ECU/100 kg	Origin (1)
0207 14 10	Boneless cuts of fowls of the species *gallus domesticus*, frozen	216,6	25	01
		247,0	16	02
		253,8	14	03
		260,7	12	04
		260,7	12	05
1602 32 11	Preparations uncooked of the species *gallus domesticus*	221,6	20	01
		269,1	05	02
		264,7	07	03
1602 39 21	Preparations uncooked other than turkeys and of the species *gallus domesticus*	221,6	20	01

(1) Origin of imports:
01 China
02 Brazil
03 Thailand
04 Chile
05 Argentina.'

COMMISSION REGULATION (EC) No 1015/98

of 14 May 1998

temporarily suspending the issuing of export licences for certain milk products and determining what proportion of the amounts covered by pending applications for export licences may be allocated

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 organisation of the market in milk and milk products [1], as last amended by Regulation (EC) No 1587/96 [2],

Having regard to Commission Regulation (EC) No 1466/95 of 27 June 1995 laying down special detailed rules of application for export refunds on milk and milk products [3], as last amended by Regulation (EC) No 897/98 [4], and in particular Article 8(3) thereof,

Whereas the market in certain milk products is currently subject to uncertainty; whereas licence applications of a speculative nature which may lead to distortions of competition between operators and potentially disrupt the continuity of exports of these products for the remainder of the period in question should be avoided; whereas the issue of export licences for the products involved should be temporarily suspended, and licences for some of these products should not be issued in respect of applications pending;

Whereas the Management Committee for Milk and Milk Products has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The issue of export licences for milk products referred to in the Annex is hereby suspended for the period 15 May to 1 June 1998, excluding licences for destination '970'.

Article 2

This Regulation shall enter into force on 15 May 1998.

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

Done at Brussels, 14 May 1998.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 148, 28. 6. 1968, p. 13.
[2] OJ L 206, 16. 8. 1996, p. 21.
[3] OJ L 144, 28. 6. 1995, p. 22.
[4] OJ L 126, 28. 4. 1998, p. 22.

ANNEX

Product code	Product code	Product code	Product code
0401 10 10 9000	0402 21 99 9700	0402 99 39 9300	0404 90 23 9917
0401 10 90 9000	0402 21 99 9900	0402 99 39 9500	0404 90 23 9919
0401 20 11 9100	0402 29 15 9200	0402 99 91 9000	0404 90 23 9931
0401 20 11 9500	0402 29 15 9300	0402 99 99 9000	0404 90 23 9933
0401 20 19 9100	0402 29 15 9500	0403 10 11 9400	0404 90 23 9935
0401 20 19 9500	0402 29 15 9900	0403 10 11 9800	0404 90 23 9937
0401 20 91 9100	0402 29 19 9200	0403 10 13 9800	0404 90 23 9939
0401 20 91 9500	0402 29 19 9300	0403 10 19 9800	0404 90 29 9110
0401 20 99 9100	0402 29 19 9500	0403 10 31 9400	0404 90 29 9115
0401 20 99 9500	0402 29 19 9900	0403 10 31 9800	0404 90 29 9120
0401 30 11 9100	0402 29 91 9100	0403 10 33 9800	0404 90 29 9130
0401 30 11 9400	0402 29 91 9500	0403 10 39 9800	0404 90 29 9135
0401 30 11 9700	0402 29 99 9100	0403 90 11 9000	0404 90 29 9150
0401 30 19 9100	0402 29 99 9500	0403 90 13 9200	0404 90 29 9160
0401 30 19 9400	0402 91 11 9110	0403 90 13 9300	0404 90 29 9180
0401 30 19 9700	0402 91 11 9120	0403 90 13 9500	0404 90 81 9100
0401 30 31 9100	0402 91 11 9310	0403 90 13 9900	0404 90 81 9910
0401 30 31 9400	0402 91 11 9350	0403 90 19 9000	0404 90 81 9950
0401 30 31 9700	0402 91 11 9370	0403 90 31 9000	0404 90 83 9110
0401 30 39 9100	0402 91 19 9110	0403 90 33 9200	0404 90 83 9130
0401 30 39 9400	0402 91 19 9120	0403 90 33 9300	0404 90 83 9150
0401 30 39 9700	0402 91 19 9310	0403 90 33 9500	0404 90 83 9170
0401 30 91 9100	0402 91 19 9350	0403 90 33 9900	0404 90 83 9911
0401 30 91 9400	0402 91 19 9370	0403 90 39 9000	0404 90 83 9913
0401 30 91 9700	0402 91 31 9100	0403 90 51 9100	0404 90 83 9915
0401 30 99 9100	0402 91 31 9300	0403 90 51 9300	0404 90 83 9917
0401 30 99 9400	0402 91 39 9100	0403 90 53 9000	0404 90 83 9919
0401 30 99 9700	0402 91 39 9300	0403 90 59 9110	0404 90 83 9931
0402 21 11 9200	0402 91 51 9000	0403 90 59 9140	0404 90 83 9933
0402 21 11 9300	0402 91 59 9000	0403 90 59 9170	0404 90 83 9935
0402 21 11 9500	0402 91 91 9000	0403 90 59 9310	0404 90 83 9937
0402 21 11 9900	0402 91 99 9000	0403 90 59 9340	0404 90 89 9130
0402 21 17 9000	0402 99 11 9110	0403 90 59 9370	0404 90 89 9150
0402 21 19 9300	0402 99 11 9130	0403 90 59 9510	0404 90 89 9930
0402 21 19 9500	0402 99 11 9150	0403 90 59 9540	0404 90 89 9950
0402 21 19 9900	0402 99 11 9310	0403 90 59 9570	0404 90 89 9990
0402 21 91 9100	0402 99 11 9330	0403 90 61 9100	2309 10 70 9100
0402 21 91 9200	0402 99 11 9350	0403 90 61 9300	2309 10 70 9200
0402 21 91 9300	0402 99 19 9110	0403 90 63 9000	2309 10 70 9300
0402 21 91 9400	0402 99 19 9130	0403 90 69 9000	2309 10 70 9500
0402 21 91 9500	0402 99 19 9150	0404 90 21 9100	2309 10 70 9600
0402 21 91 9600	0402 99 19 9310	0404 90 21 9910	2309 10 70 9700
0402 21 91 9700	0402 99 19 9330	0404 90 21 9950	2309 10 70 9800
0402 21 91 9900	0402 99 19 9350	0404 90 23 9120	2309 90 70 9100
0402 21 99 9100	0402 99 31 9110	0404 90 23 9130	2309 90 70 9200
0402 21 99 9200	0402 99 31 9150	0404 90 23 9140	2309 90 70 9300
0402 21 99 9300	0402 99 31 9300	0404 90 23 9150	2309 90 70 9500
0402 21 99 9400	0402 99 31 9500	0404 90 23 9911	2309 90 70 9600
0402 21 99 9500	0402 99 39 9110	0404 90 23 9913	2309 90 70 9700
0402 21 99 9600	0402 99 39 9150	0404 90 23 9915	2309 90 70 9800

COMMISSION REGULATION (EC) No 1016/98

of 14 May 1998

fixing the maximum export refund on barley in connection with the invitation to tender 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 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 8 to 14 May 1998, pursuant to the invitation to tender issued in Regulation (EC) No 1337/97, the maximum refund on exportation of barley shall be ECU 53,74 per tonne.

Article 2

This Regulation shall enter into force on 15 May 1998.

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

Done at Brussels, 14 May 1998.

For the Commission
Franz FISCHLER
Member of the Commission

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[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 1017/98

of 14 May 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 8 to 14 May 1998, pursuant to the invitation to tender issued in Regulation (EC) No 1339/97, the maximum refund on exportation of common wheat shall be ECU 21,70 per tonne.

Article 2

This Regulation shall enter into force on 15 May 1998.

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

Done at Brussels, 14 May 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 1018/98

of 14 May 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 837/98 [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 8 to 14 May 1998, pursuant to the invitation to tender issued in Regulation (EC) No 1773/97, the maximum refund on exportation of oats shall be ECU 44,90 per tonne.

Article 2

This Regulation shall enter into force on 15 May 1998.

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

Done at Brussels, 14 May 1998.

For the Commission
Franz FISCHLER
Member of the Commission

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[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 119, 22. 4. 1998, p. 14.

COMMISSION REGULATION (EC) No 1019/98

of 14 May 1998

fixing the rates of the refunds applicable to certain cereal and rice-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 1766/92 of 30 June 1992 on the common organization of the market in cereals ([1]), as last amended by Commission Regulation (EC) No 923/96 ([2]), and in particular Article 13 (3) thereof,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice ([3]), as amended by Regulation (EC) No 192/98 ([4]), and in particular Article 13 (3) thereof,

Whereas Article 13 (1) of Regulation (EEC) No 1766/92 and Article 13 (1) of Regulation (EC) No 3072/95 provide that the difference between quotations of prices on the world market for the products listed in Article 1 of each of those Regulations and the prices within the Community may be covered by an export refund;

Whereas Commission Regulation (EC) No 1222/94 of 30 May 1994 laying down common implementing rules for 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 ([5]), as last amended by Regulation (EC) No 1909/97 ([6]), specifies the products for which a rate of refund should be fixed, to be applied where these products are exported in the form of goods listed in Annex B to Regulation (EEC) No 1766/92 or in Annex B to Regulation (EC) No 3072/95 as appropriate;

Whereas, in accordance with the first subparagraph of Article 4 (1) of Regulation (EC) No 1222/94, the rate of the refund per 100 kilograms for each of the basic products in question must be fixed for each month;

Whereas, now that a settlement has been reached between the European Community and the United States of America on Community exports of pasta products to the United States and has been approved by Council Decision 87/482/EEC ([7]), it is necessary to differentiate the refund on goods falling within CN codes 1902 11 00 and 1902 19 according to their destination;

Whereas Article 4 (5) (b) of Regulation (EC) No 1222/94 provides that, in the absence of the proof referred to in Article 4 (5) (a) of that Regulation, a reduced rate of export refund has to be fixed, taking account of the amount of the production refund applicable, pursuant to Commission Regulation (EEC) No 1722/93 ([8]), as last amended by Regulation (EC) No 1516/95 ([9]), for the basic product in question, used during the assumed period of manufacture of the goods;

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

The rates of the refunds applicable to the basic products appearing in Annex A to Regulation (EC) No 1222/94 and listed either in Article 1 of Regulation (EEC) No 1766/92 or in Article 1 (1) of Regulation (EC) No 3072/95, exported in the form of goods listed in Annex B to Regulation (EEC) No 1766/92 or in Annex B to amended Regulation (EC) No 3072/95 respectively, are hereby fixed as shown in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 15 May 1998.

([1]) OJ L 181, 1. 7. 1992, p. 21.
([2]) OJ L 126, 24. 5. 1996, p. 37.
([3]) OJ L 329, 30. 12. 1995, p. 18.
([4]) OJ L 20, 27. 1. 1998, p. 16.
([5]) OJ L 136, 31. 5. 1994, p. 5.
([6]) OJ L 268, 1. 10. 1997, p. 20.
([7]) OJ L 275, 29. 9. 1987, p. 36.
([8]) OJ L 159, 1. 7. 1993, p. 112.
([9]) OJ L 147, 30. 6. 1995, p. 49.

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

Done at Brussels, 14 May 1998.

For the Commission
Martin BANGEMANN
Member of the Commission

ANNEX

to the Commission Regulation of 14 May 1998 fixing the rates of the refunds applicable to certain cereals and rice products exported in the form of goods not covered by Annex II to the Treaty

CN code	Description of products (1)	Rate of refund per 100 kg of basic product
1001 10 00	Durum wheat:	
	– on exports of goods falling within CN codes 1902 11 and 1902 19 to the United States of America	—
	– in other cases	—
1001 90 99	Common wheat and meslin:	
	– on exports of goods falling within CN codes 1902 11 and 1902 19 to the United States of America	1,119
	– in other cases:	
	– – where pursuant to Article 4 (5) of Regulation (EC) No 1222/94 (2)	0,792
	– – in other cases	1,721
1002 00 00	Rye	3,983
1003 00 90	Barley	4,151
1004 00 00	Oats	2,218
1005 90 00	Maize (corn) used in the form of:	
	– starch:	
	– – where pursuant to Article 4 (5) of Regulation (EC) No 1222/94 (2)	2,275
	– – in other cases	3,436
	– glucose, glucose syrup, maltodextrine, maltodextrine syrup of CN codes 1702 30 51, 1702 30 59, 1702 30 91, 1702 30 99, 1702 40 90, 1702 90 50, 1702 90 75, 1702 90 79, 2106 90 55 (3):	
	– – where pursuant to Article 4 (5) of Regulation (EC) No 1222/94 (2)	1,846
	– – in other cases	3,007
	– other (including unprocessed)	3,436
	Potato starch of CN code 1108 13 00 similar to a product obtained from processed maize:	
	– where pursuant to Article 4 (5) of Regulation (EC) No 1222/94 (2)	2,275
	– in other cases	3,436
1006 20	Husked rice:	
	– round grain	3,178
	– medium grain	2,829
	– long grain	2,829
ex 1006 30	Wholly-milled rice:	
	– round grain	4,100
	– medium grain	4,100
	– long grain	4,100
1006 40 00	Broken rice used in the form of:	
	– starch of CN code 1108 19 10:	
	– – where pursuant to Article 4 (5) of Regulation (EC) No 1222/94 (2)	0,978
	– – in other cases	2,200
	– other (including unprocessed)	2,200

CN code	Description of products (1)	Rate of refund per 100 kg of basic product
1007 00 90	Sorghum	4,151
1101 00	Wheat or meslin flour:	
	– on exports of goods falling within CN codes 1902 11 and 1902 19 to the United States of Amercia	1,376
	– in other cases	2,117
1102 10 00	Rye flour	4,750
1103 11 10	Groats and durum wheat meal:	
	– on exports of goods falling within CN codes 1902 11 and 1902 19 to the United States of America	—
	– in other cases	—
1103 11 90	Common wheat groats and spelt:	
	– on exports of goods falling within CN codes 1902 11 and 1902 19 to the United States of America	1,376
	– in other cases	2,117

(1) As far as agricultural products obtained from the processing of a basic product or/and assimilated products are concerned, the coefficients shown in Annex E of amended Commission Regulation (EC) No 1222/94 shall be applied (OJ L 136, 31. 5. 1994, p. 5).

(2) The goods concerned are listed in Annex I of amended Regulation (EEC) No 1722/93 (OJ L 159, 1. 7. 1993, p. 112).

(3) For syrups of CN codes NC 1702 30 99, 1702 40 90 and 1702 60 90, obtained from mixing glucose and fructose syrup, the export refund may be granted only for the glucose syrup.

COMMISSION REGULATION (EC) No 1020/98

of 14 May 1998

fixing the rates of the refunds applicable to eggs and egg yolks 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 2771/75 of 29 October 1975 on the common organization of the market in eggs [1], as last amended by Commission Regulation (EC) No 1516/96 [2], and in particular Article 8 (3) thereof,

Whereas Article 8 (1) of Regulation (EEC) No 2771/75 provides that the difference between prices in international trade for the products listed in Article 1 (1) of that Regulation and prices within the Community may be covered by an export refund where these goods are exported in the form of goods listed in the Annex to that Regulation; whereas 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 [3], as last amended by Regulation (EC) No 1909/97 [4], specifies the products for which a rate of refund should be fixed, to be applied where these products are exported in the form of goods listed in the Annex to Regulation (EEC) No 2771/75;

Whereas, in accordance Article 4 (1) of Regulation (EC) No 1222/94, the rate of the refund per 100 kilograms for each of the basic products in question must be fixed for a period of the same duration as that for which refunds are fixed for the same products exported unprocessed;

Whereas Article 11 of the Agreement on Agriculture concluded under the Uruguay Round lays down that the export refund for a product contained in a good may not exceed the refund applicable to that product when exported without further processing;

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

HAS ADOPTED THIS REGULATION:

Article 1

The rates of the refunds applicable to the basic products appearing in Annex A to Regulation (EC) No 1222/94 and listed in Article 1 (1) of Regulation (EEC) No 2771/75, exported in the form of goods listed in the Annex I to Regulation (EEC) No 2771/75, are hereby fixed as shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 15 May 1998.

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

Done at Brussels, 14 May 1998.

For the Commission
Martin BANGEMANN
Member of the Commission

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[1] OJ L 282, 1. 11. 1975, p. 49.
[2] OJ L 189, 30. 7. 1996, p. 99.
[3] OJ L 136, 31. 5. 1994, p. 5.
[4] OJ L 268, 1. 10. 1997, p. 20.

ANNEX

to the Commission Regulation of 14 May 1998 fixing the rates of the refunds applicable to eggs and egg yolks exported in the form of goods not covered by Annex II to the Treaty

(ECU / 100 kg)

CN code	Description	Destination (1)	Rate of refund
0407 00	Birds' eggs, in shell, fresh, preserved or cooked:		
	– Of poultry:		
0407 00 30	– – Other:		
	a) On exportation of ovalbumin of CN codes 3502 11 90 and 3502 19 90	02	18,00
		03	17,00
		04	9,00
	b) On exportation of other goods	01	9,00
0408	Birds' eggs, not in shell and egg yolks, fresh, dried, cooked by steaming or by boiling in water, moulded, frozen or otherwise preserved, whether or not containing added sugar or other sweetening matter:		
	– Egg yolks:		
0408 11	– – Dried:		
ex 0408 11 80	– – – Suitable for human consumption:		
	not sweetened	01	58,00
0408 19	– – Other:		
	– – – Suitable for human consumption:		
ex 0408 19 81	– – – – Liquid:		
	not sweetened	01	27,00
ex 0408 19 89	– – – – Frozen:		
	not sweetened	01	27,00
	– Other:		
0408 91	– – Dried:		
ex 0408 91 80	– – – Suitable for human consumption:		
	not sweetened	01	43,00
0408 99	– – Other:		
ex 0408 99 80	– – – Suitable for human consumption:		
	not sweetened	01	11,00

(1) The destinations are as follows:
01 Third countries,
02 Kuwait, Bahrain, Oman, Qatar, United Arab Emirates, Yemen, Hong Kong SAR and Russia,
03 South Korea, Japan, Malaysia, Thailand, Taiwan, the Philippines and Egypt,
04 All destinations except Switzerland and those of 02 and 03.

COMMISSION REGULATION (EC) No 1021/98

of 14 May 1998

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 [1], as last amended by Commission Regulation (EC) No 923/96 [2],

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 [3], as last amended by Regulation (EC) No 2092/97 [4], and in particular Article 2 (1) thereof,

Whereas the import duties in the cereals sector are fixed by Commission Regulation (EC) No 929/98 [5], as last amended by Regulation (EC) No 956/98 [6];

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 929/98,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EC) No 929/98 are hereby replaced by Annexes I and II to this Regulation.

Article 2

This Regulation shall enter into force on 15 May 1998.

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

Done at Brussels, 14 May 1998.

For the Commission
Franz FISCHLER
Member of the Commission

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[1] OJ L 181, 1. 7. 1992, p. 21.
[2] OJ L 126, 24. 5. 1996, p. 37.
[3] OJ L 161, 29. 6. 1996, p. 125.
[4] OJ L 292, 25. 10. 1997, p. 10.
[5] OJ L 130, 1. 5. 1998, p. 9.
[6] OJ L 133, 7. 5. 1998, p. 14.

ANNEX I

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

CN code	Description	Import duty by land inland waterway or sea from Mediterranean, the Black Sea or Baltic Sea ports (ECU/tonne)	Import duty by air or by sea from other ports (2) (ECU/tonne)
1001 10 00	Durum wheat (1)	7,16	0,00
1001 90 91	Common wheat seed	54,23	44,23
1001 90 99	Common high quality wheat other than for sowing (3)	54,23	44,23
	medium quality	74,59	64,59
	low quality	88,14	78,14
1002 00 00	Rye	104,32	94,32
1003 00 10	Barley, seed	104,32	94,32
1003 00 90	Barley, other (3)	104,32	94,32
1005 10 90	Maize seed other than hybrid	95,25	85,25
1005 90 00	Maize other than seed (3)	95,25	85,25
1007 00 90	Grain sorghum other than hybrids for sowing	104,32	94,32

(1) 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.

(2) 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.

(3) 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

(period from 30 April 1998 to 13 May 1998)

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)	120,90	106,69	99,53	88,93	177,76 (1)	80,75 (1)
Gulf premium (ECU/tonne)	—	12,72	6,33	9,81	—	—
Great Lakes premium (ECU/tonne)	9,88	—	—	—	—	—

(1) Fob Duluth.

2. Freight/cost: Gulf of Mexico — Rotterdam: ECU 11,60 per tonne; Great Lakes — Rotterdam: ECU 20,52 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 1022/98

of 14 May 1998

fixing the export refunds on products processed from cereals and rice

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 [1], as last amended by Commission Regulation (EC) No 923/96 [2], and in particular Article 13 (3) thereof,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice [3], as amended by Regulation (EC) No 192/98 [4], and in particular Article 13 (3) thereof,

Whereas Article 13 of Regulation (EEC) No 1766/92 and Article 13 of Regulation (EC) No 3072/95 provide that the difference between quotations or prices on the world market for the products listed in Article 1 of those Regulations and prices for those products within the Community may be covered by an export refund;

Whereas Article 13 of Regulation (EC) No 3072/95 provides that when refunds are being fixed account must be taken of the existing situation and the future trend with regard to prices and availabilities of cereals, rice and broken rice on the Community market on the one hand and prices for cereals, rice, broken rice and cereal products on the world market on the other; whereas the same Articles provide that it is also important to ensure equilibrium and the natural development of prices and trade on the markets in cereals and rice and, furthermore, to take into account the economic aspect of the proposed exports, and the need to avoid disturbances on the Community market;

Whereas Article 4 of Commission Regulation (EC) No 1518/95 [5], as amended by Regulation (EC) No 2993/95 [6], on the import and export system for products processed from cereals and from rice defines the specific criteria to be taken into account when the refund on these products is being calculated;

Whereas the refund to be granted in respect of certain processed products should be graduated on the basis of the ash, crude fibre, tegument, protein, fat and starch content of the individual product concerned, this content being a particularly good indicator of the quantity of basic product actually incorporated in the processed product;

Whereas there is no need at present to fix an export refund for manioc, other tropical roots and tubers or flours obtained therefrom, given the economic aspect of potential exports and in particular the nature and origin of these products; whereas, for certain products processed from cereals, the insignificance of Community participation in world trade makes it unnecessary to fix an export refund at the present time;

Whereas the world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination;

Whereas the refund must be fixed once a month; whereas it may be altered in the intervening period;

Whereas certain processed maize products may undergo a heat treatment following which a refund might be granted that does not correspond to the quality of the product; whereas it should therefore be specified that on these products, containing pregelatinized starch, no export refund is to be granted;

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

The export refunds on the products listed in Article 1 (1) (d) of Regulation (EEC) No 1766/92 and in Article 1 (1) (c) of Regulation (EC) No 3072/95 and subject to Regulation (EC) No 1518/95 are hereby fixed as shown in the Annex to this Regulation.

[1] OJ L 181, 1. 7. 1992, p. 21.
[2] OJ L 126, 24. 5. 1996, p. 37.
[3] OJ L 329, 30. 12. 1995, p. 18.
[4] OJ L 20, 27. 1. 1998, p. 16.
[5] OJ L 147, 30. 6. 1995, p. 55.
[6] OJ L 312, 23. 12. 1995, p. 25.

Article 2

This Regulation shall enter into force on 15 May 1998.

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

Done at Brussels, 14 May 1998.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX

to the Commission Regulation of 14 May 1998 fixing the export refunds on products processed from cereals and rice

(ECU/tonne)

Product code	Refund
1102 20 10 9200 (1)	48,10
1102 20 10 9400 (1)	41,23
1102 20 90 9200 (1)	41,23
1102 90 10 9100	62,27
1102 90 10 9900	42,34
1102 90 30 9100	39,92
1103 12 00 9100	39,92
1103 13 10 9100 (1)	61,85
1103 13 10 9300 (1)	48,10
1103 13 10 9500 (1)	41,23
1103 13 90 9100 (1)	41,23
1103 19 10 9000	39,83
1103 19 30 9100	64,34
1103 21 00 9000	17,55
1103 29 20 9000	42,34
1104 11 90 9100	62,27
1104 12 90 9100	44,36
1104 12 90 9300	35,49
1104 19 10 9000	17,55
1104 19 50 9110	54,98
1104 19 50 9130	44,67
1104 21 10 9100	62,27
1104 21 30 9100	62,27
1104 21 50 9100	83,02
1104 21 50 9300	66,42
1104 22 20 9100	35,49
1104 22 30 9100	37,71

(ECU/tonne)

Product code	Refund
1104 23 10 9100	51,54
1104 23 10 9300	39,51
1104 29 11 9000	17,55
1104 29 51 9000	17,21
1104 29 55 9000	17,21
1104 30 10 9000	4,30
1104 30 90 9000	8,59
1107 10 11 9000	30,63
1107 10 91 9000	73,89
1108 11 00 9200	34,42
1108 11 00 9300	34,42
1108 12 00 9200	54,98
1108 12 00 9300	54,98
1108 13 00 9200	54,98
1108 13 00 9300	54,98
1108 19 10 9200	33,44
1108 19 10 9300	33,44
1109 00 00 9100	0,00
1702 30 51 9000 (2)	62,85
1702 30 59 9000 (2)	48,12
1702 30 91 9000	62,85
1702 30 99 9000	48,12
1702 40 90 9000	48,12
1702 90 50 9100	62,85
1702 90 50 9900	48,12
1702 90 75 9000	65,86
1702 90 79 9000	45,71
2106 90 55 9000	48,12

(1) No refund shall be granted on products given a heat treatment resulting in pregelatinization of the starch.

(2) Refunds are granted in accordance with Council Regulation (EEC) No 2730/75 (OJ L 281, 1. 11. 1975, p. 20), amended.

NB: The product codes and the footnotes are defined in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24. 12. 1987, p. 1), amended.

COMMISSION REGULATION (EC) No 1023/98

of 14 May 1998

fixing the export refunds on cereal-based compound feedingstuffs

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 [1], as last amended by Commission Regulation (EC) No 923/96 [2], and in particular Article 13 (3) thereof,

Whereas Article 13 of Regulation (EEC) No 1766/92 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund;

Whereas Regulation (EC) No 1517/95 of 29 June 1995 laying down detailed rules for the application of Regulation (EEC) No 1766/92 as regards the arrangements for the export and import of compound feedingstuffs based on cereals and amending Regulation (EC) No 1162/95 laying down special detailed rules for the application of the system of import and export licences for cereals and rice [3] in Article 2 lays down general rules for fixing the amount of such refunds;

Whereas that calculation must also take account of the cereal products content; whereas in the interest of simplification, the refund should be paid in respect of two categories of 'cereal products', namely for maize, the most commonly used cereal in exported compound feeds and maize products, and for 'other cereals', these being eligible cereal products excluding maize and maize products; whereas a refund should be granted in respect of the quantity of cereal products present in the compound feedingstuff;

Whereas furthermore, the amount of the refund must also take into account the possibilities and conditions for the sale of those products on the world market, the need to avoid disturbances on the Community market and the economic aspect of the export;

Whereas, however, in fixing the rate of refund it would seem advisable to base it at this time on the difference in the cost of raw inputs widely used in compound feedingstuffs as the Community and world markets, allowing more accurate account to be taken of the commercial conditions under which such products are exported;

Whereas the refund must be fixed once a month; whereas it may be altered in the intervening period;

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

The export refunds on the compound feedingstuffs covered by Regulation (EEC) No 1766/92 and subject to Regulation (EC) No 1517/95 are hereby fixed as shown in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 15 May 1998.

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

Done at Brussels, 14 May 1998.

For the Commission

Franz FISCHLER

Member of the Commission

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[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. 51.

ANNEX

to the Commission Regulation of 14 May 1998 fixing the export refunds on cereal-based compound feedingstuffs

Product code benefitting from export refund (1):

2309 10 11 9000, 2309 10 13 9000, 2309 10 31 9000, 2309 10 33 9000, 2309 10 51 9000, 2309 10 53 9000, 2309 90 31 9000, 2309 90 33 9000, 2309 90 41 9000, 2309 90 43 9000, 2309 90 51 9000, 2309 90 53 9000.

(ECU/tonne)

Cereal products (2)	Amount of refund (2)
Maize and maize products: CN codes 0709 90 60, 0712 90 19, 1005, 1102 20, 1103 13, 1103 29 40, 1104 19 50, 1104 23, 1904 10 10	34,36
Cereal products (2) excluding maize and maize products	29,36

(1) The product codes are defined in Sector 5 of the Annex to Commission Regulation (EEC) No 3846/87 (OJ L 366, 24. 12. 1987, p 1), amended.

(2) For the purposes of the refund only the starch coming from cereal products is taken into account.

Cereal products means the products falling within subheadings 0709 90 60 and 0712 90 19, Chapter 10, and headings Nos 1101, 1102, 1103 and 1104 (excluding subheading 1104 30) and the cereals content of the products falling within subheadings 1904 10 10 and 1904 10 90 of the combined nomenclature. The cereals content in products under subheadings 1904 10 10 and 1904 10 90 of the combined nomenclature is considered to be equal to the weight of this final product.

No refund is paid for cereals where the origin of the starch cannot be clearly established by analysis.

COMMISSION REGULATION (EC) No 1024/98

of 14 May 1998

fixing production refunds on cereals and rice

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 [1], as last amended by Commission Regulation (EC) No 923/96 [2], and in particular Article 7 (3) thereof,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice [3], as amended by Regulation (EC) No 192/98 [4], and in particular Article 7 (2) thereof,

Having regard to Commission Regulation (EEC) No 1722/93 of 30 June 1993 laying down detailed rules for the arrangements concerning production refunds in the cereals and rice sectors [5], as last amended by Regulation (EC) No 1516/95 [6], and in particular Article 3 thereof,

Whereas Regulation (EEC) No 1722/93 establishes the conditions for granting the production refund; whereas the basis for the calculation is established in Article 3 of the said Regulation; whereas the refund thus calculated must be fixed once a month and may be altered if the price of maize and/or wheat and/or barley changes significantly;

Whereas the production refunds to be fixed in this Regulation should be adjusted by the coefficients listed in the Annex II to Regulation (EEC) No 1722/93 to establish the exact amount payable;

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

1. The refund referred to in Article 3 (2) of Regulation (EEC) No 1722/93, expressed per tonne of starch extracted from maize, wheat, potatoes, rice or broken rice, shall be ECU 28,61 per tonne.

2. The refund referred to in Article 3 (3) of Regulation (EEC) No 1722/93, expressed per tonne of starch extracted from barley and oats, shall be ECU 28,61 per tonne.

Article 2

This Regulation shall enter into force on 15 May 1998.

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

Done at Brussels, 14 May 1998.

For the Commission
Franz FISCHLER
Member of the Commission

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[1] OJ L 181, 1. 7. 1992, p. 21.
[2] OJ L 126, 24. 5. 1996, p. 37.
[3] OJ L 329, 30. 12. 1995, p. 18.
[4] OJ L 20, 27. 1. 1998, p. 16.
[5] OJ L 159, 1. 7. 1993, p. 112.
[6] OJ L 147, 30. 6. 1995, p. 49.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 11 September 1997

declaring a concentration to be compatible with the common market and the functioning of the EEA Agreement

(Case No IV/M.833 — The Coca-Cola Company/Carlsberg A/S)

(Only the English text is authentic)

(Text with EEA relevance)

(98/327/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings [1], as amended by the Act of Accession of Austria, Finland and Sweden, and in particular Article 8(2) thereof,

Having regard to the Commission Decision of 2 May 1997 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission,

Having regard to the opinion of the Advisory Committee on Concentrations [2],

Whereas:

(1) On 25 March 1997, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (the Merger Regulation) by which The Coca-Cola Company (TCCC) and Carlsberg A/S (Carlsberg) will set up a jointly-owned company, Coca-Cola Nordic Beverages (CCNB). This joint venture will own interests in various soft drink entities in the Nordic region, including certain assets that will be transferred from Carlsberg to TCCC pursuant to a licence agreement. The notification concerns Denmark and Sweden.

(2) By decision of 14 April 1997, the Commission ordered the continuation of the suspension of the notified concentration, pursuant to Article 7(2) and Article 18(2) of the Merger Regulation, pending its final decision.

(3) After examination of the notification, the Commission concluded that the notified operation fell within the scope of the Merger Regulation and raised serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement. The Commission decided to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation on 2 May 1997.

I. THE PARTIES

TCCC

(4) TCCC, a US company, is a major brand owner and global supplier of soft drink concentrates and

[1] OJ L 395, 30. 12. 1989, p. 1; corrigendum OJ L 257, 21. 9. 1990, p. 13.
[2] OJ C 149, 15. 5. 1998.

syrups used to produce certain carbonated soft drinks (CSDs), including Coca-Cola, Coca-Cola Light, Fanta and Sprite, as well as other non-alcoholic beverages (NABs).

Carlsberg

(5) Carlsberg is the Danish registered parent of a group of companies that are active primarily in the production and wholesale distribution of beer, but also in other drinks-related operations, including NABs. One of Carlsberg's subsidiaries, Dadeko A/S (Dadeko), is the largest bottling company of CSDs in Denmark. In addition Carlsberg has interests in other soft-drink and brewing companies in Denmark and in Sweden.

II. THE OPERATION

A. *General*

(6) CCNB will be 51 % owned by Carlsberg, with the remaining 49 % held ultimately by TCCC. CCNB will be based in Denmark and its main business will be to invest and hold interests in national bottlers with respect to the preparation, packaging, marketing, distribution and sale of NABs and other related activities. CCNB will at the outset cover Denmark and Sweden but will also cover Finland, Norway, Iceland, Estonia, Latvia, Lithuania and possibly Greenland and St. Petersburg, Russia (the CCNB territory) at a later stage.

(7) The operation involves: (i) the creation of CCNB, (ii) the transfer of national bottling companies in Denmark and Sweden to CCNB, that is, Carlsberg will contribute its wholly owned Danish subsidiary, Dadeko, and TCCC will contribute its recently established wholly owned Swedish subsidiary, Coca-Cola Drycker Sverige AB (CCDS), (iii) two agreements governing the transfer and licensing of certain brands in those countries, and (iv) the creation of a distribution company in Sweden.

(8) In Denmark, Dadeko, which renewed its bottling agreement with TCCC in 1994, will continue a 40-year relationship for bottling mainly TCCC's CSD products. At present, Dadeko is responsible for preparing and packaging the CSD brands of both Carlsberg and Tuborg, together with those Cadbury Schweppes brands that are present in Denmark. Currently Dadeko only distributes TCCC products to the retail sector, while Carlsberg and Tuborg distribute their own CSD brands, together with those of Cadbury Schweppes to the retail sector. Moreover, Carlsberg and Tuborg currently share responsibility for distributing their own CSD brands, together with those of TCCC and Cadbury Schweppes, to the hotel, restaurant and catering (Horeca) sector. After implementation of the operation, Dadeko will continue to bottle TCCC brands, and those remaining [...] [1] brands. It will be responsible for the distribution of [...] brands to the retail sector, while [...] will distribute those brands to the Horeca sector.

(9) In Sweden, TCCC has recently established CCDS which has been marketing and selling TCCC's products since 1 April 1997. From 1 January 1998, CCDS will take over the preparation and packaging of TCCC's products, which at present is carried out by Pripps Ringnes. DryckesDistributoren AB (DDAB), a 50/50 joint venture between CCDS and Falcon Bryggerier AB (itself jointly owned by Carlsberg and Oy Sinebrychoff Ab, a Finnish brewer), will carry out the physical distribution (storage, transportation and delivery) on an exclusive basis of CCDS' NABs, Falcon's NABs and Falcon's beer to customers in Sweden.

(10) CCNB will form the ninth 'anchor bottler' of TCCC products. The term 'anchor bottler' identifies certain bottling companies in which TCCC holds a minority equity interest and which are strongly committed to the strategic goals of TCCC and to furthering the interests of TCCC's worldwide production, distribution and marketing systems. They tend to be large and geographically diverse, and have strong financial and management resources.

B. *The Master Shareholders' Agreement (MSA)*

(11) The MSA between TCCC and Carlsberg provides for the establishment of CCNB and sets out the terms under which the parties will control CCNB, how CCNB will function and provides the framework for all future national bottling entities in the CCNB territory. The MSA also contains the non-competition obligations of TCCC and Carlsberg. Another important provision is the arrangement [...]. Finally the MSA refers to [...].

[1] In the published version of the Decision, some information has hereinafter been omitted for reasons of confidentiality.

C. *The Licence Agreement in Denmark*

(12) TCCC, Carlsberg and Dadeko have signed a [...] year Licence Agreement (renewable for another [...] years) under which Carlsberg grants an authorisation to TCCC and TCCC in turn grants an authorisation to Dadeko to produce, market, distribute, and sell certain [...] NABs in Denmark. The [...] licensed products are [...]. Carlsberg will make available to TCCC [...] relating to those products with a view to TCCC providing [...]. TCCC will become the brand manager for the [...] brands. Carlsberg will retain some right to [...] in order to protect [...]. CCNB will be responsible for [...]. Carlsberg undertakes not to [...] any other party those products, or any other [...], in Denmark.

(13) In addition, Carlsberg will discontinue the production of its [...] brands [...]. Therefore, as a consequence of the operation only [...] will be kept by the Carlsberg organisation.

D. *Arrangements in Sweden*

(14) In addition to the transfer of CCDS to CCNB, notified under the Merger Regulation, other agreements setting up DDAB and a Trademark Purchase and Supply Agreement (TPSA) governing the transfer of certain brands from Falcon to TCCC were notified to the Commission under Council Regulation No 17 [1] on 18 April 1997. Those agreements are being assessed separately.

E. *Conclusion*

(15) The operation will lead to a structural change in the soft drinks business operations of Carlsberg and TCCC, at both a regional level in the Nordic countries, and a national level in Denmark and Sweden. In particular Carlsberg will have no CSD interests in competition to CCNB. TCCC's position changes from that of a simple licensor of its CSDs in those markets to being a co-owner of the joint venture that produces CSDs.

III. THE CONCENTRATION

A. *The scope of the concentration*

(16) Apart from the setting up of CCNB, which constitutes the essence of the operation, the parties have also notified the licence agreement between Carlsberg, TCCC and Dadeko in Denmark under the Merger Regulation. The notifying parties consider specific provisions, such as non-competition clauses and exclusivity provisions in the licence agreement, to be ancillary restrictions directly related and necessary to the implementation of the concentration. However, the Commission considers that the licence agreement is necessary in order for TCCC and Carlsberg to concentrate the preparation, packaging, distribution, marketing and sales of all the TCCC and Carlsberg brands in CCNB in order to bring Carlsberg's Danish NAB business into line with the TCCC anchor bottler principles. The licence agreement is, therefore, one of the elements constituting the concentration, which will establish economic unity between Carlsberg and TCCC and should also be considered to be an essential and integral part of the concentration.

B. *Assessment of the concentrative nature of CCNB*

B.1. **Joint control**

(17) CCNB will be owned 51 % by Carlsberg and 49 % indirectly by TCCC. Relations between Carlsberg and TCCC will be governed by the MSA. Carlsberg will nominate [...] directors and TCCC [...] directors to CCNB's supervisory board. TCCC will nominate CCNB's [...] and Carlsberg will nominate its [...]. CCNB's Chief Executive Officer, responsible for the day-to-day management, will be nominated by [...] and the Chief Financial Officer by [...]. To ensure that each parent has to consent to certain decisions affecting the strategic behaviour of CCNB, 'key decisions' by the shareholders on matters related to corporate structure and policies, [strategic decisions], the adoption of business plans and budget require the unanimous approval of both parents. If the supervisory board is unable to agree [...]. According to the parties there are, however, significant incentives for the parties to avoid a situation in which the termination provisions of their agreement will come into operation. CCNB will thus be subject to joint control by TCCC and Carlsberg.

B.2. **Full function on a lasting basis**

(18) CCNB will have all the resources necessary to operate its business activities on a lasting basis. First, the parties will transfer their existing bottling

[1] Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty (OJ 13, 21. 2. 1962, p. 204/62).

entities in Denmark and Sweden to CCNB, including the plants, distribution equipment (trucks, warehouses and so forth), employees and other investments such as vending and fountain equipment. Second, CCNB will be responsible for the production, marketing, distribution and sale of NABs in the Nordic region and will thus not be limited to one specific function on the market. Also, CCNB and its bottlers will add considerable value to the concentrate provided by TCCC. Third, even though TCCC will supply concentrates and authorise the bottling of such NABs, and Carlsberg has a 50 % shareholding in Falcon and will retain [...] in Denmark, such presence of the parties in the market of CCNB and its subsidiaries does not affect the characterisation of CCNB as a concentrative joint venture. The MSA is signed for [...] years with a possibility of renewal for a further [...] years.

B.3. **Absence of coordination**

(19) In Denmark, TCCC has no presence as a producer or distributor, only as a brand owner. Apart from being a concentrate supplier, TCCC will, broadly speaking, only be present in Denmark through CCNB. According to the parties the prospects of TCCC entering the Danish market other than through CCNB would be extremely remote. Carlsberg will discontinue [...] of its present NAB brands. However, it will retain certain NAB activities which will [...] to the sale and distribution of [...], limited distribution in the [...] and that of [...] NABs and a 50 % shareholding in Rynkeby A/S (producing juices and dilutables). Carlsberg will be subject to a non-competition clause according to which it cannot compete in [...]. TCCC has never directly bottled in the Danish market and presently has no available facilities for doing so. Therefore the activities kept outside CCNB cannot be seen as an instrument for producing or reinforcing coordination between Carlsberg and TCCC.

(20) As in Denmark, Carlsberg will also be bound by its obligation not to compete in [...] activities in Sweden. Based on the above information, CCNB cannot be seen as an instrument for producing or reinforcing coordination between Carlsberg and TCCC.

C. ***Conclusion***

(21) The notified joint venture, together with the licence agreement in Denmark, forms a concentration within the meaning of Article 3 of the Merger Regulation.

IV. COMMUNITY DIMENSION

(22) The concentration has a Community dimension as defined in Article 1(2) of the Merger Regulation. TCCC and Carlsberg have an aggregate world-wide turnover of more than ECU 17 billion, which is above the ECU 5 billion specified in the Merger Regulation. The undertakings concerned each have a Community-wide turnover of more than ECU 250 million (TCCC: ECU 4 046 million, and Carlsberg: ECU 1 952 million), of which not more than two-thirds is achieved in one and the same Member State.

V. RELEVANT MARKETS

A. ***Relevant product markets***

(23) In the Nordic countries the majority of producers of CSDs and other NABs like juices and packaged waters have traditionally been brewers. The brewers have thus been able to offer a wide portfolio of commercial beverages encompassing beers, CSDs and packaged waters to their customers. However, the fact that a product is sold as a part of a larger portfolio of beverages does not mean that the portfolio as such should be considered the relevant product market for anti-trust purposes. A distinction has to be made between various categories of commercial beverages. This analysis should not ignore the fact that at the bottling level, it increases the market power of a supplier to be able to offer customers a broader beverage portfolio. The economic advantages that flow to bottlers who offer both CSDs and beers in their system will be discussed in the assessment of this operation.

(24) In their notification, the parties state that the affected product markets 'are at least as wide as those for the supply of NABs' in Denmark and Sweden. Such a market would encompass a wide-ranging variety of beverages, including CSDs, still drinks, fruit juices, packaged waters, coffee, tea and milk. An examination of the soft drinks industry indicates that the market definition proposed by the parties is too broad for analysing the likely competitive consequences of the notified operation.

For the reasons discussed below, it appears appropriate to assess the operation, at both the brand and bottling levels, in the context of an overall CSD market. A number of elements suggest that there is a separate relevant product market for colas, but it should be noted that whether the operation is analysed in terms of colas alone, or in terms of all CSDs, the assessment would not materially change.

A.1. **The CSD production stream**

(25) The supply of colas and other flavoured CSDs to retail customers consists of two interrelated activities: brand ownership and bottling. The brand owner creates and promotes the beverage brands, provides the supply of concentrate (or authorises its production), and authorises local bottlers to prepare, package, market, distribute and sell the beverages. In this respect it is TCCC's strategy, as a brand owner, to create consumer demand, whereas the role of the TCCC bottlers is to meet the demand.

(26) Brand owners of international brands — such as TCCC, PepsiCo and Cadbury Schweppes — produce CSD concentrates in a limited number of locations throughout the world and supply their bottlers on a global basis from these production facilities. In comparison, smaller companies may use 'flavour houses' to produce their concentrate.

(27) The term 'bottling' is generally applied throughout the CSD industry to encompass the preparation, packaging, sales, marketing and distribution of CSDs. A bottler is typically assigned a geographic territory by the brand owner within which it is responsible for these functions.

(28) The responsibility for the marketing and promotion of CSDs is normally shared between the brand owner and bottler. Marketing activities are a combination of brand-specific advertising and trade-oriented promotion. In the CSD industry, a distinction is generally made between these areas as follows:

— *'Above-the-line' marketing:* The CSD markets are characterised by powerful brands, with the leading brands being advertised on an international basis. This brand-specific advertising is referred to in the industry as 'above-the-line' and is mainly carried out through TV, radio, cinema, the press, and sponsorship of activities such as music and sport. Such advertising is normally devised, carried out and financed by the brand owner.

— *'Below-the-line' marketing:* Promotion of products at the trade level is referred to in the industry as 'below-the-line' marketing. 'Below-the-line' marketing consists of two main types of activities: promotional discounts (such as multi-buy offers, price reductions and customer discounts); and trade marketing (such as payment to customers for listings, shelf displays and in-store advertising).

(29) Distribution of CSDs is carried out through various channels, which differ somewhat from country to country depending upon market structure (including such factors as location of customer warehouses and retail outlets, geographic dispersion of population, and whether CSDs are co-distributed with beers or not). In Denmark and Sweden, CSDs are mainly distributed through the retail channel which may be sub-divided into the grocery channel (supermarkets and so forth) and a service trade channel (comprising petrol stations, kiosks and so forth) and the horeca channel (hotels, restaurants and catering). However, for the purpose of assessing the proposed transaction these distinctions do not make a separate assessment necessary for either the Swedish or the Danish market, since the conclusions resulting from the analysis would be the same whether the channels were considered as separate relevant product markets or not. Therefore the question as to whether the channels are separate relevant product markets can be left open.

(30) In the present case the impact of the operation is on TCCC's forward vertical integration into bottling, on TCCC's acquisition of brands in Sweden and on its gaining the licence for brands in Denmark. Because the impact of the changes in brand ownership and TCCC's vertical integration are substantial at both the brand and bottling levels, the assessment of the impact of the operation will be analysed at both levels.

A.2. **Product market definition: all CSDs**

(a) *The distinction between CSDs and other NABs*

(31) According to the most recent Canadean data available (Annual Report — 1996 Cycle, Canadean), it appears that CSDs have continued to grow at a different rate from the overall beverages and soft drinks categories in both Denmark and Sweden.

(32) In Denmark, data show that total sales of soft drinks grew by 5,5 % annually between 1990 and 1995. Packaged waters grew by about 7 %, and CSDs 'soared' by 10 %. Canadean reported that 'carbonate sales in the 1990's were particularly good, growing by nearly 65 % between 1990 and 1995.' In comparison, the report stated that 'the performance of fruit drinks, which are primarily targeted at the youth market, has been pretty lacklustre throughout the decade,' being perceived as the 'poor relation' among soft drinks, and that the soft drink 'market growth was driven by carbonates [and syrups/squashes].' The consumption of fruit juices thus fell by 2 % annually between 1990 and 1995. If packaged waters and juices were part of the same product market as CSDs, it would be expected that price developments could explain the difference in growth rates. However, that is not the case since, according to Canadean data on retail prices, relative prices for the various types of soft drinks have changed little in the last four years, and so different price developments do not explain the different growth rates for the various categories of soft drinks.

(33) In Sweden, too, Canadean data showed different rates of growth between the soft drink category and CSDs. Total soft drink sales grew by 1 % and packaged water by 9 %, while juice and nectar sales declined by 2 % and CSD sales remained 'static.' If packaged waters and juices were part of the same product market as CSDs, it would be expected that price developments could explain the difference in growth rates. However, as for Denmark, that is not the case since, according to Canadean data on retail prices, relative prices for the various types of soft drinks have changed little in the last four years, and so different price developments do not explain the different growth rates for the various categories of soft drinks.

(34) The parties have argued in their response to the Statement of Objections ('the Response') that the Canadean price data represent only a limited number of brands, packages and distribution channels and that it is unclear how the price data has been collected. The Commission recognises that the Canadean price data are selected retail prices which do not cover all distribution channels and packages. However, the Canadean price data are typical market prices which cover the most important brands, packages and distribution channels. It is, therefore, not unreasonable to conclude that the Canadean prices reflect the general development in market prices for CSDs, juices and packaged waters. Consequently, the Commission concludes, that changes in relative prices cannot explain the different growth rates of CSDs, juices and packaged waters in the last four years in Denmark and Sweden. This is an indication that there is not a high level of price competition between CSDs, packaged waters and juices. In other words, it is not prices which cause customers to purchase, for example, a higher volume of CSDs, and less juice.

(35) In addition, the Commission has considered the Canadean data relating to selected retail prices for Denmark and Sweden. Waters and CSDs appear to be at similar price levels but both are cheaper than fruit juices. Furthermore it is clear that CSDs are more expensive than milk, tea and coffee, thereby indicating that CSDs are in a separate relevant product market from all NABs. However, waters do not have the same characteristics as CSDs: for example, they do not contain added sugar.

(36) Both in Denmark and Sweden CSDs are not displayed, in supermarkets, on the same shelf as other NABs such as coffee, tea, milk, or juices, indicating that CSDs and NABs are in different product markets. Products competing directly with each other would normally be expected to be displayed next to each other.

(37) [Certain studies] show that the timing of consumption of CSDs, compared to other NABs, is different.

(%)

	At breakfast		Between breakfast and lunch		At lunch		Between lunch and dinner		At dinner		After dinner	
	DK	S	DK	S	DK	S	DK	S	DK	S	DK	S
Coffee, tea, milk	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]
Tap water	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]
Alcoholic drinks	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]
CSDs	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]

(38) These and similar studies indicate that CSDs are often drunk during leisure times unlike other NABs which are more functional in nature. Therefore, the different consumption patterns of CSDs from other NABs indicate that they are not both in the same product market.

(39) In respect of consumption patterns the parties have argued that the Commission has failed to address the key issue of whether consumers of CSDs find other beverages to be demand substitutes, and that it is difficult to conclude anything about the timing or consumption of CSDs compared to other NABs from the above table (Response, p. 41). However, the parties have not disputed the fundamental conclusion from their own studies that CSDs are often drunk at leisure times, unlike other NABs which are more functional in nature. Therefore, the Commission maintains that the different consumption patterns indicate that CSDs and other NABs are not in the same relevant product market.

(40) Finally, responses from customers and competitors in both Sweden and Denmark indicate that CSDs are not part of the same relevant product market as other NABs. In this respect the parties have argued that it is wrong to attach much, if any, importance to the impressions of retailers, wholesalers and competitors (Response, p. 42). However, retailers, wholesalers and competitors normally do have a thorough knowledge of their businesses and therefore have a clear view on, for example, the impact of a promotion of Coca-Cola on the sales of other drinks.

(41) As to supply-side considerations, other NABs such as milk, coffee, tea and juices are produced in a completely different way from CSDs and no supply-side substitution is possible. As far as packaged waters are concerned, it would be easier to package CSDs on the same equipment as is used for the production of packaged waters. However, the fact that a range of soft drinks can be produced on the same equipment is insufficient to create a single relevant product market for all soft drinks for the purpose of assessing the notified operation. The need to create and position a CSD, to advertise and promote a new product or a new brand, and to obtain access to distribution outlets means that supply-side flexibility is not a sufficient criterion upon which to expand the relevant product market. The mere physical capability of production equipment to produce a number of different products is not sufficient for the conclusion to be drawn that different beverages should be grouped into a single relevant product market.

(42) In conclusion, therefore, for the purpose of the application of the Merger Regulation, NABs as a whole cannot be regarded as being the relevant product market in either Sweden or Denmark. Rather it is concluded that CSDs are distinct from other NABs such as coffee, tea, milk, juices and packaged waters and do, in themselves, form a separate relevant product market.

(b) *The differentiation of colas from all other CSDs*

(43) With respect to drawing a differentiation between colas and all other CSDs, the Commission's earlier decisions [1] indicate that a wide variety of factors show that in the beverage industry a distinction may be made between different flavours of CSDs. A wide range of evidence including industry statements and market studies supported the Commission's finding of a distinct relevant product market

[1] Decision 97/540/EC, Case IV/M.794 — Coca-Cola Enterprises, Inc./Amalgamated Beverages GB (OJ L 218, 9. 8. 1997, p. 15); Decision 92/553/EEC, Case IV/M.190 — Nestlé/Perrier (OJ L 356, 5. 12. 1992, p. 1); Case IV/M.289 — PepsiCo/KAS (21. 12. 1992) and Decision 96/204/EC, Case IV/M.582 — Orkla/Volvo (OJ L 66, 16. 3. 1996, p. 17).

for cola CSDs in Great Britain [1]. This conclusion was based on factors including consumer preference, and differences in marketing and pricing between colas and non-cola flavoured CSDs. In the present case a number of elements suggest that there is a separate relevant product market for colas, but it should be noted that whether the operation is analysed in terms of colas alone, or in terms of all CSDs, the assessment would not materially change. The competitive effects of the present operation can thus be analysed in a product market encompassing all CSDs.

B. ***Relevant geographic markets***

(44) It has been the Commission's practice to analyse the supply of beverages on a national basis [2]. The same analysis is relevant in the present case, since the bottlers in question have been licensed by brand owners to sell a product within the limits of a national geographic territory.

(45) The finding of national CSD markets for Denmark and Sweden is supported by the low rate of imports and exports of CSDs. According to Canadean, imports of CSDs were less than 2,5 % in Sweden and less than 2 % in Denmark in 1995. Exports were even lower than imports in Sweden, whereas Danish exports were only 4 %.

(46) Differences in list prices for TCCC products between Sweden, Denmark, Norway, Finland, Germany, Netherlands, the United Kingdom and Belgium are an indication that Sweden and Denmark are two separate relevant geographical markets. The Norwegian list prices are the lowest in the Nordic countries. Danish list prices are about 20 % higher than in Norway, and Swedish list prices about 40 % higher than in Norway. Furthermore, Danish prices are significantly higher than in areas such as Germany and the Benelux.

(47) The parties have indicated in their letter of 28 May 1997 that list prices do not necessarily correspond to transaction prices due to discounts. However, discounts are a normal feature of CSD markets in all these countries and it seems that differences in discounts cannot explain the whole difference between the list prices. The parties have argued in their letter of 28 May 1997 that different recycling systems and differences in distribution costs can explain part of the differences in list prices. However, the recycling systems in the Nordic countries are comparable for the greater part of the volume of CSDs, since most CSDs are sold in refillable bottles. As far as distribution costs are concerned, it would be expected that Norway would have the highest distribution costs and in this respect be comparable to Finland and Sweden due to the similarities in the geography of these countries. Denmark would, on the other hand, be expected to be more similar to Germany, the United Kingdom and the Benelux countries in this respect. However, contrary to what would be expected if distribution costs explained the differences in list prices, Sweden and Denmark have higher list prices than Norway. As far as the other explanations offered in the parties' letter (comparisons based on purchasing power parities and the fact that price variations on similar consumer goods are the norm with the Community), the Commission is of the opinion that they are not relevant for the delineation of the relevant geographic market.

(48) In addition, as regards Denmark, laws relating to beverage packaging are the strictest in Europe; refillable bottles are mandatory for domestic sales of locally produced CSDs and beers. There is also a total ban on cans. Therefore, in practice imports are restricted unless a satisfactory deposit/returnable/recycling system is in place. The national ban on one-way containers acts as a barrier to imports, by imposing obligations on the industry to use the designated recycling system for all bottles produced.

(49) Therefore, the Commission concludes that Denmark and Sweden are separate relevant geographic markets for the purposes of assessing this operation, a conclusion that has not been contested by the parties.

VI. COMPATIBILITY WITH THE COMMON MARKET AND THE FUNCTIONING OF THE EEA AGREEMENT

A. ***Overview: the impact of the operation***

(50) The impact of the notified operation would be felt at both the brand and bottling levels. Specifically,

[1] Decision 97/540/EC.
[2] Decision 97/540/EC and Decision 92/553/EEC.

the operation would have the following competitive effects on the markets:

(a) at the *brand level,* TCCC would acquire the know-how and production rights for certain CSDs (and concentrates) from Carlsberg and Falcon in Denmark and Sweden respectively (in Denmark, TCCC will reassign the rights to produce the CSDs to Dadeko, whereas in Sweden it will retain these rights); and

(b) at the *bottling level,* there would be two effects:

— the overall strengthening of TCCC's market power through its forward vertical integration, in that it is moving from its role as a licensor to that of being the co-owner and co-decision maker of bottling operations, and

— the strengthening of the dominant position of Dadeko, control over which passes to CCNB, at the bottling level in two ways: TCCC's brand portfolio would be enlarged by the operation, and at the same time, the Carlsberg portfolio would be eliminated in Denmark. Furthermore, the Falcon portfolio would be weakened in Sweden.

(51) As a result of these structural changes, the operation would lead to the elimination of both actual and potential competition from Carlsberg in both Denmark and Sweden, in the following ways:

(a) *elimination of actual competition in both Denmark and Sweden:*

in Denmark: Carlsberg has stated its intention (in the notification) to discontinue production of certain [...] flavours which it currently produces and markets, including in particular, [...] in the portfolio; and in Sweden: TCCC would acquire certain [...] brand CSDs from Falcon; and

(b) *elimination of potential competition in both Denmark and Sweden:*

in Denmark: Carlsberg is bound by the MSA not to introduce any new [...] flavours in [...] in the future; and in Sweden: Falcon (50 % owned by Carlsberg) is bound by [...] non-competition agreements not to re-enter the CSD markets in [...].

(52) The parties have asserted that the concentration has no appreciable effect on competition. Their main lines of argument are that the relevant product market is at least as wide as all NABs (a notion dismissed above), that there will be no material change in the competitive structure in Denmark, and that there will be a more competitive market in Sweden. This 'lack of change' scenario ignores the fundamental structural alterations that would take place: TCCC and Carlsberg become partners in CCNB, replacing the current licensor/licensee arrangement; the TCCC CSD brand portfolio is enlarged by the operation, and at the same time, the Carlsberg CSD portfolio is eliminated and the Falcon CSD portfolio is weakened. Finally, the operation raises barriers to entry in Denmark (discussed below).

(53) As is evident from parties' internal papers, the overall purpose of establishing CCNB is to strengthen the TCCC brands and bottling operations in the CCNB territory and thereby capture a higher share of beverage sales. [...].

(54) The impact of the establishment of CCNB can only be understood against the background of the outlook for the Nordic market. The parties have provided projections (in millions of litres) for sales of cola and non-cola CSDs in Denmark and Sweden:

		1995	1998	1999	2000
Denmark	Colas	207	[...]	[...]	[...]
	Non-colas	192	[...]	[...]	[...]
Sweden	Colas	233	[...]	[...]	[...]
	Non-colas	306	[...]	[...]	[...]

The forecast compound annual growth rates for the period between 1998 and 2000 in Denmark are [...] for colas and [...] for non-cola flavoured CSDs, and for Sweden [...] for colas and [...] for non-cola flavoured CSDs. In general, based on the current annual per capita consumption, the parties consider the Danish and Swedish markets have considerable growth potential for both colas and non-cola flavoured CSDs.

(55) In conclusion, the strategic aim of TCCC in establishing CCNB is to capture the growth of the market for the brands owned by or licensed to TCCC. Although this is a legitimate objective as such, as will be seen from the following discussion, the creation of CCNB as a joint venture with Carlsberg is not a matter of internal restructuring, but is a new transaction putting into effect the joint strategy of two competitors which will have structural effects on the industry.

B. ***Denmark***

B.1. **Overview of the industry**

(56) The total volume of CSDs consumed in Denmark in 1995 was 399 million litres with colas accounting for 52 % and non-colas for 48 % of this total volume. The retail channel accounted for 64 % of CSDs consumed and the Horeca channel for 36 % of the total volume consumed in 1995.

(57) TCCC is the brand owner and supplier of the concentrate for Coca-Cola, Coca-Cola Light, Fanta, Sprite and other TCCC brands which are being bottled exclusively by the Carlsberg subsidiary Dadeko. PepsiCo is the brand owner and supplier of the concentrate for Pepsi Cola, 7-Up and other PepsiCo brands whose products are bottled by the brewer Bryggerigruppen A/S (Bryggerigruppen), as discussed below. Cadbury Schweppes is the brand owner and concentrate supplier of the Schweppes and Sunkist brands. In addition, it owns Dr Pepper, which is not on the Danish market. The Cadbury Schweppes brands are packaged by Dadeko and distributed through the Carlsberg distribution system.

(58) Carlsberg is the largest supplier of beer, CSDs and packaged waters in Denmark. Carlsberg is the brand owner of the Tuborg Squash CSDs. It has a 75 % stake and sole control over Dansk Coladrik, which owns and bottles Jolly Cola, the third largest cola brand in Denmark. Furthermore, Carlsberg is the 100 % owner of the brewer Wiibroe, which supplies the Neptun CSD brands. Carlsberg also has joint control over the largest Danish producer of juice products. It is foreseen as a consequence of the operation, that Dansk Coladrik will be sold (see below).

(59) Bryggerigruppen is the second largest brewer and bottler of soft drinks in Denmark. It is the bottler of the PepsiCo brands, and supplies a full range of its own non-cola flavoured CSDs. It is, for example, the brand owner of the lemon-lime CSD 'Faxe Kondi', which competes directly with TCCC's Sprite brand.

(60) The shares of Bryggerigruppen are held by the two holding companies, Jyske Bryg Holding AS (Jyske Bryg) and Faxe Bryg Holding A/S (Faxe Bryg), in which Carlsberg has minority shareholdings. Carlsberg holds 37 % of the shares and 48 % of the votes in Jyske Bryg and, based on the votes cast at the last three annual general meetings of the shareholders, Carlsberg has cast more than 50 % of the votes present at the meetings.

	Total votes	Voted at meeting	Carlsberg holding	Carlsberg (percentage)
1994 AGM	2 777 525	1 810 122	1 335 995	74
1995 AGM	2 777 525	1 837 422	1 335 995	73
1996 AGM	2 777 525	1 478 738	1 335 995	90
1997 AGM	2 777 525	1 595 090	1 335 995	84

Therefore, Carlsberg has the possibility of exercising decisive influence and consequently control over Jyske Bryg.

(61) Jyske Bryg holds, directly and indirectly, 62 % of the shares and 49 % of the votes of Bryggerigruppen. Furthermore, it appears that [. . .]. The remaining shares of Bryggerigruppen are held by Faxe Bryg (49 % of the votes) and BG Bank which holds 2 % of the votes. According to the parties, [. . .].

(62) If a disagreement were to arise between Jyske Bryg and Faxe Bryg, the leading position of Carlsberg in the beer and CSD markets would play an important role in any negotiations to resolve the differences. It would be in the economic interests of Bryggerigruppen, and its shareholders, to find an accommodation with Carlsberg to avoid retaliation in the markets where Bryggerigruppen operates and Carlsberg has market leadership. For these reasons, it appears that Carlsberg has substantial influence over Bryggerigruppen and therefore that Bryggerigruppen offers reduced competition to Carlsberg.

(63) Others: A number of other smaller brewers exist. The most important are Harboe, in which Carlsberg has 25 % of the shares and a member of the board, and Albani in which Carlsberg has a 15 % shareholding, but only 8,75 % of the votes. Furthermore, the company Saltum-Houlbjerg Bryggerier (Saltum) has developed into an important supplier of discount and distributors' own brands (DOBs) in recent years. It is a small company which does not have its own distribution network.

B.2. **Market structure**

(a) *Market positions*

(64) The impact of the operation is felt at the brand and bottling levels. The market positions of the brand owners and bottlers on the overall CSD market are shown in the following tables, which set out the

market shares for 1995 on a value basis in Denmark and the estimated market shares following the creation of CCNB (based on data provided by the parties):

Brand owners

(%)

	All CSDs 1995	All CSDs post CCNB
TCCC	[40 to 45]	[40 to 45]
Carlsberg	[5 to 10]	[5 to 10]
Dansk Coladrik	[5 to 10]	[5 to 10]
Total Parties	[55 to 60]	[55 to 60]
PepsiCo	[5 to 10]	[5 to 10]
Albani	[0 to 5]	[0 to 5]
Harboe	[0 to 5]	[0 to 5]
Bryggerigruppen	[5 to 10]	[5 to 10]
Schweppes	[5 to 10]	[5 to 10]
Others	[10 to 15]	[10 to 15]

Bottlers

(%)

	All CSDs 1995	All CSDs post CCNB
Dadeko	[40 to 45]	[50 to 55]
Carlsberg/Tuborg	[10 to 15]	[0 to 15]
Carlsberg/Wiibroe	(*)	—
Carlsberg/Dansk Coladrik	[0 to 5]	[0 to 5]
Total Parties	[60 to 65]	[50 to 55]
Bryggerigruppen	[15 to 20]	[15 to 20]
Albani	[0 to 5]	[0 to 5]
Harboe	[0 to 5]	[0 to 5]
Others	[10 to 15]	[20 to 25]

(*) Included in the Carlsberg/Tuborg figures.

(65) TCCC had a market share of [40 to 45 %] at the brand level and the Carlsberg operations had a share of [10 to 15 %] in 1995. As regards bottling, Dadeko bottles [40 to 45 %] of CSDs and Carlsberg's other operations a further [15 to 20 %]. The second largest brand owner is PepsiCo with [5 to 10 %], and the second largest bottler is the PepsiCo bottler Bryggerigruppen with [15 to 20 %] of the market. Carlsberg and TCCC are therefore more than five times larger than the next largest brand owner and Carlsberg is almost four times bigger than the next largest bottler. The rest of the producers mainly produce discount brands and DOBs, which have achieved a certain success, mainly in the retail channel.

(b) *Conditions of competition*

(66) Access to brands and to distribution are key competitive factors in the CSD industry. Dadeko holds the licence for the dominant TCCC brands, the Cadbury Schweppes brands, and its parent, Carlsberg, is the owner of the important national brand in Denmark — Tuborg Squash. The production of Dadeko, together with the other Carlsberg bottlers, is more than four times that of its nearest competitor.

(67) Colas are the largest selling CSD flavour and are sometimes referred to as a 'traffic builder' which drives the overall CSD volume of a supplier. Therefore, it is a considerable advantage for a supplier to have a strong cola brand in its portfolio. Furthermore, the inclusion of strong beer and packaged water brands, such as those of Carlsberg, in the beverage portfolio gives each of the brands in the portfolio greater market power than if they were sold on a 'stand-alone' basis. It is almost inconceivable that a Danish outlet for beverages such as packaged waters, beers and CSDs would not carry TCCC and Carlsberg brands. No other Danish supplier has a beverage portfolio which would enable it effectively to challenge Carlsberg and Dadeko.

(68) The distribution of CSDs is characterised by high economies of scale. In particular it is crucial to unload a sufficiently high volume at each truck stop to bring down the average cost of delivery to individual customers. Generally this means that companies with the highest volume and the broadest portfolio of beverages in their distribution system will have the lowest costs and be able to reach the highest number of customers.

(69) In Denmark beer and packaged waters are often co-distributed with CSDs. This is an advantage for both the brewers and the customers. For the brewers it increases the economies of scale in distribution, and allows a wider distribution than would otherwise have been possible. For customers it is an advantage to be able to buy a complete portfolio from one supplier, since it involves fewer deliveries. The Carlsberg group is the largest supplier of beer and packaged waters with more

than 50 % and 45 % of the respective volumes consumed in Denmark. In view of their market shares in CSDs, it is clear that Carlsberg and Dadeko have by far the most extensive distribution systems, giving their products the best market coverage when compared to the other suppliers. By way of comparison with other breweries, Carlsberg and Dadeko distributed some 344 million litres of beer and 163 million litres of colas and other CSDs in 1996; all other breweries together distributed volumes of beers and CSDs totalling between 85 and 100 million litres, respectively. Carlsberg/Dadeko was therefore almost three times bigger than the other brewers as a whole.

(70) Finally, it is important to consider the effect of Carlsberg's holding in Jyske Bryg, which holds, directly and indirectly, 62 % of the shares in Bryggerigruppen. Carlsberg, through Jyske Bryg, has substantial influence over Bryggerigruppen. This brewer is the largest competitor to Dadeko, TCCC and Carlsberg at both the brand and bottling levels and the only other company bottling premium brands in Denmark. Furthermore, Carlsberg has shareholdings in Albani and Harboe, which together with Saltum are the largest producers of discount CSDs.

(71) In conclusion, in view of the brands owned by TCCC and Carlsberg, it is unlikely that they would be restrained by their current competitors in the overall CSD market. As regards bottling, given the market shares of Dadeko and the other Carlsberg operations, their portfolios of brands, their distribution systems and Carlsberg's shareholdings in other brewers, it appears that none of the current competitors would be able to constrain the actions of Dadeko in the CSD market.

(c) *Barriers to entry for potential competitors*

(72) The main barriers to entry to the CSD market are access to brands and to a distribution network, as well as to shelf space, a sales and service network, brand image and loyalty and advertising sunk costs. TCCC, PepsiCo and Cadbury Schweppes are the only international brand owners. In view of the risks, costs and the time needed to launch an international brand it is likely that only the existing three international brand owners would be able to launch new international CSD brands in any country. On the Danish market only Carlsberg and Bryggerigruppen have, in the past, been able to launch national premium brands. Therefore, it appears that only the existing brand owners in Denmark would be able to launch new brands.

(73) CSDs rely heavily on brand image to drive sales, and companies like TCCC and PepsiCo have established brand loyalty through heavy investments to maintain the high profile of their brands. The introduction of a new brand would thus require heavy expenditure on advertising and promotion in order to persuade brand-loyal consumers to switch away from their usual CSD brand. Moreover, consumer loyalty to the established brands would make it difficult for a new supplier to persuade retail customers to change suppliers and would thus further hinder entry. Such advertising and promotion expenditures are sunk costs and add substantially to the risk of entry.

(74) In addition, any potential entrant would also be hindered by the need for access to bottling and to a distribution system. Each of the major brewers in Denmark has its own distribution system, meaning that any new entrant would have to either incur the significant cost of setting up its own system or negotiate with a competitor for the use of their system. It is unlikely that a new entrant would find it economically viable to set up a new distribution operation, since the entrant would have to include beers and packaged waters in its system in order to achieve a sufficient volume of distribution. The brewers' power in this field is reinforced by the fact that CSDs are distributed in refillable containers and any new entrant's bottles would have to comply with the relevant standards. Therefore, a new entrant's products would have to be distributed by one of the existing brewers as is today the case for TCCC and Cadbury Schweppes products, which are distributed by Carlsberg, and PepsiCo brands, which are distributed by Bryggerigruppen.

However, as the existing brewers are well established, and have their own line of soft drinks, it would be difficult for a new entrant to find distribution. Moreover, Carlsberg's holdings in several other Danish brewers makes it less likely that any potential entrant would be able to co-operate or otherwise form an alliance with a Danish brewing company. Furthermore, as mentioned above, it should be noted that Carlsberg has by far the best and most wide-ranging distribution system on the Danish market. For a new entrant the most efficient way to enter the Danish market would be to be distributed by Carlsberg.

(75) Finally, even if a new entrant were to obtain access to an adequate distribution network, the firm would still have to obtain shelf space and incur the expenses of supporting a sales and service network in order to ensure that its products were properly stocked and positioned. The Commission has recognised [1] the importance of having a sales and service network to induce customers to take on a product line.

(76) The Commission recognises that entry may be possible on a smaller scale, for example by deliveries of DOBs directly to a supermarket chain with distribution completed through the supermarket chain's distribution system. This strategy has been used by Saltum. It is a strategy which does not involve heavy advertising costs or major investment in a distribution system. Saltum has in the period 1990 to 1995 been able to increase its CSD volume from 19 to 54 million litres. This increase in volume arises from sales of Saltum's own brands, an increase in its supplies of DOBs to a supermarket chain and the acquisition of another producer of discount CSDs. In comparison, Bryggerigruppen, the PepsiCo bottler, increased its volume from 39 to 58 million litres in the period 1990 to 1995. However, an assessment of the competitive impact of a producer like Saltum cannot be made simply by looking at the increase in its volume sold, as argued by the parties at the Hearing and in the Response (p. 52). It must be noted that the growth of Saltum has mainly been achieved through an acquisition and the production of DOBs for one supermarket chain. Moreover, it is incorrect to say that Saltum is one of the three largest Danish brands by considering its total production, as one third of its production is of DOBs and one fifth represents another discount brand acquired recently by Saltum. Finally, it is necessary to look at the impact of discount brands and DOBs on the whole market.

(77) Discount brands and DOBs have achieved a certain success in the retail channel, but are of little importance in the service trade and Horeca. Discount brands and DOBs therefore only have an impact on specific parts of the market. It is correct as the parties stated at the Hearing that discount brands have increased their volume share of the market in the period 1986 to 1996. However, more importantly, in value terms the share of discount brands and DOBs actually decreased from 24 % of the market in 1993 to 21 % of the market in 1995. Furthermore, it is clear from Nielsen data that the average retail price for all CSDs has not decreased in the last two years. Finally, the price differences between Denmark and neighbouring countries (see section V.B above) are substantial. This is evidence that discount brands and DOBs have not been able to create competition which has led to a lower price level for consumers. It, therefore, appears that branded CSDs are of importance to enable a producer to be an effective competitor. In any case, the most likely companies to enter the CSD market with discount brands or DOBs are the established brewers who are already on the market with such products.

(78) For these reasons there do not appear to be any potential competitors who would or could enter the Danish overall CSD markets at either a brand or bottling level.

(d) *Countervailing buyer power*

(79) Major retail chains have a need to stock leading brands such as those owned by TCCC and Carlsberg. The Coca-Cola brand, in particular, is considered a 'must stock' brand; and CSDs in general are of strategic importance to grocery retailers in that they are fast-moving consumer goods that 'build traffic'. One retailer noted that if Coca-Cola were

[1] Decision 96/204/EC, Orkla/Volvo.

delisted, a certain volume of consumers would be lost to another retail outlet, indicating the strong demand for the Coca-Cola brand. Consequently, retailers cannot use the threat of increasing volume of other brands as leverage. Therefore, it appears that little, if any, countervailing buyer power arises between the customer and either the brand owner or bottler.

(80) In the Response the parties have argued that Dadeko is constrained by powerful buyers and that Dadeko's five largest retail customers account for around [35 to 40 %] of TCCC's total sales of NABs in Denmark. Furthermore, retailers control shelf space and product promotions and would be able to meet CSD requirements from sources other than Dadeko. The parties also mention examples of the power of supermarket chains: a delisting of [...] by the [...] chain for a period in [...] and a reduction in shelf space by [...] in [...].

(81) The Commission recognises that the big supermarket chains have more negotiating power than smaller retailers, and that this results in the supermarket chains being able to negotiate discounts which are not available to smaller retailers. However, in an assessment of dominance the question is whether there is sufficient countervailing buyer power to neutralise the market power of the parties. This is not the situation in the present case. First, the concentration ratio on the supply-side is much higher than on the buyer side. Second, retailers are not able to meet the demand for the dominant 'must stock' TCCC brands from other suppliers. Consequently, they are not able to find other suppliers for their CSD requirements to such an extent that it could remove the dominance of the parties. In the absence of any other specific reasons for the presence of countervailing buyer power, it can only be concluded that little countervailing buyer power exists. This is also clear from the fact that Danish CSD prices are very high compared to neighbouring countries. See section V.B above.

(e) *Conclusion*

(82) In the overall market for CSDs, TCCC's market share, the strength of its brand, the barriers to entry for competitors and the lack of countervailing buyer power, lead the Commission to conclude that TCCC is dominant on the CSD market at the brand level. For similar reasons the Commission considers that Dadeko, as licensee of TCCC, is dominant on the market for CSDs at the bottling level.

B.3. **Strengthening of a dominant position on the overall CSD market in Denmark**

(83) With the creation of CCNB, the brands, the portfolios and distribution system of TCCC and Carlsberg/Dadeko come under the joint strategy and common ownership of the parties. Consequently the Commission has concluded that the creation of CCNB will give rise to the strengthening of the dominant positions of TCCC and Dadeko on the CSD market at the brand and bottling levels respectively.

(84) The parties have argued that the intended divestiture of Jolly Cola, the licensing of [...], the discontinuation of certain [...] brands, as well as [...] would have reduced their market share from [55 to 60 %] to [50 to 55 %] at the brand level in 1995. These actions would have led to a reduction in market share, at the bottling level, from [60 to 65 %] to [50 to 55 %] in 1995. However, as discussed below it is not likely that the operation will lead to the parties giving up this [5 to 10 %] market share. More importantly, the parties have forecast that the overall CSD market in Denmark is expected to grow. Rather, it appears that the purpose of the operation is to position TCCC and CCNB/Dadeko to capture the majority of this growth. For the following reasons, TCCC's dominant position will be strengthened at the brand level and Dadeko's at the bottling level through the creation of CCNB.

(a) *The change from a licence agreement to a joint venture arrangement*

(85) Bottlers may be either independent companies, licensed by TCCC to produce its products, or entities which are either partly or wholly owned by TCCC. In some cases, the bottling arrangement between TCCC and the licensee matures into the creation of a joint venture between the two parties, a relationship which may subsequently be terminated upon the former licensee becoming subject to the sole control of an 'anchor bottler' ([1]).

([1]) Such was the case in IV/M.794 — Coca-Cola Enterprises, Inc./Amalgamated Beverages GB (Decision 97/540/EC). In the present operation, there is already a provision in the MSA in case of dissolution of CCNB, in which event CCNB would pass under the full control and ownership of TCCC (as discussed in paragraph 11).

(86) As far as the present arrangements are concerned, the operation results in a change from a licence agreement to a structural joint venture. The present licence agreement between TCCC and Dadeko is based on TCCC's standard Bottler's Agreement known as its European Community Standard International Bottler's Agreement ('ECSIBA') which was notified under Regulation 17 to the Commission on 7 September 1992 ([1]).

(87) In general terms, the present agreement provides that TCCC's role is confined to selling and delivering beverage bases and to approving certain decisions. Dadeko's role is confined to preparing and packaging TCCC beverages for distribution and sale in Denmark. Dadeko is obliged [...]. The bottling agreement obliges Dadeko, for example, to [...]. Dadeko is further identified as being [...]. Thus, the Bottler's Agreement provides for a formal division of responsibilities between Dadeko and TCCC. Moreover, under the present arrangement [...].

(88) The post-merger arrangement will be based on a Bottler's Agreement ([2]), the MSA and the licence agreement concerning the [...] CSD brands. The last two agreements will thus involve additional contractual obligations on the parties in addition to the bottling provisions, described above. Some of the main changes that will ensue in the relationship between the parties are: (i) TCCC will become fully involved in all decision-making bodies at different levels ([3]), (ii) [certain] brands will now become a part of the joint venture and thus subject to joint decision-making, (iii) Carlsberg must not, directly or indirectly, undertake any act or activity in relation to [...] within [...] and (iv) the MSA introduces [...].

(89) The parties have recognised that the concentration will lead to a structural change but have maintained that the structural change will have no appreciable impact on the parties' business relationship. However, the structural change from a licence agreement to a joint venture will strengthen Dadeko in two ways.

— *It will allow TCCC to take a more long-term view.* The Commission appreciates that TCCC and other brand owners have historically licensed bottlers for long periods. However, licence agreements are intrinsically not structural and therefore more limited in their contractual obligations and they are also a more short-term means of cooperation than a joint venture. In this respect it is instructive to note that TCCC terminated its licence agreement with Pripps in Sweden to facilitate the creation of CCNB and that TCCC recently established a joint venture with the former long-term PepsiCo licensee in Venezuela. Such transactions would be more difficult to achieve in the case of a joint venture agreement as compared to a licence arrangement. In the present case, [...].

— *It will harmonise the goals of TCCC and Carlsberg.* The parties have recognised that there can be conflicting interests between TCCC as a brand owner and Carlsberg as a bottler. The creation of CCNB will give TCCC joint control over production, below-the-line marketing, distribution and sales of both TCCC and [certain other] brands. The operation will remove potential areas of conflict between TCCC and Carlsberg, for example, in the allocation of production capacity and advertising strategies. At present TCCC and Carlsberg could, for example, have different interests in the mix of advertising and point-of-sales promotions, since TCCC is basically paying for the above-the-line advertising, whereas Carlsberg/Dadeko is paying for the point-of-sales advertising and has other brands being sold outside the influence of TCCC. In the future, with the creation of the joint venture, such areas of conflict will be eliminated through the pooling of the brands under TCCC and the joint control over CCNB. In this sense, the operation will create a 'seamless' structure with better coordination between the brand and bottling levels.

([1]) Case IV/34.460, which is still pending.

([2]) The parties have submitted that the Bottler's Agreement to be executed between TCCC and Dadeko following the implementation of the notified operation will be identical to [...] in all material respects.

([3]) This means that TCCC will be represented at: (i) the shareholders' general meeting, (ii) the supervisory board which, jointly with the executive board, is in charge of the management affairs, is responsible for the proper organisation of the activities and supervises the activities of the executive board; (iii) [...]; and (iv) [other day-to-day management functions].

(90) Therefore, on the basis of the foregoing, the Commission does not accept the 'no change scenario' presented by the parties who consider that the creation of CCNB will not significantly change the present situation and that TCCC will have no new decision-making power or influence over its bottler beyond the influence that it currently exerts.

(b) *Strengthening at the brand level*

(91) Jolly Cola will remain in the CCNB brand portfolio despite [...]. In the Response the parties have argued that Jolly Cola is a brand in decline which has lost considerable market share and has become less important in recent years. The Commission recognises the difficulties faced by the Jolly Cola brand and the fact that the market share of Jolly Cola has decreased to about only 5 %. However, there is not at present any agreement to sell the stake in Dansk Coladrik, and any sale would be complicated by a pending court case over the disposal process. Consequently, the Commission has combined the market share appertaining to Jolly Cola with that of the parties.

(92) Similarly it has been argued that the [...] brand should not be included in the parties' market share since Carlsberg is to license its production to [...]. However, its exclusion would be inappropriate since Carlsberg plans to continue to distribute the [...] brand. In the Response the parties have argued that [...]. The Commission agrees that the brand is not important in an overall market context, but notes that Carlsberg will continue to distribute the [...] brand.

(93) As regards [...], there is a risk that [...] may leave the overall CSD market in Denmark because, as a consequence of the operation, [...].

(94) The parties claim that it is likely that the [...] brand will be able to find another bottling arrangement: in reality the only available alternative is Bryggerigruppen. While it is not impossible that Bryggerigruppen would become the future bottler of [...]. Finally, as noted above, Carlsberg has substantial influence over Bryggerigruppen. The establishment of CCNB will mean that, in any conflicts between the interests of [...] and those of TCCC, Carlsberg is likely to support TCCC because the strategic interest of Carlsberg in CCNB is much greater than its interest in the CSD business of Bryggerigruppen. This will constrain the competitive potential of the [...] brand in Denmark, even if the brand were to be licensed to Bryggerigruppen. For these reasons, it cannot be taken for granted that [...] would be licensed to Bryggerigruppen. In fact, the brand may be withdrawn from the Danish market.

(95) The operation will result in reduced competition between the TCCC, Carlsberg and Cadbury Schweppes brands. At present the capacity of Dadeko is allocated between the production of TCCC, Tuborg, Carlsberg and Cadbury Schweppes brands and, at the marketing level, coordination is undertaken at the Carlsberg Group level through the Carlsberg Soft Drink Coordination Committee. However, Dadeko is currently an exclusive TCCC sales and distribution organisation, which is separate from the Tuborg and Carlsberg sales and distribution organisations. Therefore, a certain degree of competition between the brands of TCCC, Carlsberg and Cadbury Schweppes takes place.

(96) The operation will lead to a structural change in this relationship. First, the brand management and the above-the-line marketing for all the TCCC, [...] and [...] brands will be handled by TCCC, and the [...] brands by CCNB. Second, the distribution and below-the-line marketing will be carried out by Dadeko for all the TCCC, Carlsberg, and [...] brands. Therefore, the operation will create one focused organisation which has all the TCCC, Carlsberg, [...] and [...] brands in its portfolio, and which carries out all the distribution, marketing and sales activities of TCCC and Carlsberg for all the brands (including the [...] brands). Consequently, the present competition between TCCC, Carlsberg and [...] brands will be eliminated. Moreover, TCCC would acquire the power to give additional advertising and promotional support to the CSDs it prefers and to weaken, or totally eliminate, support for other flavours. This means it would be able to 'manage out' flavours from the Carlsberg and [...] portions of the CCNB portfolio to the advantage of TCCC brands.

(97) As discussed above, Carlsberg has substantial influence over Bryggerigruppen. It is clear [...] that the link between Bryggerigruppen/Pepsi and Carlsberg [...] could cause conflicts of interest for Carlsberg. [...]. Furthermore, Carlsberg's future stake in CCNB may further constrain the competitive potential of Bryggerigruppen on the Danish CSD market. In particular in cases of conflict between

TCCC and PepsiCo, Carlsberg would have a greater incentive to support TCCC after the operation. The reason is that Carlsberg's stake in CCNB is of much greater strategic importance than its stake in the CSD business of Bryggerigruppen.

(98) As concerns raising barriers to entry, the only Danish companies likely to launch new CSD brands would be Carlsberg or Bryggerigruppen. However, Carlsberg will be eliminated as a competitor at this level in the future. This is particularly important since Carlsberg is one of the few companies which would be able to challenge TCCC as a supplier of new brands. Furthermore, it cannot be excluded that Carlsberg's substantial influence over Bryggerigruppen could constrain the launch of a new brand by this company. Therefore, in effect, the operation gives TCCC decisive influence over which new brands will be launched on the overall CSD market in Denmark in the future. In this respect it should be noted that [. . .], especially since TCCC has recently launched the [. . .] brand on the Danish market.

(c) *Strengthening at the bottling level*

(99) The operation will allow TCCC to have direct contact with customers, thereby allowing it to employ the commercial leverage of its global system in relation to its customers, greatly increasing its bargaining position in the market. Consequently, TCCC will also be in a position to implement exclusivity programmes, volume discounts and rebate schemes more easily.

(100) The operation forecloses the Carlsberg distribution system to brands other than those owned by or licensed to TCCC and CCNB. The Carlsberg and Tuborg distribution systems are still today available for other brands. This is demonstrated by the fact that, in 1993, Carlsberg launched the Cadbury Schweppes Sunkist brand, which is distributed by Carlsberg and Tuborg. As a consequence of the operation, such product launches would no longer be possible for Carlsberg. Since the Carlsberg distribution system is the largest in the country, that foreclosure has serious consequences for other brand owners, especially given Carlsberg's substantial influence over Bryggerigruppen, which is the only realistic alternative to Carlsberg as a licence holder and distributor of a new international brand for colas and other CSDs. Thus the operation will further increase the likelihood of CCNB increasing its market share and in reality gives TCCC decisive influence over which new brands will be launched on the Danish market. Therefore the likelihood that a major international brand, such as Cadbury Schweppes' Dr Pepper brand, would enter the market is reduced.

B.4. **Conclusion**

(101) For the above reasons, the Commission has concluded that, at the brand level TCCC is dominant and at the bottling level Dadeko (as bottler for TCCC and Carlsberg CSDs) is dominant. With the creation of CCNB, the dominant positions of TCCC and Dadeko (control over which passes to CCNB) are strengthened. In reality, the operation will give TCCC decisive influence over which new CSD brands are launched on the Danish market.

C. ***Sweden***

C.1. **Overview of the industry**

(102) The total volume of CSDs consumed in Sweden, in 1995, was some 542 million litres of which 239 million litres (44 %) were cola flavoured CSDs. Some 77 % of all CSDs in Sweden were sold by the retail trade in 1995, with the balance being sold in the Horeca channel.

(103) Prior to the establishment of CCDS, three breweries were primarily responsible for the production, distribution and sale of CSDs and packaged waters in Sweden. Pripps, a subsidiary of the Norwegian conglomerate Orkla, was the largest of these companies. As well as producing a range of beers, Pripps was the licensee for TCCC's brands and is the franchisee for Cadbury Schweppes' mixers, in addition to producing its own CSDs and packaged waters. The second largest brewer was Spendrups Bryggeri AB, which is independently owned and holds, at present, the licence for PepsiCo brands in Sweden and Norway. The smallest of the three brewers, Falcon, currently holds the licence to produce Dr Pepper. Falcon will jointly own, with CCDS, the distribution joint venture, DDAB.

(104) As already mentioned, since 1 April 1997, CCDS has been marketing and selling the full range of TCCC's products on the Swedish market. As of 1 January 1998, CCDS will also take over the bottling of those products, which is being carried out by Pripps until its bottling agreement expires on 31 December 1997.

C.2. **Market structure**

(105) The market positions of the brand owners and bottlers on the overall CSD market in Sweden are shown in the following tables, which set out the market shares for 1995 on a value basis and the estimated market shares following the creation of CCNB (based on data provided by the parties):

Brands

(%)

	All flavoured CSDs 1995	All flavoured CSDs post CCNB
TCCC	[40 to 50]	[50 to 55]
Falcon	[0 to 5]	[0 to 5]
Total parties	[50 to 55]	[50 to 55]
PepsiCo	[5 to 10]	[5 to 10]
Schweppes	[0 to 5]	[0 to 5]
Pripps	[10 to 15]	[10 to 15]
Spendrups	[5 to 10]	[5 to 10]
Others	[15 to 20]	[15 to 20]

NB: The 'Others' category includes DOBs and the like.

Bottlers

(%)

	All flavoured CSDs 1995	All flavoured CSDs post CCNB
CCDS		[50 to 55]
Falcon	[5 to 10]	[5 to 10]
Total parties	[5 to 10]	[55 to 60]
Pripps	[60 to 65]	[15 to 20]
Spendrups	[15 to 20]	[15 to 20]
Others	[15 to 20]	[15 to 20]

NB: The 'Others' category includes DOBs and the like.

(106) In the context of the market structure, it should be taken into account that in August 1997 Pripps and PepsiCo agreed to enter into an exclusive franchise bottling agreement for the production, distribution and sales of Pepsi-Cola and Seven-Up products in Sweden. The agreement will come into force on 1 January 2001, after the expiry of PepsiCo's existing bottling agreement with Spendrups. According to the parties, preliminary discussions are also under way regarding a similar alliance in Norway.

C.3. **Conclusion**

(107) On the basis of the information provided by the parties, together with the Commission's investigation, there are indications that TCCC is dominant at the brand level and CCDS is dominant at the bottling level on the CSD market in Sweden. The Commission, however, recognises that the formation of CCDS, together with the termination of TCCC's licence agreement with Pripps, will add new bottling capacity to the Swedish CSD market. Consequently, the concentrative elements of the operation will not lead to a strengthening of the present positions of either TCCC or CCDS. The cooperative elements of the operation (the TPSA and the creation of DDAB) are being assessed under the separate proceedings pursuant to Article 85 of the EC Treaty. In this context, the Commission notes that certain undertakings have been given during the course of the procedure under the Merger Regulation with respect to the TPSA (see below).

VII. UNDERTAKINGS SUBMITTED BY THE PARTIES

(108) In the light of the competition concerns identified by the Commission, the parties have offered to modify the original concentration plan. The wording of the two main divestiture undertakings is as follows:

(109) ***Divestiture of Carlsberg's shareholding in Jyske Bryg***

'In order to meet the requirements of the Commission to facilitate the development of a viable competitor with adequate resources in the CSD sector, Carlsberg A/S hereby gives the following undertaking to the Commission with respect to its shareholding in Jyske Bryg Holding A/S:

1. If, within [...] from the date of the Commission adopting a favourable decision under Regulation (EEC) No 4064/89, Carlsberg A/S has not sold its shares in Jyske Bryg Holding A/S (such shares hereinafter referred to as the "Shares") to one or more viable industrial undertakings unconnected to Carlsberg A/S or The Coca-Cola Company, such purchaser being in a position to maintain and develop Bryggerigruppen as an active competitive force in competition with Dadeko, Carlsberg A/S will:

   (a) appoint an independent firm of accountants, lawyers, investment bankers or similar consultants (such firm hereinafter referred to as the "Trustee"), to be approved by the Commission, and to act on the Commission's behalf in overseeing the ongoing independent and separate management of the

Shares and the continued efforts by Carlsberg A/S to divest the shares within the further period set out in (b) below; and

(b) be allowed a further period of [. . .] to negotiate a sale of the Shares to a purchaser or purchasers unconnected to Carlsberg A/S or The Coca-Cola Company.

2. Should divestiture according to paragraph 1 above not have been accomplished within the further period set out in paragraph 1(b) above, Carlsberg A/S will give the Trustee an irrevocable mandate to find purchaser(s) for the Shares, such sale to be made at a fair and reasonable price within an additional extension period of [. . .] (or such further period to be agreed with the Commission) to a purchaser or purchasers unconnected to Carlsberg A/S or The Coca-Cola Company. Carlsberg A/S will provide the Trustee with all the assistance and information necessary for the execution of such sale and for the obtaining of such terms and conditions.

3. In the event that the Trustee has not sold the Shares by the end of the period described in paragraph 2, he shall sell the Shares on the best possible terms and conditions subject to an absolute and unconditional obligation on Carlsberg A/S to divest at no minimum price. Such sale to take place prior to the end of the period described in paragraph 2.

4. Carlsberg A/S or the Trustee (as appropriate) will notify the Commission of any proposal within their knowledge for a sale of Shares to a single purchaser by Carlsberg A/S where such sale is in respect of Shares amounting to [. . .] per cent or more of the total number of issued shares in Jyske Bryg Holding A/S. The Commission will, within [. . .] weeks of receipt of such notification, inform Carlsberg A/S or the Trustee (as appropriate) in writing if it considers that the proposed purchaser does not fulfill the conditions set out in paragraphs 1, 1(b) or 2 (as appropriate), in which case a sale to such proposed purchaser shall not proceed. Otherwise, at the end of the [. . .] week period Carlsberg A/S will be free to sell its shares to such purchaser.

5. Carlsberg A/S further understands that any sale of shares amounting to less than [. . .] per cent of the total issued shares in Jyske Bryg Holding A/S shall also be to a purchaser which to the best of Carlsberg A/S's knowledge is unconnected to it or The Coca-Cola Company. When the divestiture of its shares in Jyske Bryg Holding has been accomplished, Carlsberg A/S undertakes to report to the Commission the identity of the buyer(s) of the shares, provided that the identity of the buyer(s) of the shares is known to Carlsberg A/S, and as may be necessary, provide the information, to the best of its knowledge, necessary to judge whether the buyers are unconnected with Carlsberg A/S and The Coca-Cola Company.

6. Carlsberg A/S, or alternatively the Trustee, undertakes not to vote the Carlsberg A/S shares in Jyske Bryg Holding A/S during the divestiture periods except with the prior approval of the Commission. The Commission will not unreasonably withhold its approval for Carlsberg A/S, or alternatively the Trustee, to vote the shares. Carlsberg A/S will provide the necessary information for the Commission to make an evaluation in this respect.

7. Carlsberg A/S or the Trustee, as the case may be, will notify the Commission of all material developments in relation to the sale of the Shares and, in any event, will report on relevant developments at [. . .] intervals.'

(110) ***Divestiture of Carlsberg's shareholding in Dansk Coladrik (Jolly Cola)***

'Carlsberg A/S hereby gives the following undertaking to the Commission with respect to its shareholding interests in Dansk Coladrik A/S:

1. Carlsberg A/S will, within [. . .] of the date of the Commission adopting a favourable decision under Regulation (EEC) No 4064/89, seek to sell its shareholding in Dansk Coladrik A/S, it being understood that any purchaser should be a viable existing or prospective competitor independent of Carlsberg A/S and The Coca-Cola Company and possessing the financial resources and proven expertise in the NAB market, enabling it to maintain and develop Dansk Coladrik A/S as an active competitive force in competition with Dadeko A/S in relation to the bottling of cola CSDs (such purchaser hereinafter referred to as a "Purchaser").

2. If Carlsberg A/S does not divest its shareholding in Dansk Coladrik A/S by the end of the period set out in paragraph 1 above, Carlsberg A/S will appoint an independent trustee

to be approved by the Commission (hereinafter referred to as "the Trustee") to act as described below.

3. The Trustee will on Carlsberg A/S's behalf oversee the ongoing management of Dansk Coladrik A/S to ensure its continued viability and market value and the rapid and effective sale of the Carlsberg A/S shares in Dansk Coladrik A/S at a fair and reasonable price.

4. Carlsberg A/S will give the Trustee an irrevocable mandate to find a Purchaser for its shareholding in Dansk Coladrik A/S within an extension period of [...] (or such further period to be agreed with the Commission). Carlsberg A/S agrees to undertake to give, on an arms-length basis and subject to Carlsberg A/S's reasonable secrecy interests, all assistance requested by the Trustee prior to the sale of the Carlsberg A/S shareholding to a Purchaser.

5. Carlsberg A/S or the Trustee will report to the Commission on whether it believes that one or more proposed purchasers fulfil the description of a Purchaser set out in paragraph 1 above. The Commission will, within [...] weeks of receipt of such report, inform Carlsberg A/S or the Trustee (as appropriate) in writing if it reasonably considers that such proposed purchaser or purchasers do not fulfil the description of a Purchaser set out in paragraph 1 above, in which case a sale to such proposed purchaser or purchasers shall not proceed. Otherwise, at the end of the [...] week period Carlsberg A/S will be free to sell its shares to such purchaser.

6. Providing the offers concerned have been received from Purchasers and the procedure described in paragraph 5 has been complied with, Carlsberg A/S alone will be free to accept any offer or to select the offer it considers best in case of a plurality offer.

7. In the event that the Trustee has not sold the Carlsberg A/S shareholding in Dansk Coladrik A/S by the end of the period described in paragraph 4, he shall sell the shareholding on the best possible terms and conditions subject to an absolute and unconditional obligation on Carlsberg A/S to divest at no minimum price. Such sale to take place prior to the end of the period described in paragraph 4.

8. Prior to the completion of the sale of the Carlsberg A/S shareholding in Dansk Coladrik to a Purchaser, Carlsberg A/S will ensure that Dansk Coladrik A/S is managed as a distinct and saleable entity with its own management accounts, and that the management of Dansk Coladrik A/S are instructed that the Dansk Coladrik A/S business will be managed on an independent basis in order to ensure its continued viability and market value, and this will take place under the guidance and control of the Trustee following his appointment as described in paragraph 2 above. Prior to the completion of the sale of the Carlsberg A/S shareholding to a Purchaser, Carlsberg A/S will not integrate the Dansk Coladrik A/S business into any Carlsberg A/S business unit, nor will it appoint or second any Carlsberg A/S employee to the Dansk Coladrik A/S business. Carlsberg A/S also undertakes that it will make no structural changes to the Dansk Coladrik A/S business without prior Commission approval.

9. Carlsberg A/S will not obtain from Dansk Coladrik A/S management any business secrets, know-how, commercial information or any other industrial information or property rights of confidential or proprietary nature relating to the Dansk Coladrik A/S business.

10. Carlsberg A/S undertakes that, prior to the sale of the Carlsberg A/S shareholding in Dansk Coladrik A/S, all existing agreements between Carlsberg A/S and Dansk Coladrik A/S relating to the sale of Jolly Cola concentrate by Dansk Coladrik A/S to Carlsberg A/S will continue in force and, in the event that any such agreement will expire prior to the sale of the Carlsberg A/S shareholding, it will be renewed by Carlsberg A/S without any material change to the terms of the contract unless such change is approved by the Commission.

11. Carlsberg A/S or the Trustee as the case may be will notify the Commission of all material developments in relation to the sale of the Carlsberg A/S shareholding in Dansk Coladrik A/S and, in any event, will report on relevant developments at [...] intervals.'

(111) ***Other undertakings***

In addition, the parties have proposed three other undertakings. First, the parties will change the notified licence agreement relating to the [...] NAB brands in order to enable Carlsberg to have control

over their brand management. Carlsberg will provide Dadeko with [...]. Second, the MSA will be amended to enable Carlsberg to compete in the CSD market within the CCNB territory. Third, the TPSA will be amended so that TCCC will not purchase the [...] trademark from Falcon, nor supply [...].

VIII. ASSESSMENT OF THE UNDERTAKINGS

(112) In the light of the assessment of the operation, the Commission considers that the proposed undertakings are adequate to prevent the strengthening of a dominant position as a result of which effective competition would be significantly impeded.

(113) At present, TCCC is dominant at the brand level and Dadeko is dominant at the bottling level. The operation will lead to TCCC's forward vertical integration into bottling and thereby link TCCC and Bryggerigruppen through Carlsberg's shareholding in Bryggerigruppen, the second largest brewer and soft drinks producer in Denmark. Only the removal of this link would make Bryggerigruppen free of TCCC and Carlsberg and enable it to be established as the second independent player in the Danish CSD market. The Commission considers Bryggerigruppen to have the necessary resources to become a viable second force in the Danish CSD market since, among other things, it has a sufficiently broad range of products in its portfolio, it holds the licence for the PepsiCo brands, and it has an adequate nationwide distribution system.

(114) In the opinion of the Commission, Carlsberg's undertaking to divest itself of its shareholding in Jyske Bryg is crucial to counterbalance the anti-competitive impact arising from the creation of CCNB. In particular, the undertaking compensates for the *de facto* elimination of Carlsberg as an actual and potential competitor at the brand level and for the foreclosure of Carlsberg's distribution system, since it will allow Bryggerigruppen to develop into a real alternative to the parties on the Danish market. The undertaking, for example, makes it more likely that [...], and that new brands can be launched in competition with the brands of TCCC. Therefore, given the specific circumstances of the Danish CSD market, the Commission considers the undertaking to be an essential remedy to prevent a strengthening of a dominant position.

(115) Carlsberg's undertaking to divest itself of its shareholding in Dansk Coladrik addresses the Commission's concern about an effective and timely disposal of that holding by the parties' proposal to appoint a trustee to oversee the management and sale of Dansk Coladrik. It is noted that the other three shareholders in Dansk Coladrik have rights of first refusal to Carlsberg's shares in the company. The Commission considers that under the present circumstances and in view of the total package of undertakings, Carlsberg or the trustee can sell the shares in Dansk Coladrik to one or more of the other existing shareholders in Dansk Coladrik.

(116) Finally, the other undertakings offered by the parties are not adequate in themselves to redress the anti-competitive impact of the proposed concentration. First, the undertaking designed to give Carlsberg certain supervisory responsibilities over the [...] NAB brands will lead to increased, though not full, independence from TCCC. Second, the new limitation imposed on the non-competition clause will have only a limited impact, if any, in the marketplace. Third, the undertaking relating to the TPSA solely concerns the arrangements in the Swedish market. The Commission, therefore, notes the existence of these undertakings, but does not assess them further.

IX. ANCILLARY RESTRAINTS

(117) The parties have requested that clause [...] of the MSA, which sets out the non-competition obligations of TCCC [...] and Carlsberg [...] and which are coterminous with the lifetime of the joint venture, be considered as ancillary to the concentration. These provisions are directly related and necessary to the implementation of the concentration and, accordingly, the Commission recognises their ancillary character.

X. OVERALL CONCLUSION

(118) Consequently the notified operation, as modified by the divestiture package, will not strengthen a dominant position in the Danish CSD market as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it. The operation is, therefore, on condition that the undertakings are adhered to, compatible with the common market and the functioning of the EEA Agreement,

HAS ADOPTED THIS DECISION:

Article 1

Subject to full compliance with the divestiture undertakings concerning Jyske Bryg Holding A/S and Dansk Coladrik A/S, as set out above in paragraphs 109 and 110, the concentration notified by the parties on 25 March 1997 relating to the creation of Coca-Cola Nordic Beverages is declared compatible with the common market and the functioning of the EEA Agreement.

Article 2

This Decision is addressed to:

The Coca-Cola Company
One Coca-Cola Plaza, N.W.
Atlanta GA 30013
USA

Carlsberg A/S
Vesterfælledvej 100
1799 Copenhagen V
Denmark

Done at Brussels, 11 September 1997.

For the Commission
Karel VAN MIERT
Member of the Commission

CORRIGENDA

Corrigendum to Council Directive 92/53/EEC of 18 June 1992 amending Directive 70/156/EEC on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers

(Official Journal of the European Communities L 225 of 10 August 1992)

Page 2, Article 1:

the second indent shall read as follows:

'— "quadricycles" within the meaning of Article 1(3) of Council Directive 92/61/EEC relating to the type-approval of two- or three-wheel motor vehicles (*);

(*) OJ L 225, 10.8.1992, p. 72.'

Page 8, Article 13(3):

in the penultimate line of the first subparagraph:

for: 'Regulation',

read: 'Committee'.