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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1138/98

of 28 May 1998

amending Annexes II and III to Regulation (EC) No 519/94 on common rules for imports from certain third countries

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Whereas Regulation (EC) No 519/94 [1] introduced, in respect of the People's Republic of China, the quotas listed in Annex II to that Regulation and the surveillance measures listed in Annex III thereto;

Whereas the Council's objective in establishing the quotas was to strike a balance between an appropriate level of protection for the Community industries concerned and maintenance of an acceptable level of trade with China, taking into account the various interest in play;

Whereas analysis of the main economic indicators, in particular the volume and market share of Chinese imports, leads to the conclusion that the quota on toys falling within HS/CN codes 9503 41, 9503 49 and 9503 90 should be abolished and that such abolition would be neither inconsistent with the above objective nor liable to disrupt the Community market;

Whereas, in the light of the experience acquired in implementing the quotas, the situation of the Community producers concerned indicates that a 5 % upward adjustment of the quotas would be appropriate and would be neither inconsistent with the above objective nor liable to disrupt the Community market; wheres, however, in the case of footwear the particularly sensitive nature of the industry indicates that for the time being no increase is appropriate;

Whereas the products in respect of which the quota is abolished by this Regulation should, however, be subject to prior Community surveillance, in order to ensure adequate monitoring of the volume and prices of the imports of the products concerned;

Whereas the quantitative quotas and the surveillance measures introduced pursuant to Regulation (EC) No 519/94 should therefore be amended,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes II and III to Regulation (EC) No 519/94 shall be replaced by the Annexes which appear in Annexes I and II to this Regulation respectively.

Article 2

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

It shall apply from 1 January 1998.

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

Done at Brussels, 28 May 1998.

For the Council

The President

M. FISHER

[1] OJ L 67, 10. 3. 1994, p. 89. Regulation as last amended by Regulation (EC) No 847/97 (OJ L 122, 14. 5. 1997, p. 1).

ANNEX I

'ANNEX II

List of quotas for certain products originating in China

Product description	HS/CN code	Quotas (annual basis)
Footwear	ex 6402 99 (1)	39 151 481 pairs
	6403 51 6403 59	2 795 000 pairs
	ex 6403 91 (1) ex 6403 99 (1)	12 120 000 pairs
	ex 6404 11 (2)	18 228 780 pairs
	6404 19 10	31 897 716 pairs
Tableware, kitchenware of porcelain or china	6911 10	48 090 tonnes
Ceramic tableware, kitchenware, other than of porcelain or china	6912 00	36 383 tonnes

(1) Excluding footwear involving special technology: shoes which have a cif price per pair of not less than ECU 9 for use in sporting activities, with a single- or multilayer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact or materials such as low-density polymers.

(2) Excluding:

(a) footwear which is designed for a sporting activity and has, or has provision for the attachment of, spikes, sprigs, stops, clips, bats or the like, with a non-injected sole;

(b) footwear involving special technology: shoes which have a cif price per pair of not less than ECU 9 for use in sporting activities, with a single- or multilayer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact or materials such as low-density polymers.'

ANNEX II

'ANNEX III

List of products originating in the People's Republic of China subject to Community surveillance

Product description	HS/CN code
Ammonium chloride	2827 10
Other polyhydric alcohols	2905 49 90
Citric acid	2918 14
Tetracyclines and their derivatives	ex 2941 30
Chloramphenicol	ex 2941 40
Basic dyes and preparations based thereon	3204 13
Vat dyes and preparations based thereon	3204 15
Fireworks, signalling flares, rain rockets, fog signals and other pyrotechnic articles	3604
Polyvinyl alcohol	3905 30
Gloves	4203 29 91 4203 29 99
Footwear	6402 19 ex 6402 99 (1) 6403 19 ex 6403 91 (1) ex 6403 99 (1) ex 6404 11 (2)
Ornamental ceramic articles of porcelain	6913 10
Glassware	ex 7013 (3)
Bicycles	8712 00
Toys	9503 30 9503 41 9503 49
Puzzles	9503 60
Toys	9503 90
Playing cards	9504 40
Articles falling within HS/CN codes	9603 29 9603 30 9603 40 9603 90

(1) Footwear involving special technology: shoes which have a cif price per pair of not less than ECU 9 for use in sporting activities, with a single- or multilayer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact or materials such as low-density polymers.

(2) Excluding:

(a) footwear which is designed for a sporting activity and has, or has provision for the attachment of, spikes, sprigs, stops, clips, bats or the like, with a non-injected sole;

(b) footwear involving special technology: shoes which have a cif price per pair of not less than ECU 9 for use in sporting activities, with a single- or multilayer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact or materials such as low-density polymers.

(3) Excluding glass-fronted clip-frames, consisting of a mechanically-gathered glass sheet with worked edges, a printed paper sheet and a piece of hardboard to support the picture, held together by clips of base metal.'

COUNCIL REGULATION (EC) No 1139/98

of 26 May 1998

concerning the compulsory indication of the labelling of certain foodstuffs produced from genetically modified organisms of particulars other than those provided for in Directive 79/112/EEC

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs [1], and in particular Article 4(2) thereof,

Having regard to the proposal from the Commission,

(1) Whereas, in accordance with the provisions of Part C of Council Directive 90/220/EEC of 23 April 1990 on the deliberate release into the environment of genetically modified organisms [2], consents have been given for the placing on the market of certain genetically modified products by Commission Decision 96/281/EC of 3 April 1996 concerning the placing on the market of genetically modified soya beans (*Glycine max* L.) with increased tolerance to the herbicide glyphosate, pursuant to Council Directive 90/220/EEC [3], and by Commission Decision 97/98/EC of 23 January 1997 concerning the placing on the market of genetically modified maize (*Zea mays* L.) with the combined modification for insecticidal properties conferred by the Bt-endotoxin gene and increased tolerance to the herbicide glufosinate ammonium pursuant to Council Directive 90/220/EEC [4];

(2) Whereas in accordance with Directive 90/220/EEC there were no safety grounds for mentioning on the label of genetically modified soya beans (*Glycine max* L.) or of genetically modified maize (*Zea mays* L). that they were obtained by genetic modification techniques;

(3) Whereas Directive 90/220/EEC does not cover non-viable products derived from genetically modified organisms (hereinafter referred to as 'GMOs');

(4) Whereas certain Member States have taken measures in respect of the labelling of foods and food ingredients produced from the products concerned; whereas differences between those measures are liable to impede the free movement of those foods and food ingredients and thereby adversely affect the functioning of the internal market; whereas it is therefore necessary to adopt uniform Community labelling rules for the products concerned;

(5) Whereas Regulation (EC) No 258/97 of the European Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients [5], lays down, in Article 8, additional specific labelling requirements in order to ensure proper information for the final consumer; whereas those additional specific labelling requirements do not apply to foods or food ingredients which were used for human consumption to a significant degree within the Community before the entry into force of Regulation (EC) 258/97 and are for that reason considered not to be novel;

(6) Whereas, in order to prevent distortions of competition, labelling rules for the information of the final consumer based on the same principles should apply to foods and food ingredients consisting of or derived from GMOs which were placed on the market before the entry into force of Regulation (EC) No 258/97 pursuant to a consent given under Directive 90/220/EEC, and to foods and food ingredients which are placed on the market thereafter;

(7) Whereas, therefore, Commission Regulation (EC) No 1813/97 of 19 September 1997 concerning the compulsory indication on the labelling of certain foodstuffs produced from genetically modified organisms of particulars other than those provided for in Directive 79/112/EEC [6] laid down general labelling rules for the abovementioned products;

(8) Whereas it is now urgent to lay down detailed uniform Community rules for the labelling of the foodstuffs covered by Regulation (EC) No 1813/97;

[1] OJ L 33, 8. 2. 1979, p. 1. Directive as last amended by Directive 97/4/EC of the European Parliament and of the Council (OJ L 43, 14. 2. 1997, p. 21).
[2] OJ L 117, 8. 5. 1990, p. 15. Directive as last amended by Directive 97/35/EC (OJ L 169, 27. 6. 1997, p. 72).
[3] OJ L 107, 30. 4. 1996, p. 10.
[4] OJ L 31, 1. 2. 1997, p. 69.
[5] OJ L 43, 14. 2. 1997, p. 1.
[6] OJ L 257, 20. 9. 1997, p. 7.

(9) Whereas, in particular, drawing on the approach taken in Article 8 of Regulation (EC) No 258/97, it is necessary to ensure that the final consumer is informed of any characteristic or food property, such as composition, nutritional value or nutritional effects or the intended use of the food, which renders a food or food ingredient no longer equivalent to an existing food or food ingredient; whereas, for that purpose, foods and food ingredients produced from genetically modified soya beans or from genetically modified maize which are not equivalent to conventional counterparts should be subject to labelling requirements;

(10) Whereas, drawing on the approach taken in Article 8 of Regulation (EC) No 258/97, it is necessary that labelling requirements are based on scientific evaluation;

(11) Whereas it is necessary to establish clear labelling rules for the abovementioned products, allowing official control on a reliable, readily repeatable and practicable basis; whereas common scientifically validated testing methods should be developed;

(12) Whereas it is also necessary to ensure that the labelling requirements are no more burdensome than necessary but sufficiently detailed to supply consumers with the information they require;

(13) Whereas at this stage the presence in foods and food ingredients of protein or DNA resulting from genetic modification constitutes the criterion best complying with the abovementioned requirements; whereas such an approach could be reconsidered in the light of future developments in scientific knowledge;

(14) Whereas adventitious contamination of foodstuffs with DNA or protein resulting from genetic modification cannot be excluded; whereas labelling as a result of such contamination could be avoided by setting a threshold for the detection of DNA and protein;

(15) Whereas urgent consideration must be given, in the light of any relevant scientific advice, to the question of whether a de minimis threshold for the presence of DNA or protein resulting from genetic modification can be set and, if so, at what level;

(16) Whereas foods and food ingredients produced from genetically modified soya beans (*Glycine max* L.) or from genetically modified maize (*Zea mays* L.), in which DNA resulting from genetic modification is present, are not equivalent and should therefore be subject to labelling requirements;

(17) Whereas it is possible that protein or DNA resulting from genetic modification has been destroyed by successive stages of processing; whereas, in that case, foods and food ingredients should be considered equivalent for labelling purposes; whereas they should therefore not be subject to labelling requirements; whereas a list of such products should be drawn up;

(18) Whereas, nevertheless, some processing methods may eliminate DNA but not proteins; whereas the possibility cannot be excluded that such methods may be capable of being applied to food uses; whereas foods and food ingredients in which DNA resulting from genetic modification is not present but in which proteins resulting from genetic modification are present, cannot be considered to be equivalent; whereas therefore, they should be subject to labelling requirements;

(19) Whereas the necessary information should be provided in the list of ingredients except in the case of products for which no such list exists, in which case it should appear clearly on the labelling of the product;

(20) Whereas this Regulation is without prejudice to the operators' right to include voluntary claims in the labels of their products as to particulars other than those laid down in this Regulation (such as the absence of foods and food ingredients produced from genetically modified soya beans and maize, or the presence of such foods and food ingredients in cases where it is not scientifically verifiable but evidence of it is available through other means), provided that such claims are made in compliance with the provisions of Directive 79/112/EEC;

(21) Whereas, having regard to their scope and effects, the Community measures introduced by this Regulation are not only necessary but essential if the objectives set are to be attained; whereas those objectives cannot be attained by the Member States acting individually;

(22) Whereas this Regulation replaces Commission Regulation (EC) No 1813/97, which should therefore be repealed;

(23) Whereas in pursuance of the procedure laid down in Article 17 of Directive 79/112/EEC, a draft of this text was submitted to the Standing Committee on Foodstuffs, which was unable to deliver an opinion, and whereas in accordance with the same procedure the Commission addressed a proposal to the Council, concerning the measures to be adopted,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation shall apply to foods and food ingredients which are to be delivered as such to the final consumer (hereinafter referred to as 'the specified foodstuffs') produced, in whole or in part, from:

— genetically modified soya beans covered by Decision 96/281/EC,

— genetically modified maize covered by Decision 97/98/EC.

2. This Regulation shall not apply to food additives, flavourings for use in foodstuffs or extraction solvents used in the production of foodstuffs as referred to in Article 2(1) of Regulation (EC) No 258/97.

Article 2

1. The specified foodstuffs shall be subject to the additional specific labelling requirements laid down in paragraph 3.

2. However, the specified foodstuffs in which neither protein nor DNA resulting from genetic modification is present shall not be subject to the said additional specific labelling requirements.

A list of products not subject to the additional specific labelling requirements shall be drawn up under the procedure laid down in Article 17 of Directive 79/112/EEC, taking account of technical developments, the opinion of the Scientific Committee on Food and any other relevant scientific advice.

3. The additional specific labelling requirements shall be the following:

(a) where the food consists of more than one ingredient, the words 'produced from genetically modified soya' or 'produced from genetically modified maize', as appropriate, shall appear in the list of ingredients provided for by Article 6 of Directive 79/112/EEC in parentheses immediately after the name of the ingredient concerned. Alternatively, these words may appear in a prominently displayed footnote to the list of ingredients, related by means of an asterisk (*) to the ingredient concerned. Where an ingredient is already listed as being produced from soya or maize the words 'produced from genetically modified' may be abbreviated to 'genetically modified'; if the abbreviated form of words is used as a footnote, the asterisk shall be directly attached to the word 'soya' or 'maize'. Where either form of words is used as a footnote, it shall have a typeface of at least the same size as the list of ingredients itself;

(b) in the case of products for which no list of ingredients exists, the words 'produced from genetically modified soya' or 'produced from genetically modified maize', as appropriate, shall appear clearly on the labelling of the food;

(c) where in accordance with the provisions of the first indent of Article 6(5)(b) of Directive 79/112/EEC an ingredient is designated by the name of a category, that designation shall be completed by the words 'contains . . . (*) produced from genetically modified soya/genetically modified maize', as appropriate;

(d) where an ingredient of a compound ingredient is derived from the specified foodstuffs, it shall be mentioned on the labelling of the final product, with the addition of the wording set out in point (b).

4. This Article shall be without prejudice to the other requirements of Community law concerning the labelling of foodstuffs.

Article 3

Commission Regulation (EC) No 1813/97 is hereby repealed.

Article 4

1. The labelling requirements of this Regulation shall not apply to products which have been lawfully manufactured and labelled in the Community, or which have been lawfully imported into the Community and put into free circulation, before the entry into force of this Regulation.

2. The application of Article 2 to products placed on the market with labelling complying with Commission Regulation (EC) No 1813/97 so as to indicate the presence of genetically modified material may be postponed until six months after the entry into force of this Regulation.

Article 5

This Regulation shall enter into force 90 days after its publication in the *Official Journal of the European Communities*.

(*) Ingredient(s) to be specified.

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

Done at Brussels, 26 May 1998.

For the Council
The President
J. CUNNINGHAM

COMMISSION REGULATION (EC) No 1140/98

of 2 June 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 3 June 1998.

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

Done at Brussels, 2 June 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 2 June 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
0707 00 05	052	102,2
	068	64,4
	999	83,3
0709 90 70	052	70,4
	999	70,4
0805 30 10	382	57,3
	388	57,3
	999	57,3
0808 10 20, 0808 10 50, 0808 10 90	060	34,0
	388	71,8
	400	85,7
	404	95,1
	508	97,8
	512	75,6
	524	90,2
	528	72,0
	720	139,8
	804	103,7
	999	86,6

(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 1141/98

of 2 June 1998

amending Regulation (EC) No 1464/95 on special detailed rules for the application of the system of import and export licences in the sugar sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 on the common organisation of the markets in the sugar sector [1], as last amended by Regulation (EC) No 1599/96 [2], and in particular Article 13(2)(b) thereof,

Whereas Commission Regulation (EC) No 495/97 [3] amends the wording of Article 2a of Commission Regulation (EEC) No 3665/87 [4], as last amended by Regulation (EC) No 604/98 [5], by introducing a derogation to the general provisions in that it extends the validity of an export licence comprising advance fixing of the refund to a product falling within a 12-digit product code other than that indicated in section 16 of the licence if both products belong to the same product group; whereas to apply the new wording of Article 2a of Regulation (EEC) No 3665/87 to products governed by the common organisation of the market in sugar, the composition of these product groups must be established;

Whereas to control trade flows with third countries, provision should also be made for the lodgement of a security in respect of inulin syrup falling within CN code 1702 90 80;

Whereas Articles 2 and 8 of Commission Regulation (EC) No 1464/95 [6], as amended by Regulation (EC) No 2136/95 [7], must accordingly be amended;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1464/95 is hereby amended as follows:

1. In Article 2:
   (a) the current text becomes paragraph 1;
   (b) the following paragraph is added:
   '2. For the purposes of applying Article 2a(2) of Regulation (EEC) No 3665/87, the products mentioned in Article 1(1) of Regulation (EEC) No 1785/81 shall be grouped into the following product groups:
   — those mentioned in point (a) shall constitute a product group,
   — those mentioned in point (d) shall constitute a product group,
   — those mentioned in points (f) and (g) shall constitute a product group.'
2. The following clause is added to the last indent of Article 8(1)(c):
   'and ECU 0,60 in respect of inulin syrup falling within CN code 1702 90 80.'

Article 2

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

However, Article 1(1) shall apply to cases that are still open on the day of its publication.

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

Done at Brussels, 2 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 177, 1. 7. 1981, p. 4.
[2] OJ L 206, 16. 8. 1996, p. 43.
[3] OJ L 77, 19. 3. 1997, p. 12.
[4] OJ L 351, 14. 12. 1987, p. 1.
[5] OJ L 80, 18. 3. 1998, p. 19.
[6] OJ L 144, 28. 6. 1995, p. 14.
[7] OJ L 214, 8. 9. 1995, p. 19.

COMMISSION REGULATION (EC) No 1142/98

of 2 June 1998

opening and providing for the administration of a tariff quota for frozen meat of bovine animals covered by CN code 0202 and products covered by CN code 0206 29 91 (1 July 1998 to 30 June 1999)

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 XXIV.6 negotiations [1], and in particular Article 1(1) thereof,

Whereas Schedule CXL requires an annual import quota to be opened for 53 000 tonnes of frozen beef covered by CN code 0202 and products covered by CN code 0206 29 91; whereas the rules of application should be laid down for the 1998/99 quota year starting on 1 July 1998;

Whereas a method of administration should be applied which is comparable to that used in the past for corresponding quotas; whereas such a method should entail the allocation by the Commission of part of the quantities available to traditional traders and part to traders involved in trade in beef and veal;

Whereas the traditional importers should be allocated 80 % of the quota, i.e. 42 400 tonnes, in proportion to the quantities imported by them under the same type of quota during the most recent reference period; whereas in certain cases administrative errors by the competent national body are liable to restrict traders' access to this part of the quota; whereas steps should be taken to make good any resulting damage;

Whereas traders who can show that they are genuinely involved in trade of some significance should be granted access to the second part of the quota, i.e. 10 600 tonnes, in accordance with a procedure based on the submission of applications by the parties concerned and their acceptance by the Commission; whereas proof of genuine involvement in trade calls for evidence to be presented of trade of some significance in beef and veal with third countries;

Whereas exports of beef and veal from the United Kingdom have been seriously affected by the controversy over bovine spongiform encephalopathy (BSE), in particular since the end of March 1996; whereas account should be taken of the export situation in the United Kingdom when performance criteria are set with regard to the 10 600 tonnes;

Whereas, if such criteria are to be checked, applications must be submitted in the Member State where the importer is entered in a national VAT register;

Whereas traders no longer involved in trade in beef and veal at 1 April 1998 should be denied access to the quota in order to prevent speculation;

Whereas, save as otherwise provided in 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 to import licences issued under this Regulation;

Whereas effective management of the quota and fraud prevention in particular require that used licences are to be returned to the competent authorities so they can check that the quantities shown therein are correct; whereas the competent authorities must accordingly be under an obligation to carry out such checks; whereas the security to be lodged when licences are issued should be fixed so it ensures licences are actually used and returned to the competent authorities;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A tariff quota totalling 53 000 tonnes expressed in weight of boneless meat is hereby opened for frozen meat of bovine animals covered by CN code 0202 and products covered by CN code 0206 29 91 for the period 1 July 1998 to 30 June 1999.

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

[2] OJ L 331, 2. 12. 1988, p. 5.
[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.

The serial number of the tariff quota shall be 09.4003.

For the purpose of the said quota, 100 kilograms of bone-in meat shall be equivalent to 77 kilograms of boneless meat.

2. For the purposes of this Regulation, 'frozen meat' shall mean meat which is frozen and has an internal temperature of −12°C or lower when it enters the customs territory of the Community.

3. The Common Customs Tariff duty applicable to the quota provided for in paragraph 1 shall be 20 % *ad valorem.*

Article 2

1. The quota provided for in Article 1 shall be divided into two parts as follows:

(a) the first, equalling 80 % or 42 400 tonnes, shall be apportioned among Community importers in proportion to the quantities imported by them under Commission Regulations (EC) No 3305/94 [1], (EC) No 1151/95 [2], (EC) No 1141/96 [3] and (EC) No 1042/97 [4] before 1 April 1998.

Without prejudice to the first subparagraph, the Member States may accept as the reference quantity import rights for the preceding year which were not allocated because of an administrative error by the competent national body;

(b) the second, equalling 20 % or 10 600 tonnes, shall be apportioned among traders who can prove that they have been engaged for a certain period in trade in beef and veal with third countries, involving a minimum quantity other than the quantities taken into consideration under (a) and excluding meat which is the subject of inward or outward processing arrangements.

2. For the purposes of paragraph 1(b), the 10 600 tonnes shall be allocated to traders who can furnish proof that they have:

— imported at least 160 tonnes of beef in the period 1 April 1996 to 31 March 1998 other than quantities imported under Regulations (EC) No 1151/95, (EC) No 1141/96 and (EC) No 1042/97, or

— exported at least 300 tonnes of beef in the same period.

For this purpose , 'beef' means products covered by CN codes 0201, 0202 and 0206 29 91, and the minimum reference quantities shall be expressed in terms of product weight.

Notwithstanding the second indent, the export period for traders established in the United Kingdom and entered in the national VAT register since 1 April 1996 shall be 1 April 1994 to 31 March 1996.

3. The 10 600 tonnes referred to in paragraph 2 shall be allocated in proportion to the quantities applied for by eligible traders.

4. Proof of import and export shall be furnished solely by means of customs documents of release for free circulation and export documents.

Member States may accept copies of the abovementioned documents duly certified by the competent authorities.

Article 3

1. Traders who were no longer engaged in trade in beef and veal at 1 April 1998 shall not qualify under the arrangements provided for in this Regulation.

2. Companies arising from mergers where each constituent undertaking has rights pursuant to Article 2(1)(a) shall enjoy the same rights as the undertakings from which they are formed.

Article 4

1. Together with the proof referred to in Article 2(4), applications for import rights shall be submitted before 12 June 1998 to the competent authority in the Member State where the applicant is entered in the national VAT register. Where an applicant submits more than one application under either of the arrangements referred to in Article 2(1)(a) or (b), all such applications shall be inadmissible.

Applications pursuant to Article 2(1)(b) shall not cover more than 50 tonnes of frozen boneless meat overall.

2. After the documents submitted have been verified, the Member States shall forward the following to the Commission before 25 June 1998:

— in respect of the arrangements pursuant to Article 2(1)(a), a list of eligible importers, including in particular their names and addresses and the quantities of eligible meat imported during the reference period concerned,

— in respect of the arrangements pursuant to Article 2(1)(b), a list of applicants, including in particular their names and addresses and the quantities applied for.

Article 5

1. The Commission shall decide as soon as possible on the percentage of quantities covered by applications that may be accepted.

[1] OJ L 341, 30. 12. 1994, p. 49.
[2] OJ L 116, 23. 5. 1995, p. 15.
[3] OJ L 151, 26. 6. 1996, p. 9.
[4] OJ L 152, 11. 6. 1997, p. 2.

2. Where the quantities covered by applications for import rights exceed the quantities available, the Commission shall reduce the quantities applied for by a fixed percentage.

Article 6

1. The quantities allocated shall be imported subject to presentation of one or more import licences.

2. Licence applications may be lodged solely in the Member State where the applicant has applied for import rights.

3. Following decisions on allocation by the Commission in accordance with Article 5, import licences shall be issued on application and in the names of the traders who have obtained rights to import.

4. Licence applications and licences shall contain:

(a) one of the following entries in box 20:

— Carne de vacuno congelada [Reglamento (CE) nº 1142/98]

— Frosset oksekød (forordning (EF) nr. 1142/98)

— Gefrorenes Rindfleisch (Verordnung (EG) Nr. 1142/98)

— Κατεψυγμένο βόειο κρέας [Κανονισμός (ΕΚ) αριθ. 1142/98]

— Frozen meat of bovine animals (Regulation (EC) No 1142/98)

— Viande bovine congelée [Règlement (CE) nº 1142/98]

— Carni bovine congelate [Regolamento (CE) n. 1142/98]

— Bevroren rundvlees (Verordening (EG) nr. 1142/98)

— Carne de bovino congelada [Regulamento (CE) nº 1142/98]

— Jäädytettyä naudanlihaa (asetus (EY) N:o 1142/98)

— Fryst kött av nötkreatur (förordning (EG) nr 1142/98);

(b) the country of origin in box 8;

(c) one of the following groups of CN codes in box 16:

— 0202 10 00, 0202 20,

— 0202 30,

— 0206 29 91.

Article 7

For the purpose of applying the arrangements provided for in this Regulation, the frozen meat shall be imported into the customs territory of the Community subject to the conditions laid down in Article 17(2)(f) of Council Directive 72/462/EEC [1].

Article 8

1. Regulations (EEC) No 3719/88 and (EC) No 1445/95 shall apply, save where otherwise provided in this Regulation.

2. Notwithstanding Article 8(4) of Regulation (EEC) No 3719/88, the full Common Customs Tariff duty applicable on the day of release for free circulation shall be charged on all quantities exceeding those set out in the import licence.

3. Import licences issued pursuant to this Regulation shall be valid for 90 days from their date of issue. However, no licences shall be valid after 30 June 1999.

4. The security relating to the import licences shall amount to ECU 35 per 100 kilograms net weight. It shall be lodged together with the licence application.

5. Where import licences are returned with a view to the release of the security, the competent authorities shall check that the quantities shown on the licences are the same as those shown on the licences at the time of issue. Where licences are not returned, the Member States shall carry out an investigation to establish who has used them and for what quantities. The Member States shall inform the Commission at the earliest opportunity of the results of such investigation.

Article 9

This Regulation shall enter into force on the seventh 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, 2 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 302, 31. 12. 1972, p. 28.

COMMISSION REGULATION (EC) No 1143/98

of 2 June 1998

laying down detailed rules for a tariff quota for cows and heifers of specified mountain breeds originating in various third countries, other than for slaughter, and amending Regulation (EC) No 1012/98

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3066/95 of 22 December 1995 establishing certain concessions in the form of Community tariff quotas for certain agricultural products and providing for the adjustment, as an autonomous and transitional measure, of certain agricultural concessions provided for in the Europe Agreements to take account of the Agreement on agriculture concluded during the Uruguay Round of multilateral trade negotiations ([1]), as last amended by Regulation (EC) No 1595/97 ([2]), and in particular Article 8 thereof,

Having regard to Council Regulation (EC) No 1926/96 of 7 October 1996 establishing certain concessions in the form of Community tariff quotas for certain agricultural products and providing for the adjustment, as an autonomous and transitional measure, of certain agricultural concessions provided for in the agreements on free trade and trade-related matters with Estonia, Latvia and Lithuania, to take account of the Agreement on agriculture concluded during the Uruguay Round of multilateral trade negotiations ([3]), and in particular Article 5 thereof,

Whereas Regulation (EC) No 3066/95 provides for the opening of a tariff quota for an annual quantity of 7 000 cows and heifers of specified mountain breeds originating in Hungary, Poland, the Czech Republic, Slovakia, Bulgaria, Romania, Lithuania, Latvia and Estonia at a customs duty of 6 % *ad valorem*; whereas that quota should be opened on a multiannual basis for periods of 12 months commencing on 1 July (hereinafter referred to as 'the year of import') and the detailed rules of application laid down;

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 certain cases administrative errors by the competent national body threaten to restrict access by importers to this part of the quota; whereas there should be provision to correct any harm caused;

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 during the 12 months preceding the year of import in question; whereas a batch of 15 animals in principle constitutes a normal load and 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 to be submitted in the Member State where the importer is registered for VAT purposes;

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

Whereas provision should be made for the system to be administered by means of import licences; whereas to that end detailed rules for the submission of applications and the information which should appear in applications and licences should be laid down, if necessary by way of derogation from certain provisions of Commission Regulation (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 ([4]), as last amended by Regulation (EC) No 1044/98 ([5]), and Commission Regulation (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 ([6]), as last amended by Regulation (EC) No 759/98 ([7]); whereas, moreover, provision should be made for the licences to be issued after a period of consideration and subject where necessary to a uniform percentage reduction;

([1]) OJ L 328, 30. 12. 1995, p. 31.
([2]) OJ L 216, 8. 8. 1997, p. 1.
([3]) OJ L 254, 8. 10. 1996, p. 1.
([4]) OJ L 331, 2. 12. 1988, p. 1.
([5]) OJ L 149, 20. 5. 1998, p. 11.
([6]) OJ L 143, 27. 6. 1995, p. 35.
([7]) OJ L 105, 4. 4. 1998, p. 7.

Whereas, so that the destination can be checked, provision should be made for imported animals to be identified in accordance with Council Regulation (EC) No 820/97 of 21 April 1997 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products [1];

Whereas Article 82 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [2], as last amended by Regulation (EC) No 82/97 [3], provides for customs supervision of goods released for free circulation at a reduced rate on account of their end-use; whereas the animals imported should be monitored to ensure they are not slaughtered during a certain period; whereas, to ensure that slaughter does not take place, a security should be required to cover the difference between the duties under the Common Customs Tariff (CCT) and the reduced duties applicable when the animals in question were entered for free circulation;

Whereas Article 7(2) of Commission Regulation (EC) No 1012/98 of 14 May 1998 opening and providing for the management of tariff quotas for the import of bulls, cows and heifers, other than for slaughter, of certain alpine and mountain breeds [4] states that, in order to comply with the ban on slaughter of the imported animals within a certain period, a security equivalent to the specific amount of the CCT customs duties should be provided; whereas this amount does not cover the whole of the customs debt in the case of non-compliance with the obligations relating to this quota; whereas the amount of the security should therefore be adjusted to reflect the difference between the CCT duties and the reduced duties;

Whereas in certain cases administrative errors by the competent national body threaten to restrict access by traditional importers to the part of the quota covered by the above Regulation; whereas there should therefore be provision to correct any harm caused;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. The following tariff quota is hereby 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'), for animals originating in the third countries listed in Annex I.

Serial No	CN code (1)	Description	Quota volume (head)	Customs duty
09.4563	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 for slaughter of the following mountain breeds: grey, brown, yellow, mottled Simmental and Pinzgau	7 000	6 % *ad valorem*

(1) For Taric codes: see Annex II.

2. For the purposes of this Regulation, the animals referred to in paragraph 1 shall be deemed to be not for slaughter where 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 duly proven cases of *force majeure*.

Article 2

1. The quota referred to in Article 1(1) shall be divided into two parts of 80 %, i.e. 5 600 head, and 20 %, i.e. 1 400 head, respectively.

(a) The first part, equal to 80 %, shall be allocated among importers in the Community who can furnish proof of having imported animals under the quota for serial No 09.4563 during the 36 months preceding the year of import in question.

Without prejudice to the first subparagraph, the Member States may accept as the reference quantity import rights for the year of import which were not allocated because of an administrative error by the competent national body.

(b) The second part, equal to 20 %, shall be allocated among importers 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 falling within CN code 0102.

Importers must be entered in a national VAT register.

(1) OJ L 117, 7. 5. 1997, p. 1.
(2) OJ L 302, 19. 10. 1992, p. 1.
(3) OJ L 17, 21. 1. 1997, p. 1.
(4) OJ L 145, 15. 5. 1998, p. 13.

2. The first part of the quota shall be allocated among importers on the basis of their applications for import rights in proportion to their imports of animals as referred to in paragraph 1(a) during the period stated in that subparagraph.

3. The second part of the quota shall be allocated among importers as referred to in paragraph 1(b) on the basis of their applications for import rights in proportion to the quantities applied for.

Import right applications must relate to:

— at least 15 head, and

— no more than 50 head.

Licence applications relating to more than 50 head shall be automatically reduced to that number.

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

Member States may accept copies of the above documents, 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 import rights may be submitted only in the Member State in which the applicant is entered in the national VAT register.

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

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

3. For the purposes of Article 2(1)(a), importers shall present the applications for the import rights to the competent authorities together with the proof referred to in Article 2(4) by 10 July of each year of import at the latest.

After verification of the documents presented, Member States shall forward to the Commission, by the seventh working day following the end of the period for the submission of applications at the latest, the list of importers who meet the acceptance conditions, showing in particular their names and addresses and the number of eligible animals imported during the period referred to in Article 2(2).

4. For the purposes of Article 2(1)(b), applications for import rights must be lodged by importers by 10 July of each year of import at the latest, together with the proof referred to in Article 2(4).

After verification of the documents presented, Member States shall forward to the Commission, by the seventh working day following the end of the period for the submission of applications at the latest, the list of applicants and the quantities requested.

5. All notifications, including notifications of nil applications, shall be made by telex or fax, drawn up on the basis of the specimens in Annexes III and IV in the case where applications have in fact been lodged.

Article 5

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

2. As regards the applications referred to in Article 4(4), 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 made by drawing lots, by batches of 15 head, by the Member States concerned. If the remaining quantity is less than 15 head, that quantity shall constitute a single batch.

Article 6

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

2. Licence applications may be submitted only to the competent authorities in the Member State where the applicant is entered in the national VAT register.

3. Upon notification of allocation from the Commission, import licences shall be issued at the earliest opportunity at the request and in the name of importers who have obtained import rights.

4. Import licences shall be valid for 90 days from their date of issue. However, they shall expire no later than 30 June following the date of issue.

5. Licences issued shall be valid throughout the Community.

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

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

Article 7

1. Checks to ensure that the animals imported are not slaughtered in the four months following their release into free circulation shall be conducted in accordance with Article 82 of Regulation (EEC) No 2913/92.

2. All animals imported under this Regulation shall be identified in accordance with Regulation (EC) No 820/97.

3. Such identification must indicate the date on which the animal was released for free circulation and the identity of the importer.

4. In order to ensure compliance with the obligation not to slaughter the animals referred to in paragraph 1 and to ensure collection of duties not received where that obligation is not complied with, a security shall be lodged with the competent customs authorities. The amount of that security shall be the difference between the customs duties laid down in the Common Customs Tariff and the duties referred to in Article 1(1) applicable on the date when the animals are entered for free circulation.

Such securities shall be released immediately where proof is furnished to the customs authorities concerned to the effect that the animals:

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

(b) have been slaughtered within that time for reasons of *force majeure* or for health reasons or have died as a result of disease or an accident.

Article 8

Licence applications and licences shall contain the following entries:

(a) in box 8, the name of one or more of the countries listed in Annex I; licences shall carry an obligation to import from one or more of the countries indicated;

(b) in box 16, the CN codes set out in Annex II;

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

— Razas alpinas y de montaña [Reglamento (CE) nº 1143/98], año de importación ....

— Alpine racer og bjergracer (forordning (EF) nr. 1143/98), importår ....

— Höhenrassen (Verordnung (EG) Nr. 1143/98), Einfuhrjahr: ....

— Αλπικές και ορεσίβιες φυλές [κανονισμός (ΕΚ) αριθ. 1143/98], έτος εισαγωγής ....

— Alpine and mountain breeds (Regulation (EC) No 1143/98), Year of import ....

— Races alpines et de montagne [règlement (CE) nº 1143/98], année d'importation: ....

— Razze alpine e di montagna [regolamento (CE) n. 1143/98], anno d'importazione ....

— Bergrassen (Verordening (EG) nr. 1143/98), jaar van invoer: ....

— Raças alpinas e de montanha [Regulamento (CE) nº 1143/98], ano de importação ....

— Alppi- ja vuoristorotuja [Asetus (EY) N:o 1143/98], tuontivuosi ....

— Alp- och bergraser (förordning (EG) nr 1143/98), importår ....

Article 9

The imported animals shall qualify for the duties referred to in Article 1 on presentation of an EUR.1 movement certificate issued by the exporting country in accordance with Protocol 4 annexed to the Europe Agreements and Protocol 3 annexed to the Free Trade Agreements or a declaration by the exporter in accordance with the said Protocols.

Article 10

Regulation (EC) No 1012/98 is amended as follows:

1. The following subparagraph is added to point (a) of Article 2(1):

'Without prejudice to the first subparagraph, the Member States may accept as the reference quantity import rights for the previous year of import which were not allocated because of an administrative error by the competent national body.'

2. Article 7(2) is replaced by the following:

'2. In order to ensure compliance with the obligation not to slaughter the animals referred to in paragraph 1 and to ensure collection of duties not received where that obligation is not complied with, a security shall be lodged with the competent customs authorities. The amount of that security shall be the difference between the customs duties laid down in the Common Customs Tariff and the duties referred to in Article 1(1) applicable on the date when the animals are entered for free circulation.'

Article 11

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

It shall apply from 1 July 1998.

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

Done at Brussels, 2 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

List of third countries

— Hungary
— Poland
— Czech Republic
— Slovakia
— Romania
— Bulgaria
— Lithuania
— Latvia
— Estonia

ANNEX II

TARIC codes

CN codes	TARIC codes
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

ANNEX III

EC Fax No (32-2) 296 60 27/(32-2) 295 36 13

Application of Article 4(3) of Regulation (EC) No 1143/98

COMMISSION OF THE EUROPEAN COMMUNITIES DG VI/D/2 — BEEF AND VEAL SECTOR

IMPORT RIGHTS APPLICATION

Date: ..... Period: .....

Member State: .....

Number of applicant (1)	Applicant (name and address)	Quantity (head) imported from to
	Total	

Member State: Fax No: .....

Tel.: .....

(1) Continuous numbering.

ANNEX IV

EC Fax No (32 2) 296 60 27/(32 2) 295 36 13

Application of Article 4(4) of Regulation (EC) No 1143/98

COMMISSION OF THE EUROPEAN COMMUNITIES DG VI/D/2 — BEEF AND VEAL SECTOR

IMPORT RIGHTS APPLICATION

Date: ..... Period: .....

Member State: .....

Number of applicant (1)	Applicant (name and address)	Quantity (head)
	Total	

Member State: Fax No: .....

Tel.: .....

(1) Continuous numbering.

COMMISSION REGULATION (EC) No 1144/98

of 2 June 1998

laying down, for the period 1 July 1998 to 30 June 1999, detailed rules of application for a tariff quota for calves weighing not more than 80 kilograms originating in certain third countries

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3066/95 of 22 December 1995 establishing certain concessions in the form of Community tariff quotas for certain agricultural products and providing for the adjustment, as an autonomous and transitional measure, of certain agricultural concessions provided for in the Europe Agreements to take account of the Agreement on Agriculture concluded during the Uruguay Round Multilateral Trade Negotiations ([1]), as last amended by Regulation (EC) No 1595/97 ([2]), and in particular Article 8 thereof,

Having regard to Council Regulation (EC) No 1926/96 of 7 October 1996 establishing certain concessions in the form of Community tariff quotas for certain agricultural products and providing for the adjustment, as an autonomous and transitional measure, of certain agricultural concessions provided for in the agreements on free trade and trade-related matters with Estonia, Latvia and Lithuania, to take account of the Agreement on Agriculture concluded during the Uruguay Round Multilateral Trade Negotiations ([3]), and in particular Article 5 thereof,

Whereas Regulations (EC) No 3066/95 and (EC) No 1926/96 provide for the opening, for the period 1 July 1998 to 30 June 1999, of a tariff quota for 178 000 live bovine animals weighing 80 kilograms or less originating in Hungary, Poland, the Czech Republic, Slovakia, Romania, Bulgaria, Estonia, Latvia and Lithuania and benefiting from an 80 % reduction in the rate of customs duties; whereas management measures should be laid down relating to the importation of these animals;

Whereas experience shows that limiting imports can give rise to speculative import applications; whereas, in order to guarantee that the planned measures function correctly, most of the quantities available should be reserved for so-called traditional importers of live bovine animals; whereas in certain cases administrative errors by the competent national body threaten to restrict access by traders to this part of the quota; whereas there should be provision to correct any harm caused;

Whereas, so as not to introduce rigidity into trade relations in the sector, a second allocation should be made available for traders able to show that they are carrying out a genuine activity involving trade in a significant number of animals; whereas, in consideration of this and in order to ensure efficient management, a minimum of 100 animals should be required to have been exported and/or imported during 1997 by the operators concerned; whereas a batch of 100 animals in principle constitutes a normal load; whereas experience has shown that the sale or purchase of a single batch is a minimum requirement for a transaction to be considered real and viable;

Whereas verification of these criteria requires all applications from the same trader to be submitted in the Member State where the trader is registered for VAT purposes;

Whereas, so as to avoid speculation, access to the quota should be denied to traders no longer carrying out an activity in the beef and veal sector on 1 June 1998;

Whereas, to ensure orderly importation of the quantities laid down for the period 1 July 1998 to 30 June 1999, the issue of the licences should be staggered over the year of import;

Whereas the arrangements should be managed using import licences; whereas, to this end, rules should be laid down on the submission of applications and the information to be given on applications and licences, where necessary by derogation from certain provisions of Commission Regulation (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 ([4]), as last amended by Regulation (EC) No 1044/98 ([5]), and of Commission Regulation (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 ([6]), as last amended by Regulation (EC) No 759/98 ([7]); whereas, moreover, it should be stipulated that licences are to be issued following a reflection period and where necessary with a fixed percentage reduction applied;

([1]) OJ L 328, 30. 12. 1995, p. 31.
([2]) OJ L 216, 8. 8. 1997, p. 1.
([3]) OJ L 254, 8. 10. 1996, p. 1.
([4]) OJ L 331, 2. 12. 1988, p. 1.
([5]) OJ L 149, 20. 5. 1998, p. 11.
([6]) OJ L 143, 27. 6. 1995, p. 35.
([7]) OJ L 105, 4. 4. 1998, p. 7.

Whereas provision should be made for imported animals to be identified in accordance with Council Regulation (EC) No 820/97 of 21 April 1997 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products [1];

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

HAS ADOPTED THIS REGULATION:

Article 1

With the exception of imports under the tariff quotas for the importation of 169 000 young male bovine animals for fattening and 153 000 live bovine animals weighing between 80 and 300 kilograms, imports into the Community of live bovine animals falling within CN codes 0102 90 05, 0102 90 21, 0102 90 29, 0102 90 41 and 0102 90 49 and referred to in Article 1(1)(a) of Council Regulation (EEC) No 805/68 [2], originating in the countries listed in Annex I, shall be subject to the management measures laid down in this Regulation.

Article 2

1. Import licences under this Regulation may be issued for the period 1 July 1998 to 30 June 1999 only for 178 000 animals falling within CN code 0102 90 05 originating in the countries listed in Annex I.

The quota shall have the serial number 09.4598.

2. For those animals, the *ad valorem* duty and the specific duties fixed in the Common Customs Tariff (CCT) shall be reduced by 80 %.

3. The quantity referred to in paragraph 1 shall be divided into two parts, as follows:

(a) the first part, equal to 70 %, i.e. 124 600 head, shall be allocated among importers who can furnish proof of having imported animals falling within CN code 0102 90 05 during 1995, 1996 or 1997 in the context of the regulations referred to in Annex II.

Without prejudice to the first subparagraph, the Member States may accept as the reference quantity import rights for the year of import which were not allocated because of an administrative error by the competent national body;

(b) the second part, equal to 30 %, i.e. 53 400 head, shall be allocated among traders who can furnish proof of having imported and/or exported during 1997 at least 100 live bovine animals falling within CN code 0102 90 apart from those under (a).

Traders must be registered for VAT purposes in a Member State.

4. The 124 600 head shall be allocated on the basis of applications for import rights among the eligible importers in proportion to their imports of animals within the meaning of paragraph 3(a) during 1995, 1996 and 1997 proven in accordance with paragraph 6.

5. The 53 400 head shall be allocated among the eligible traders in proportion to the quantities applied for proven in accordance with paragraph 6.

6. Proof of import and export shall be provided exclusively by means of the customs document of release for free circulation or the export document duly stamped by the customs authorities.

Member States may accept copies of the abovementioned documents duly certified by the issuing authority where the applicant can prove to the satisfaction of the competent authority that he was not able to obtain the original documents.

Article 3

1. Traders who on 1 June 1998 were no longer engaged in any activity in the beef and veal sector shall not qualify for the allocation pursuant to Article 2(3)(a).

2. Any company formed by the merger of companies each having rights pursuant to Article 2(4) shall enjoy the same rights as the companies from which it was formed.

Article 4

1. Applications for import rights may be presented only in the Member State in which the applicant is registered within the meaning of Article 2(3).

2. For the purposes of Article 2(3)(a), traders shall present applications for import rights to the competent authorities together with the proof referred to in Article 2(6) by 18 June 1998 at the latest.

After verification of the documents presented, Member States shall forward to the Commission, by 30 June 1998 at the latest, the list of traders who meet the acceptance conditions, showing in particular their names and addresses and the number of eligible animals imported during each of the reference years.

[1] OJ L 117, 7. 5. 1997, p. 1.
[2] OJ L 148, 28. 6. 1968, p. 24.

3. For the purposes of Article 2(3)(b), applications for import rights, together with the proof referred to in Article 2(6), must be lodged by traders by 18 June 1998 at the latest.

Only one application may be lodged by each applicant. Where the same applicant lodges more than one application all applications from that person shall be invalid. Applications may not relate to a quantity larger than that available.

After verification of the documents presented, Member States shall forward to the Commission by 30 June 1998 a list of applicants and quantities applied for.

4. All notifications, including notifications of nil applications, shall be made by telex or fax, drawn up on the basis of the models in Annexes III and IV in the case where applications have been lodged.

Article 5

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

2. As regards applications pursuant to Article 4(3), where the quantities applied for 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 100 head per application, the allocation shall be made by drawing lots, by batches of 100 head, by the Member States concerned. If the remaining quantity is less than 100 head, it shall constitute a single batch.

Article 6

1. Imports of the quantities allocated in accordance with Article 5 shall be subject to the presentation of an import licence.

2. Licence applications may be presented only in the Member State in which the application for import rights was lodged.

3. Licences shall be issued, at the request of traders, up to 31 December 1998 for a maximum of 50 % of the allocated import rights. Import licences for the remaining quantities shall be issued from 1 January 1999.

The number of animals for which a licence is issued shall be expressed in units. Where necessary, numbers shall be rounded up or down as the case may be.

4. Licence applications and licences shall contain the following entries:

(a) in Section 8, the indication of the countries referred to in Annex I; licences shall carry with them an obligation to import from one or more of the countries indicated;

(b) in Section 16, CN subheading 0102 90 05;

(c) in Section 20, the serial number 09.4598 and at least one of the following:

— Reglamento (CE) nº 1144/98
— Forordning (EF) nr. 1144/98
— Verordnung (EG) Nr. 1144/98
— Κανονισμός (ΕΚ) αριθ. 1144/98
— Regulation (EC) No 1144/98
— Règlement (CE) nº 1144/98
— Regolamento (CE) n. 1144/98
— Verordening (EG) nr. 1144/98
— Regulamento (CE) nº 1144/98
— Asetus (EY) N:o 1144/98
— Förordning (EG) nr 1144/98.

5. Import licences issued pursuant to this Regulation shall be valid for 90 days from their date of issue. However, no licences shall be valid after 30 June 1999.

6. Licences issued shall be valid throughout the Community.

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

Article 7

The animals shall qualify for the duties referred to in Article 1 on presentation of an EUR. 1 movement certificate issued by the exporting country in accordance with Protocol 4 annexed to the Europe Agreements and Protocol 3 annexed to the free-trade Agreements or a declaration drawn up by the exporter in accordance with these Protocols.

Article 8

All animals imported under this Regulation shall be identified in accordance with Regulation (EC) No 820/97.

Article 9

Regulations (EEC) No 3719/88 and (EC) No 1445/95 shall apply, subject to the provisions of this Regulation.

Article 10

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, 2 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

List of third countries

— Hungary
— Poland
— Czech Republic
— Slovakia
— Romania
— Bulgaria
— Lithuania
— Latvia
— Estonia.

ANNEX II

Regulations referred to in Article 2(3)(a)

Commission Regulations:

(EC) No 3076/94 (OJ L 325, 17. 12. 1994, p. 8),
(EC) No 1566/95 (OJ L 150, 1. 7. 1995, p. 24),
(EC) No 2491/95 (OJ L 256, 26. 10. 1995, p. 36),
(EC) No 3018/95 (OJ L 314, 28. 12. 1995, p. 58),
(EC) No 403/96 (OJ L 55, 6. 3. 1996, p. 9),
(EC) No 1110/96 (OJ L 148, 21. 6. 1996, p. 15),
(EC) No 1462/96 (OJ L 187, 26. 7. 1996, p. 34),
(EC) No 2501/96 (OJ L 338, 28. 12. 1996, p. 65).

ANNEX III

EC Fax: (32 2) 296 60 27/(32 2) 295 36 13

Application of Article 4(2) of Regulation (EC) No 1144/98

Serial No 09.4598

COMMISSION OF THE EUROPEAN COMMUNITIES DG VI D.2 — BEEF AND VEAL SECTOR

APPLICATION FOR IMPORT RIGHTS

Date: ..... Period: .....

Member State: .....

Number of applicant (1)	Applicant (name and address)	Quantity imported (head)			Total for the three years
		1995	1996	1997	
	Total				

Member State: ..... Fax: .....

Tel.: .....

(1) Continuous numbering.

ANNEX IV

EC Fax: (32 2) 296 60 27/(32 2) 295 36 13

Application of Article 4(3) of Regulation (EC) No 1144/98

Serial No 09.4598

COMMISSION OF THE EUROPEAN COMMUNITIES DG VI D.2 — BEEF AND VEAL SECTOR

APPLICATION FOR IMPORT RIGHTS

Date: ..... Period: .....

Member State: .....

Number of applicant (1)	Applicant (name and address)	Quantity (head)
	Total	

Member State: ..... Fax: .....

Tel.: .....

(1) Continuous numbering.

COMMISSION REGULATION (EC) No 1145/98

of 2 June 1998

amending Regulation (EC) No 1169/97 laying down detailed rules for the application of Council Regulation (EC) No 2202/96 introducing a Community aid scheme for producers of certain citrus fruits

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2202/96 of 28 October 1996 introducing a Community aid scheme for producers of certain citrus fruits [1], and in particular Articles 2(2) and 6 thereof,

Whereas certain provisions should be added to Commission Regulation (EC) No 1169/97 [2] in order to make management of the new scheme introduced by Regulation (EC) No 2202/96 more flexible; whereas, to that end, it should be made possible to include in contracts covering one marketing year a written amendment within each delivery period and to include in multiannual contracts the opportunity to carry a limited percentage of the quantities to be supplied during one delivery period forward to the following period in the same marketing year; whereas, also, the time for notifying delivery to the designated body should be put back;

Whereas experience gained in processing contracts shows that it is necessary to lay down proportional financial penalties if the quantities contracted by the producer organisations are not complied with; whereas, where a producer organisation markets products intended for processing from members of other producer organisations and/or makes individual producers eligible for the aid scheme, the financial responsibility for non-compliance with the quantities contracted and the consequences resulting therefrom are to be established in accordance with the provisions of Article 8(3)(c) of Regulation (EC) No 1169/97;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1169/97 is hereby amended as follows:

1. Article 5(2) is replaced by the following:

'2. In the case of contracts covering one marketing year, the quantities of the products referred to in Article 3(3)(d) may be altered by written amendment, except in the first period where the products referred to in paragraph 1(a) are concerned.

Such amendments shall show the identification number of the contract to which they relate. They shall be concluded by no later than the 45th day after the beginning of the delivery period in question.

The quantities to be delivered in each delivery period as stipulated in such amendments may not differ by more than 40 % from those originally laid down in the contract for that period. However, they may differ by up to 50 % in the case of deliveries of lemons and oranges in the third and fourth periods.

The quantities delivered by the new members referred to in Article 8(5) shall be included in those amendments.';

2. the following subparagraph is added to Article 5(3):

'Up to 15 % of the quantities to be delivered in each delivery period may be carried forward to the following period by means of a written agreement between the parties and provided that the overall quantity for the marketing year in question is respected.

That agreement shall be forwarded by the producer organisation to the body referred to in Article 6(1) to arrive no later than 15 working days before the end of the period in question.';

3. in Article 10(1), 'noon' is replaced by '6 p.m.'

4. (only concerns the other language versions);

5. the following paragraph is added to Article 20:

'7. If the quantities actually delivered during a marketing year under each contract referred to in

[1] OJ L 297, 21. 11. 1996, p. 49.
[2] OJ L 169, 27. 6. 1997, p. 15.

Article 3(2)(a) and (b) are found to be less than the contracted quantities, including any amendments, for the marketing year in question, the aid for the contract in question shall be reduced by:

— 20 % if the difference between the quantities actually delivered and the quantities contracted is greater than or equal to 20 % but less than 30 %,

— 30 % if the difference between the quantities actually delivered and the quantities contracted is greater than or equal to 30 % but less than 40 %,

— 40 % if the difference between the quantities actually delivered and the quantities contracted is greater than or equal to 40 % but less than 50 %.

No aid shall be granted if the difference between the quantities actually delivered and the quantities contracted is greater than or equal to 50 %.

In the case of multiannual contracts, this paragraph shall not apply if paragraph 5 is applied.

The producer organisation signing the contracts shall reimburse the difference between the aid or advance actually paid and the aid or advance due plus interest calculated in accordance with paragraph 1.

The aid reduction referred to in this paragraph shall not be applied if the producer organisation signing the contracts can prove to the satisfaction of the competent national authority that failure to comply with the contracts was not deliberate or the result of serious negligence on its part or on the part of members of other producer organisations and/or individual producers.';

6. in the Annex, the minimum degree Brix for mandarins shall be 9° Brix.

Article 2

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

It shall apply from the 1998/99 marketing year.

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

Done at Brussels, 2 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 1146/98

of 2 June 1998

amending Regulation (EC) No 541/95 concerning the examination of variations in the terms of a marketing authorisation granted by a competent authority of a Member State

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 75/319/EEC of 20 May 1975, on the approximation of provisions laid down by law, regulations or administrative action relating to medicinal products [1], as last amended by Directive 93/39/EEC [2], and in particular Article 15 thereof,

Having regard to Council Directive 81/851/EEC of 28 September 1981, on the approximation of legislation of the Member States relating to veterinary medicinal products [3], as last amended by Directive 93/40/EEC [4], and in particular Article 23 thereof,

Whereas, following practical experience in the application of Commission Regulation (EC) No 541/95 [5] appropriate provisions should be made to the terms of this Regulation;

Whereas it is appropriate to provide for a procedure to be followed in the case where national competent authority imposes urgent safety restrictions;

Whereas, moreover, it is necessary to simplify the notification procedure for minor variations and to introduce some changes to the annexes to this Regulation;

Whereas, the provisions of this Regulation are in accordance with the opinion of the Standing Committee on Medicinal Products for Human Use and the Standing Committee on Veterinary Medicinal Products,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 541/95 is amended as follows:

1. In Article 1 the following paragraph 3 is added:

'3. Where national competent authorities impose urgent provisional safety restrictions on the marketing authorisation holder, the marketing authorisation holder shall be obliged to submit an application for a variation taking account of the safety restrictions imposed by the national authorities. This application shall be submitted without delay to the national competent authorities concerned for the application of the procedures set out in Articles 6 and 7 of this Regulation. This paragraph is without prejudice to Article 15a of Directive 75/319/EEC and Article 23a of Directive 81/851/EEC'.

2. In Article 4, paragraph 2 is replaced by the following text:

'2. The reference Member State shall forthwith inform all other concerned Member States about the date of the start of the procedure. The reference Member State shall also inform the marketing authorisation holder(s) about the date of the start of the procedure'.

3. After Article 7, Article 7a and Article 7b are added:

'*Article 7a*

Because of the specificities inherent in the manufacturing of human influenza vaccines, the following dispositions are applicable:

1. Within 30 days following the date of the start of the procedure, the national competent authorities of the reference Member State shall prepare an assessment report on a pharmaceutical dossier and a draft decision which shall be addressed to the other national competent authorities concerned.

2. Within that period, the competent authority of the reference Member State may send the marketing authorisation holder a single request for information in addition to that already supplied pursuant to Article 6. It shall inform the other competent authorities concerned.

3. Within 12 days of receipt of the draft decision and the assessment report, the other competent national authorities concerned shall accept this draft decision and inform the competent national authority of the reference Member State to this effect.

[1] OJ L 147, 9. 6. 1975, p. 13.
[2] OJ L 214, 24. 8. 1993, p. 22.
[3] OJ L 317, 6. 11. 1981, p. 1.
[4] OJ L 214, 24. 8. 1993, p. 31.
[5] OJ L 55, 11. 3. 1995, p. 7.

4. The clinical data and, where appropriate, those concerning the stability of the medicinal product shall be addressed by the applicant to the competent authorities of the reference Member State and to those of the other Member States concerned at the latest 12 days following the end of the time limit laid down in paragraph 3.

The reference Member State shall evaluate these data and draft a final decision within seven days of the reception of the data mentioned in the first subparagraph. Each of the other national competent authorities shall accept this draft decision and adopt a decision in conformity with this project within the seven following days.

5. If, in the course of the procedure foreseen in the present Article, a competent authority raises a question of public health which they consider poses an obstacle to the mutual recognition of the decision to be taken, reference shall be made without delay to the provisions of Article 15, last paragraph, of Directive 75/319/EEC.

Article 7b

Notwithstanding Article 7a, in case of a pandemic situation duly recognised by the World Health Organisation, competent national authorities may exceptionally and temporarily consider the variation to be accepted after a complete application has been lodged and before the end of the procedure foreseen in Article 7a'.

4. In Annex I:

— The text of point A is replaced by the following text:

'A. By derogation, the procedure set out in Articles 6 and 7 of the present Regulation shall apply:

— to the minor variations Nos 11, 12, 13, 15 and 16 as referred to below and to minor variations 24 and 25 if the test procedure used is not a physicochemical method for medicinal products falling within the scope of Council Directives 89/342/EEC [1], or 89/381/EEC [2], or 90/677/EEC [3], or for medicinal products which had been considered as arising under List A of Directive 87/22/EEC,

— to any minor variation when a specific inspection of a manufacturing site needs to be carried out'.

— The text of variation No 1 is replaced by the following text:

'1. *Change following modification(s) to the manufacturing authorisation(s)*

General condition: the modified manufacturing authorisation must be submitted to the competent authority.

— Change in the name of a manufacturer of the medicinal product

Condition to be fulfilled: the manufacturing site shall remain the same.

— Change of the manufacturing site(s) for part or all of the manufacturing process of the medicinal product

Condition to be fulfilled: no change either in the manufacturing process or in the specifications, including test methods.

— withdrawal of the manufacturing authorization for a site of manufacture'.

— The text of variation No 5 is replaced by the following text:

'5. *Change in the colouring system of the product (addition, deletion or replacement of colourant(s))*

Condition to be fulfilled: Same functional characteristics, no change in dissolution profile for solid dosage forms. Any minor adjustment to the formulation to maintain the total weight should be made by an excipient which currently makes up a major part of the formulation'.

— The text of variation No 6 is replaced by the following text:

'6. *Change in the flavouring system of the product (addition, deletion or replacement of flavour(s))*

Condition to be fulfilled: proposed flavour must be in accordance with Directive 88/388/EEC. Any minor adjustment to the formulation to maintain the total weight should be made by an excipient which currently makes up a major part of the formulation'.

— After variation No 10 the following text is added:

'10a. *Addition or replacement of measuring device for oral liquid dosage forms and other dosage forms*

Condition to be fulfilled: the size and, where applicable, the accuracy of the proposed measuring device must be compatible with the approved posology'.

— After variation No 11 the following text is added:

'11a. *Change in the name of a manufacturer of the active substance*

Condition to be fulfilled: the manufacturer of the active substance shall remain the same.

11b. *Change in supplier of an intermediate compound used in the manufacture of the active substance*

Condition to be fulfilled: the specifications, synthetic route and quality control procedures are the same as those already approved'.

— After variation No 12 the following text is added:

'Alternative condition: "... or a certificate of suitability from the European Pharmacopoeia is provided".

12a. *Change in specification of starting material or intermediate used in the manufacture of the active substance*

Condition to be fulfilled: specification must be tightened or addition of new test and limits.'

— After variation No 15 the following text is added:

'15a. *Change in in-process controls applied during the manufacture of the product*

Condition to be fulfilled: specification must be tightened or addition of new test and limits'.

— After variation No 20 the following text is added:

'20a. *Extension of the shelf life or retest period of the active substance*

Condition to be fulfilled: stability studies have been done to the protocol which was approved at the time of the issue of the marketing authorisation; the studies must show that the agreed end of shelf life specifications are still met'.

— After variation No 24 the following text is added:

'24a. *Change in test procedure for a starting material or intermediate used in the manufacture of the active substance*

Condition to be fulfilled: results of method validation show new test procedure to be at least equivalent to the former procedure. Specification not adversely affected'.

— The footnote of variation No 26 is changed as follows:

'In cases where the marketing authorisation holder refers to the current edition of the pharmacopoeia, no variation application is required provided the change is introduced within six months of adoption of the revised monograph'.

— The heading of variation No 30 is replaced by the following text:

'30. *Change in pack size for a medicinal product'*

A supplementary condition is added: 'The packaging material remains the same'.

— A new condition is added to variation No 31:

'The change does not concern a fundamental component of the packaging material which affects the delivery or use of the product'.

— The heading of variation No 32 is replaced by the following text:

'32. *Change of imprints, bossing or other markings (except scoring) on tablets or printing on capsules, including addition or change of inks used for product marking'.*

— After variation No 33 variation No 34 is added:

'34. *Change in the manufacturing process of a non proteinaceous component due to the subsequent introduction of a biotechnology step*

General remarks:

This specific variation is without prejudice to other variations in this Annex which can be applied in this particular context.

Community legislation applicable to specific groups of products (*) has to be complied with.

The medicinal products containing a proteinaceous component obtained through a biotechnology process fall within the scope of part A of Council Regulation (EEC) No 2309/93 (**).

— *Change in the manufacturing process for components compliant with a European Pharmacopoeia monograph and verified by means of a certificate of suitability from the European Pharmacopoeia*

Conditions to be fulfilled: the specifications and physicochemical properties and all characteristics of the component remain the same.

— *Change in the manufacturing process for components requesting a new impurities test procedure*

Conditions to be fulfilled: the specifications and physicochemical properties and all characteristics of the component remain the same. The manufacturing method is liable to leave impurities not controlled in the pharmacopoeia monograph, these impurities must be declared and a suitable test procedure must be described. This supplementary test must be specified in a certificate of suitability from the European Pharmacopoeia.

(*) Food and food ingredients compliant with Regulation (EC) No 258/97 of the European Parliament and of the Council (OJ L 43, 14.2.1997, p. 1), colours for use in foodstuffs within the scope of Council Directive 94/36/EEC (OJ L 237, 10.9.1994, p. 13), food additives within the scope of Council Directive 88/388/EEC (OJ L 184, 15.7.1988, p. 61), extraction solvents within the meaning of Council Directive 88/344/EEC (OJ L 157, 24.6.1988, p. 28) as last amended by Directive 92/115/EEC (OJ L 409, 31.12.1992, p. 31) and foods or food ingredients derived from a biotechnology step which has been introduced in the manufacture/production are not required to be notified as a variation to the terms of the marketing authorisation.

(**) OJ L 214, 24.8.1993, p. 1.'

5. In Annex II:

— After the heading, the text of the first paragraph and the following subheading are replaced as follows:

'Certain changes to a marketing authorisation have to be considered to fundamentally alter the terms of this authorisation and therefore cannot be considered as a variation in the meaning of Article 15 of Directive 75/319/EEC or in the meaning of Article 23 of Directive 81/851/EEC and cannot be granted following variation procedures foreseen in Articles 4 to 7 of this Regulation. For these changes, listed below, any application has to be considered within a complete scientific evaluation procedure (as for the granting of a marketing authorisation). As the case may be, an authorisation or a modification to the existing marketing authorisation will have to be issued by the competent national authorities.

This Annex is without prejudice to the provisions of Article 4 of Directive 65/65/EEC and Article 5 of Directive 81/851/EEC'.

— The text of variation No 1, paragraph (i) is replaced by the following text:

'(i) addition of one or more active substance(s) including antigenic components for vaccines, without prejudice to Articles 7a and 7b concerning human influenza',

— The text of variation No 4, paragraph (ii) is replaced by the following text:

'(ii) shortening of the withdrawal period of a veterinary medicinal product if the change is not linked to the establishment or a modification to a maximum residue limit in accordance with Regulation (EEC) No 2377/90 (*).

(*) OJ L 224, 18.8.1990, p. 1.'

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, 2 June 1998.

For the Commission

Martin BANGEMANN

Member of the Commission

COMMISSION REGULATION (EC) No 1147/98

of 2 June 1998

amending for the 11th time Regulation (EC) No 913/97 adopting exceptional support measures for the pigmeat market in Spain

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organisation of the market in pigmeat [1], as last amended by Regulation (EC) No 3290/94 [2], and in particular Article 20 thereof,

Whereas, because of the outbreak of classical swine fever in certain production regions in Spain, the Commission adopted Regulation (EC) No 913/97 [3], as last amended by Regulation (EC) No 988/98 [4], to introduce exceptional support measures for the pigmeat market in that Member State;

Whereas, because the veterinary and trade restrictions continue to apply and have been extended to new zones, particularly in the provinces of Zaragoza and Seville, the number of piglets which may be delivered to the competent authorities should be increased so that the exceptional measures can continue from 14 May 1998 and the list of eligible areas laid down in Annex II to Regulation (EC) No 913/97 should be adjusted in line with the current veterinary and health situation;

Whereas Commission Decision 97/285/EC of 30 April 1997 concerning certain protection measures relating to classical swine fever in Spain [5], as last amended by Decision 98/271/EC [6], has been replaced by Decision 98/339/EC [7]; whereas account must be taken of this change;

Whereas the restrictions on the free movement of animals have been operative for several weeks in one of the areas located in the province of Zaragoza and the area in the province of Seville, resulting in a substantial increase in the weight of the animals and, consequently, an intolerable situation as regards their welfare; whereas application of the support measures from 14 May 1998 in these new areas is therefore justified;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 913/97 is amended as follows:

1. In Article 2(2) 'Decision 97/285/EC' is replaced by 'Decision 98/339/EC'.

2. Annex I is replaced by Annex I hereto.

3. Annex II is replaced by Annex II hereto.

Article 2

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

It shall apply from 14 May 1998.

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

Done at Brussels, 2 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 282, 1. 11. 1975, p. 1.
[2] OJ L 349, 31. 12. 1994, p. 105.
[3] OJ L 131, 23. 5. 1997, p. 14.
[4] OJ L 140, 12. 5. 1998, p. 3.
[5] OJ L 114, 1. 5. 1997, p. 47.
[6] OJ L 120, 23. 4. 1998, p. 23.
[7] OJ L 148, 19. 5. 1998, p. 43.

ANNEX I

'ANNEX I

Total maximum number of animals from 6 May 1997:

Pigs for fattening	630 000 head
Piglets	200 000 head
Cull sows	8 000 head
Pigs of the Iberian breed for fattening	6 000 head'

ANNEX II

'*ANNEX II*

Part 1

— In the province of Zaragoza, the protection and surveillance zones as defined in Annexes I and II of the order of the Diputación General de Aragón of 25 March 1998, published in the Official Journal of the Comunidad of 27.3.1998 p. 1411

— In the province of Zaragoza, the protection and surveillance zones as defined in Annexes I and II of the order of the Diputación General de Aragón of 17 April 1998, published in the Official Journal of the Comunidad of 20.4.1998, p. 1868

— In the province of Zaragoza, the protection and surveillance zones as defined in Annexes I and II of the order of the Diputación General de Aragón of 28 April 1998, published in the Official Journal of the Comunidad of 4.5.1998, p. 1999

— In the province of Seville, the protection and surveillance zones as defined in Annexes I and II to the order of the Junta de Andalucía of 23 April 1998, published in the Official Journal of the Junta of 28.4.1998, p. 4951

Part 2

The veterinary districts (*comarcas*) of the provinces of Segovia, Madrid, Toledo, Zaragoza and Seville listed in Annex I to Decision 98/339/EC.'

COMMISSION REGULATION (EC) No 1148/98

of 2 June 1998

including in the sugar sector regulations the amendments introduced by Regulation (EC) No 2086/97 on the tariff and statistical nomenclature and on the Common Customs Tariff

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 234/79 of 5 February 1979 on the procedure for adjusting the Common Customs Tariff nomenclature used for agricultural products [1], as last amended by Regulation (EC) No 3290/94 [2], and in particular Article 2(1) thereof,

Whereas Commission Regulation (EC) No 2086/97 of 4 November 1997 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff [3] provides for amendments to the combined nomenclature especially for certain products falling within the common organisation of the market in sugar;

Whereas certain codes in Council Regulations (EEC) No 1785/81 [4], as last amended by Regulation (EC) No 1599/96 [5], and (EEC) No 1010/86 [6], as last amended by Commission Regulation (EC) No 1126/96 [7], and in Commission Regulations (EC) No 1464/95 [8], as last amended by Regulation (EC) No 2136/95 [9], (EC) No 1729/97 [10], (EEC) No 2670/81 [11], as last amended by Regulation (EC) No 158/96 [12], (EEC) No 825/75 [13], as last amended by Regulation (EEC) No 1714/88 [14], and (EEC) No 1729/78 [15], as last amended by Regulation (EC) No 1730/97 [16] no longer correspond to those in the Combined Nomenclature; whereas these Regulations should be adjusted as a result;

Whereas the date of entry into force of this Regulation should coincide with the date of entry into force of Regulation (EC) No 2086/97;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. Regulation (EEC) No 1785/81 hereby is amended as follows:

— in Article 1:

(a) in point (d):

— code '1702 60 90' is replaced by '1702 60 95', and

— code '1702 90 90' is replaced by '1702 90 99';

(b) in point (h) code 'ex 1702 60 90' is replaced by '1702 60 80'.

2. Council Regulation (EEC) No 1010/86 is hereby amended as follows:

— in Article 1:

— code 'ex 1702 60 90' is replaced by 'ex 1702 60 95', and

— code 'ex 1702 90 90' is replaced by 'ex 1702 90 99'.

Article 2

1. Regulation (EC) No 1464/95 is hereby amended as follows:

(a) in Article 2, code '1702 60 90' is replaced by '1702 60 95';

(b) — in Article 8(a), third indent, code 'ex 1702 60 90' is replaced by '1702 60 80',

— in Article 8(c), third indent, code '1702 60 90' is replaced by '1702 60 95',

— in Article 8(c), fifth indent, code 'ex 1702 60 90' is replaced by '1702 60 80'.

2. Regulation (EC) No 1729/97 is hereby amended as follows:

(a) in Article 3(a), code '1702 60 90' is replaced by '1702 60 95';

[1] OJ L 34, 9. 2. 1979, p. 2.
[2] OJ L 349, 31. 12. 1994, p. 105.
[3] OJ L 312, 14. 11. 1997, p. 1.
[4] OJ L 177, 1. 7. 1981, p. 4.
[5] OJ L 206, 16. 8. 1996, p. 43.
[6] OJ L 94, 9. 4. 1986, p. 9.
[7] OJ L 150, 25. 6. 1996, p. 3.
[8] OJ L 144, 28. 6. 1995, p. 14.
[9] OJ L 214, 8. 9. 1995, p. 19.
[10] OJ L 243, 5. 9. 1997, p. 1.
[11] OJ L 262, 16. 9. 1981, p. 14.
[12] OJ L 24, 31. 1. 1996, p. 3.
[13] OJ L 79, 28. 3. 1975, p. 17.
[14] OJ L 152, 18. 6. 1988, p. 23.
[15] OJ L 201, 25. 7. 1978, p. 26.
[16] OJ L 243, 5. 9. 1997, p. 5.

(b) in Annex I:

— code '1702 60 90' is replaced by '1702 60 95', and

— code '1702 90 90' is replaced by '1702 90 99'.

3. Regulation (EEC) No 2670/81 is hereby amended as follows:

In Article 1(d) code '1702 60 90' is replaced by '1702 60 95'.

4. Regulation (EEC) No 825/75 is hereby amended as follows:

(a) in Annex II code 'ex 1702 90 90' is replaced by '1702 90 99';

(b) in Annex III:

— code 'ex 1702 60 90' is replaced by 'ex 1702 60 95', and

— code 'ex 1702 90 90' is replaced by 'ex 1702 90 99'.

5. Regulation (EEC) No 1729/78 is hereby amended as follows:

(a) in Article 2(2), second subparagraph, (a)(i):

— code '1702 60 90' is replaced by '1702 60 95', and

— code '1702 90 90' is replaced by '1702 90 99';

(b) in Article 3(3), second subparagraph, (a)(i):

— code '1702 60 90' is replaced by '1702 60 95', and

— code '1702 90 90' is replaced by '1702 90 99'.

Article 3

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

It shall apply with effect from 1 January 1998.

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

Done at Brussels, 2 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 1149/98

of 2 June 1998

laying down, for the period 1 July 1998 to 30 June 1999, certain detailed rules for the application of a tariff quota for live bovine animals weighing from 80 to 300 kilograms and originating in certain third countries

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3066/95 of 22 December 1995 establishing certain concessions in the form of Community tariff quotas for certain agricultural products and providing for the adjustment, as an autonomous and transitional measure, of certain agricultural concessions provided for in the Europe Agreements to take account of the Agreement on Agriculture concluded during the Uruguay Round Multilateral Trade Negotiations ([1]), as last amended by Regulation (EC) No 1595/97 ([2]), and in particular Article 8 thereof,

Having regard to Council Regulation (EC) No 1926/96 of 7 October 1996 establishing certain concessions in the form of Community tariff quotas for certain agricultural products and providing for the adjustment, as an autonomous and transitional measure, of certain agricultural concessions provided for in the agreements on free trade and trade-related matters with Estonia, Latvia and Lithaunia, to take account of the Agreement on Agriculture concluded during the Uruguay Round Multilateral Trade Negotiations ([3]), and in particular Article 5 thereof,

Whereas Regulations (EC) No 3066/95 and (EC) No 1926/96 provide for the opening, for the period 1 July 1998 to 30 June 1999, of a tariff quota for 153 000 live bovine animals weighing from 80 to 300 kilograms and orginating in Hungary, Poland, the Czech Republic, Slovakia, Romania, Bulgaria, Estonia, Latvia and Lithuania and qualifying for an 80 % reduction in customs duties; whereas management measures should be laid down for the import of those animals;

Whereas, with a view to preventing speculation, the quantity available should be made accessible to traders able to show that they are genuinely engaged in trade of a significant scale with third counties; whereas, in that respect and with a view to efficient managment, the traders concerned must have exported and/or imported at least 50 animals in 1997; whereas a batch of 50 animals in principle constitutes a normal load and experience has shown that the sale or purchase of a single batch is a minimum requirement for a transaction to be considered real and viable;

Whereas, if such criteria are to be checked, applications must be presented in the Member State where the importer is entered in a VAT register;

Whereas, in order to ensure that imports of the quantities laid down for the period 1 July 1998 to 30 June 1999 arrive regularly, the issuing of licences should be staggered over the period concerned;

Whereas provision should be made for the arrangements to be administered by means of import licences; whereas, to that end, detailed rules should be laid down in particular to cover the submission of applications and the particulars to be shown on applictions and licences, where applicable by way of derogation from certain provisions of Commission Regulation (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 ([4]), as last amended by Regulation (EC) No 1044/98 ([5]), and of Commission Regulation (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 ([6]), as last amended by Regulation (EC) No 759/98 ([7]); whereas provision should also be made for licences to be issued after a period for reflection, a flat-rate percentage reduction being applied where necessary;

Whereas provision should be made for imported animals to be identified in accordance with Council Regulation (EC) No 820/97 of 21 April 1997 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products ([8]);

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 328, 30. 12. 1995, p. 31.
([2]) OJ L 216, 8. 8. 1997, p. 1.
([3]) OJ L 254, 8. 10. 1996, p. 1.
([4]) OJ L 331, 2. 12. 1988, p. 1.
([5]) OJ L 149, 20. 5. 1998, p. 11.
([6]) OJ L 143, 27. 6. 1995, p. 35.
([7]) OJ L 105, 4. 4. 1998, p. 7.
([8]) OJ L 117, 7. 5. 1997, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

1. Under the tariff quotas provided for in Regulations (EC) No 3066/95 and (EC) No 1926/96, 153 000 head of live bovine animals falling within CN codes 0102 90 21, 0102 90 29, 0102 90 41 or 0102 90 49 and originating in the third countries listed in Annex II hereto may be imported in the period 1 July 1998 to 30 June 1999 in accordance with this Regulation.

This tariff quota's serial number shall be 09.4537.

2. The *ad valorem* and specific customs duties on those animals as fixed in the common customs tariff (CCT) shall be reduced by 80 %.

Article 2

1. Applicants under the quota provided for in Article 1 must be natural persons or legal entities and must prove, to the satisfaction of the competent authorities of the Member State concerned when submitting their applications, that during 1997 they have imported and/or exported at least 50 animals covered by CN code 0102 90; applicants must be listed in a national VAT register.

2. Proof of import and export shall be furnished exclusively by means of the customs document of release for free circulation or the export document, duly endorsed by the customs authorities.

The Member States may accept copies of the documents referred to above, duly certified by the issuing authority, where applicants can prove, to the satisfaction of the competent authority, that it is impossible for them to obtain the originals.

Article 3

1. Applications for import rights may be submitted only in the Member State where the applicant is registered in accordance with Article 2(1).

2. Applications for import rights:

— must cover at least 50 animals,

and

— may not cover more than 10 % of the quantity available.

Where applications exceed this quantity, the excess shall be disregarded.

3. Applications for import rights may be lodged until 17 June 1998 only.

4. Applicants may lodge no more than one application each. Where the same applicant lodges more than one application, all applications from that applicant shall be inadmissible.

5. By 26 June 1998 at the latest, the Member States shall notify the Commission of applications lodged. Such notification shall comprise a list of applicants and of quantities applied for.

All notifications, including 'nil' returns, shall be forwarded by telex or fax, using the model form in Annex I hereto in cases where applications have actually been submitted.

Article 4

1. The Commission shall decide what percentage of quantities covered by applications may be imported.

2. If the quantities covered by applications as referred to in Article 3 exceed those available, the Commission shall fix a single percentage reduction to be applied to the quantities applied for.

Where the application of the reduction provided for in the first subparagraph gives a figure of less than 50 head per application, the quantity available shall be awarded by the Member States concerned by drawing lots for import rights covering 50 head each. Where the remainder is less than 50 head, a single import right shall be awarded for that quantity.

Article 5

1. The quantities awarded shall be imported subject to presentation of one or more import licences.

2. Licence applications may be lodged only in the Member State where the application for the import right is submitted.

3. Licence applications and licences shall show the following:

(a) in Section 8, one or more of the countries listed in Annex II; licences shall carry with them an obligation to import from one or more of the countries shown;

(b) in Section 16, one of the following groups of Combined Nomenclature subheadings within the same indent:

— 0102 90 21; 0102 90 29;

— 0102 90 41; 0102 90 49;

(c) in Section 20, the serial number 09.4537 and at least one of the following:

— Reglamento (CE) nº 1149/98
— Forordning (EF) nr. 1149/98
— Verordnung (EG) Nr. 1149/98
— Κανονισμός (ΕΚ) αριθ. 1149/98
— Regulation (EC) No 1149/98
— Règlement (CE) nº 1149/98
— Regolamento (CE) n. 1149/98
— Verordening (EG) nr. 1149/98
— Regulamento (CE) nº 1149/98
— Asetus (EY) N:o 1149/98
— Förordning (EG) nr 1149/98.

4. Until 31 December 1998, licences shall be issued for no more than 50 % of the import rights awarded. Import licences covering the remainder shall be issued from 1 January 1999.

5. Import licences issued in accordance with this Regulation shall be valid for 90 days from their date of issue within the meaning of Article 21(2) of Regulation (EC) No 3719/88. However, no licence shall be valid after 30 June 1999.

6. Licences issued shall be valid throughout the Community.

7. Article 8(4) of Regulation (EEC) No 3719/88 shall not apply. To that end, the figure '0' (zero) shall be entered in Section 19 of licences.

Article 6

The duties referred to in Article 1 shall apply to live animals on presentation of either an EUR.1 movement certificate issued by the exporting country in accordance with Protocol 4 to the Europe Agreements and Protocol 3 to the free-trade agreements or a declaration by the exporter in accordance with the said Protocols.

Article 7

All animals imported under this Regulation shall be identified in accordance with Regulation (EC) No 820/97.

Article 8

Regulations (EEC) No 3719/88 and (EC) No 1445/95 shall apply, save as otherwise provided herein.

Article 9

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, 2 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

EC Fax No (32 2) 296 60 27

Application of Regulation (EC) No 1149/98

Serial No 09.4537

COMMISSION OF THE EUROPEAN COMMUNITIES DG VI/D/2 — BEEF AND VEAL SECTOR

APPLICATION FOR IMPORT RIGHTS

Date: ..... Period: .....

Member State: .....

Applicant's No (1)	Applicant (name and address)	Quantity
	Total	

Member State: ..... Fax No: .....

Tel.: .....

(1) Continuous numbering.

ANNEX II

— Hungary
— Poland
— Czech Republic
— Slovakia
— Romania
— Bulgaria
— Lithuania
— Latvia
— Estonia

COMMISSION REGULATION (EC) No 1150/98

of 2 June 1998

fixing Community producer and import prices for carnations and roses with a view to the application of the arrangements governing imports of certain floricultural products originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 4088/87 of 21 December 1987 fixing conditions for the application of preferential customs duties on imports of certain flowers originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip [1], as last amended by Regulation (EC) No 1300/97 [2], and in particular Article 5 (2) (a) thereof,

Whereas, pursuant to Article 2 (2) and Article 3 of abovementioned Regulation (EEC) No 4088/87, Community import and producer prices are fixed each fortnight for uniflorous (bloom) carnations, multiflorous (spray) carnations, large-flowered roses and small-flowered roses and apply for two-weekly periods; whereas, pursuant to Article 1b of Commission Regulation (EEC) No 700/88 of 17 March 1988 laying down detailed rules for the application of the arrangements for the import into the Community of certain floricultural products originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip [3], as last amended by Regulation (EC) No 2062/97 [4], those prices are determined for fortnightly periods on the basis of weighted prices provided by the Member States; whereas those prices should be fixed immediately so the customs duties applicable can be determined; whereas, to that end, provision should be made for this Regulation to enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

The Community producer and import prices for uniflorous (bloom) carnations, multiflorous (spray) carnations, large-flowered roses and small-flowered roses as referred to in Article 1b of Regulation (EEC) No 700/88 for a fortnightly period shall be as set out in the Annex.

Article 2

This Regulation shall enter into force on 3 June 1998.

It shall apply from 3 to 16 June 1998.

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

Done at Brussels, 2 June 1998.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 382, 31. 12. 1987, p. 22.
[2] OJ L 177, 5. 7. 1997, p. 1.
[3] OJ L 72, 18. 3. 1988, p. 16.
[4] OJ L 289, 22. 10. 1997, p. 1.

ANNEX

(ECU/100 pieces)

Period from 3 to 16 June 1998

Community producer price	Uniflorous (bloom) carnations	Multiflorous (spray) carnations	Large-flowered roses	Small-flowered roses
	14,04	7,27	29,37	15,11
Community import prices	**Uniflorous (bloom) carnations**	**Multiflorous (spray) carnations**	**Large-flowered roses**	**Small-flowered roses**
Israel	9,21	9,12	14,34	11,43
Morocco	13,42	12,74	—	—
Cyprus	—	—	—	—
Jordan	—	—	—	—
West Bank and Gaza Strip	—	—	—	—

COMMISSION REGULATION (EC) No 1151/98

of 2 June 1998

suspending the preferential customs duties and re-establishing the Common Customs Tariff duty on imports of small-flowered roses originating in Israel

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 4088/87 of 21 December 1987 fixing conditions for the application of preferential customs duties on imports of certain flowers originating in Cyprus, Israel, Jordan and Morocco and the West Bank and the Gaza Strip [1], as last amended by Regulation (EC) No 1300/97 [2], and in particular Article 5 (2) (b) thereof,

Whereas Regulation (EEC) No 4088/87 lays down the conditions for applying a preferential duty on large-flowered roses, small-flowered roses, uniflorous (bloom) carnations and multiflorous (spray) carnations within the limit of tariff quotas opened annually for imports into the Community of fresh cut flowers;

Whereas Council Regulation (EC) No 1981/94 [3], as last amended by Commission Regulation (EC) No 650/98 [4], opens and provides for the administration of Community tariff quotas for cut flowers and flower buds, fresh, originating in Cyprus, Egypt, Israel, Malta, Morocco and the West Bank and the Gaza Strip;

Whereas Commission Regulation (EC) No 1150/98 [5] fixes the Community producer and import prices for carnations and roses for the application of the import arrangements;

Whereas Commission Regulation (EEC) No 700/88 [6], as last amended by Regulation (EC) No 2062/97 [7], lays down the detailed rules for the application of the arrangements;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92 [8], as last amended by Regulation (EC) No 150/95 [9], are used to convert amounts expressed in third country currencies and are used as the basis for determining the agricultural conversion rates of the Member States' currencies; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93 [10], as last amended by Regulation (EC) No 961/98 [11];

Whereas, on the basis of prices recorded pursuant to Regulations (EEC) No 4088/87 and (EEC) No 700/88, it must be concluded that the conditions laid down in Article 2 (2) of Regulation (EEC) No 4088/87 for suspension of the preferential customs duty are met for small-flowered roses originating in Israel; whereas the Common Customs Tariff duty should be re-established;

Whereas the quota for the products in question covers the period 1 January to 31 December 1998; whereas, as a result, the suspension of the preferential duty and the reintroduction of the Common Customs Tariff duty apply up to the end of that period at the latest;

Whereas, in between meetings of the Management Committee, the Commission must adopt such measures,

HAS ADOPTED THIS REGULATION:

Article 1

For imports of small-flowered roses (CN codes ex 0603 10 11 and ex 0603 10 51) originating in Israel, the preferential customs duty fixed by Regulation (EC) No 1981/94 is hereby suspended and the Common Customs Tariff duty is hereby re-established.

Article 2

This Regulation shall enter into force on 3 June 1998.

[1] OJ L 382, 31. 12. 1987, p. 22.
[2] OJ L 177, 5. 7. 1997, p. 1.
[3] OJ L 199, 2. 8. 1994, p. 1.
[4] OJ L 88, 24. 3. 1998, p. 8.
[5] See page 45 of this Official Journal.
[6] OJ L 72, 18. 3. 1988, p. 16.
[7] OJ L 289, 22. 10. 1997, p. 1.
[8] OJ L 387, 31. 12. 1992, p. 1.
[9] OJ L 22, 31. 1. 1995, p. 1.
[10] OJ L 108, 1. 5. 1993, p. 106.
[11] OJ L 135, 8. 5. 1998, p. 5.

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

Done at Brussels, 2 June 1998.

For the Commission
Franz FISCHLER
Member of the Commission

COMMISSION REGULATION (EC) No 1152/98

of 2 June 1998

amending representative prices and additional duties for the import of certain products in the sugar sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector [1], as last amended by Regulation (EC) No 1599/96 [2],

Having regard to Commission Regulation (EC) No 1423/95 of 23 June 1995 laying down detailed implementing rules for the import of products in the sugar sector other than molasses [3], as last amended by Regulation (EC) No 624/98 [4], and in particular the second subparagraph of Article 1 (2), and Article 3 (1) thereof,

Whereas the amounts of the representative prices and additional duties applicable to the import of white sugar, raw sugar and certain syrups are fixed by Commission Regulation (EC) No 1222/97 [5], as last amended by Regulation (EC) No 1082/98 [6];

Whereas it follows from applying the general and detailed fixing rules contained in Regulation (EC) No 1423/95 to the information known to the Commission that the representative prices and additional duties at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties on imports of the products referred to in Article 1 of Regulation (EC) No 1423/95 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 3 June 1998.

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

Done at Brussels, 2 June 1998.

For the Commission
Franz FISCHLER
Member of the Commission

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[1] OJ L 177, 1. 7. 1981, p. 4.
[2] OJ L 206, 16. 8. 1996, p. 43.
[3] OJ L 141, 24. 6. 1995, p. 16.
[4] OJ L 85, 20. 3. 1998, p. 5.
[5] OJ L 173, 1. 7. 1997, p. 3.
[6] OJ L 154, 28. 5. 1998, p. 31.

ANNEX

to the Commission Regulation of 2 June 1998 amending representative prices and the amounts of additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 99

(ECU)

CN code	Amount of representative prices per 100 kg net of product concerned	Amount of additional duty per 100 kg net of product concerned
1701 11 10 (1)	18,52	7,04
1701 11 90 (1)	18,52	12,98
1701 12 10 (1)	18,52	6,85
1701 12 90 (1)	18,52	12,46
1701 91 00 (2)	22,59	14,59
1701 99 10 (2)	22,59	9,42
1701 99 90 (2)	22,59	9,42
1702 90 99 (3)	0,23	0,41

(1) For the standard quality as defined in Article 1 of amended Council Regulation (EEC) No 431/68 (OJ L 89, 10. 4. 1968, p. 3).

(2) For the standard quality as defined in Article 1 of Council Regulation (EEC) No 793/72 (OJ L 94, 21. 4. 1972, p. 1).

(3) By 1 % sucrose content.

COMMISSION REGULATION (EC) No 1153/98

of 2 June 1998

amending Regulation (EC) No 1105/98 fixing 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 Regualtion (EC) No 2092/97 [4], and in particular Article 2(1) thereof,

Whereas Commission Regulation (EC) No 1105/98 [5] lays down detailed rules as regards import duties in the cereals sector;

Whereas an error has been discovered in Annex I of Regulation (EC) No 1105/98; whereas the Regulation in question should therefore be corrected,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 1105/98 is replaced by the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 3 June 1998.

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

Done at Brussels, 2 June 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 157, 30. 5. 1998, p. 20.

ANNEX

'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)	7,19	0,00
1001 90 91	Common wheat seed	51,53	41,53
1001 90 99	Common high quality wheat other than for sowing (3)	51,53	41,53
	medium quality	76,84	66,84
	low quality	92,82	82,82
1002 00 00	Rye	108,30	98,30
1003 00 10	Barley, seed	108,30	98,30
1003 00 90	Barley, other (3)	108,30	98,30
1005 10 90	Maize seed other than hybrid	98,71	88,71
1005 90 00	Maize other than seed (3)	98,71	88,71
1007 00 90	Grain sorghum other than hybrids for sowing	108,30	98,30

(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.'

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 18 May 1998

concerning a multiannual programme for the promotion of renewable energy sources in the Community (Altener II)

(98/352/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130s(1) thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Having regard to the opinion of the Committee of the Regions [3],

Acting in accordance with the procedure laid down in Article 189c of the Treaty [4],

(1) Whereas Article 130r of the Treaty provides that one of the objectives of Community action is to ensure prudent and rational utilisation of natural resources;

(2) Whereas Article 129 of the Treaty provides that health protection requirements shall form a constituent part of the Community's other policies; whereas the Altener programme contributes to health protection;

(3) Whereas at its meeting on 29 October 1990 the Council announced its objective of stabilising total CO_2 emissions by 2000 at the 1990 level in the Community as a whole;

(4) Whereas a mechanism for monitoring CO_2 and other greenhouse gas emissions in the Community was established by Decision 93/389/EEC [5];

(5) Whereas CO_2 emissions from energy consumption in the Community are likely to increase by about 3% between 1995 and 2000, assuming normal economic growth; whereas it is, therefore, essential to adopt additional measures;

(6) Whereas at its meeting on 25 and 26 June 1996 the Council noted that in the framework of the negotiations on a protocol concerning the Berlin Mandate, the Second Assessment Report of the Intergovernmental Panel on Climate Change (SAR IPCC) had concluded that the balance of evidence suggested that there was a discernible human influence on global climate change and had stressed the need for urgent action at the widest possible level, noted that significant 'no-regrets' opportunities were available and requested the Commission to identify the measures that had to be taken at Community level;

(7) Whereas with the Green Paper of 11 January 1995 and the White Paper of 13 December 1995 the Commission communicated to the European Parliament and the Council its views on the future of energy policy in the Community and on the role that renewable energy sources should play;

[1] OJ C 192, 24. 6. 1997, p. 16.
[2] OJ C 19, 21.1.1998, p. 32.
[3] OJ C 379, 15. 12. 1997, p. 63.
[4] Opinion of the European Parliament of 6 November 1997 (OJ C 358, 24. 11. 1997, p. 30), Council Common Position of 19 January 1998 (OJ C 62, 26. 2. 1998, p. 31) and Decision of the European Parliament of 30 April 1998 (OJ C 152, 18. 5. 1998).

[5] OJ L 167, 9. 7. 1993, p. 31.

(8) Whereas in its resolution of 4 July 1996 [1] the European Parliament called upon the Commission to implement a Community action plan to promote renewable energy sources;

(9) Whereas with the Green Paper of 20 November 1996 entitled 'Energy for the Future: Renewable Sources of Energy' the Commission started a process for the development and further implementation of a Community Strategy and an Action Plan on Renewable Energy Sources (RES);

(10) Whereas in its resolution of 14 November 1996 [2] on the Commission White Paper entitled 'An Energy Policy for the European Union' the European Parliament called upon the Commission to establish a financial programme aimed at promoting sustainable energy; whereas, in its resolution of 15 May 1997 [3] on the Green Paper entitled 'Energy for the Future: Renewable Sources of Energy' it expressly requests the adoption as soon as possible of a strengthened Altener II programme;

(11) Whereas Article 8 of Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity [4] offers Member States the possibility of furthering the penetration of the market in electricity produced from renewable sources of energy by giving them priority;

(12) Whereas Article 130a of the Treaty provides that the Community shall develop and pursue its actions leading to the strengthening of its economic and social cohesion and that, in particular, it shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least-favoured regions; whereas those actions cover *inter alia* the energy sector;

(13) Whereas in Decision 93/500/EEC [5] the Council adopted a Community programme entitled 'Altener' for the promotion of renewable energy sources aimed at reducing CO_2 emissions by increasing the market share of renewable energy sources and its contribution to overall primary energy production in the Community; whereas that programme ends on 31 December 1997;

(14) Whereas the Community has recognised that the Altener programme represents an important element of the Community strategy for reducing CO_2 emissions;

(15) Whereas Decision 1110/94/EC of the European Parliament and of the Council [6] established a fourth framework programme for research, technological development and demonstration projects; whereas policy in the field of renewable energy sources is an important instrument for the use and promotion of the new energy technologies that the framework programme will develop; whereas the Altener II programme is an instrument which complements that programme;

(16) Whereas the Altener II programme does not alter national projects or systems for the promotion of renewable resources; whereas its objective is to add a Community aspect that represents added value;

(17) Whereas, furthermore, the fifth framework programme of research, technological development and demonstration should devote special attention to energy and whereas Altener II should again be an important additional instrument in this programme;

(18) Whereas renewable energy sources are an important energy source for the European Union with considerable commercial potential; whereas their development should therefore be supported through a specific strategy and targeted actions to make them both viable and competitive and thus create a favourable environment for investment;

(19) Whereas the increased use of renewable sources of energy will have a positive effect both on the environment and on the security of energy supplies; whereas the free and large-scale development of renewable energy sources will make it possible fully to exploit their economic and employment potential; whereas a high degree of international cooperation is desirable to achieve the best results;

(20) Whereas a strengthened Altener II programme represents an essential instrument for developing the potential of renewable energy sources; whereas renewable energy sources should account for a reasonable share of the European internal energy market;

(21) Whereas the aim of the targeted actions referred to in Article 2(1)(d) is to facilitate and accelerate investment in new operational capacity for the production of energy from renewable sources by

[1] OJ C 211, 22. 7. 1996, p. 27.
[2] OJ C 362, 2. 12. 1996, p. 279.
[3] OJ C 167, 2. 6. 1997, p. 160.
[4] OJ L 27, 30. 1. 1997, p. 20.
[5] OJ L 235, 18. 9. 1993, p. 41.
[6] OJ L 126, 18. 5. 1994, p. 1. Decision as amended by Decision No 616/96/EC (OJ L 86, 4. 4. 1996, p. 69).

providing financial support, in particular for small and medium sized enterprises (SMEs), in order to reduce the peripheral and service costs of renewable energy projects, and thus overcome the non-technical obstacles present; whereas those actions promote, *inter alia,* access to specialised advice, the analysis of market prospects, the choice of location of projects, application for construction and operation permits, initiatives taken by SMEs on investment in renewable sources of energy, the establishment of financing plans, the preparation of calls for tenders, the training of operators and plant commissioning;

(22) Whereas those targeted actions concern the implementation of projects carried out in the area of biomass, including energy crops, firewood, residues from forestry and agriculture, municipal waste which cannot be recycled, liquid biofuels and biogas, and in the areas of thermal and photovoltaic solar systems, passive and active solar systems in buildings, small scale (< 10 MW) hydroelectric projects, wave energy, wind power and geothermal energy;

(23) Whereas the development of renewable energy sources can help create a competitive energy system for the whole of Europe and develop a European renewable energy sources industry, with vast opportunities for the export of know-how and for investment in third countries involving Community participation;

(24) Whereas in implementing the programme, there should be close cooperation with other Community actions and programmes also concerned with promoting renewable energy sources;

(25) Whereas in order to ensure that Community aid is used efficiently the Commission will ensure that projects are subject to thorough prior appraisal; whereas it will systematically monitor and evaluate the progress and results of supported projects;

(26) Whereas a financial reference amount within the meaning of point 2 of the Declaration by the European Parliament, the Council and the Commission of 6 March 1995 ([1]) is included in this Decision for the entire duration of the programme, without thereby affecting the powers of the budgetary authority as they are defined by the Treaty;

(27) Whereas it is politically and economically desirable to open the Altener II programme to the associated central and eastern European countries in accordance with the conclusions of the Copenhagen European Council of 21 and 22 June 1994, and as outlined in the communication on that subject presented to the Council by the Commission in May 1994; whereas it should also be open to Cyprus,

HAS ADOPTED THIS DECISION:

Article 1

1. A multiannual programme of measures and actions to promote the use of renewable energy sources in the Community, called Altener II, hereinafter referred to as 'the programme', is hereby established.

The objectives of the programme shall be to:

(a) help create the necessary conditions for the implementation of a Community action plan for renewable energy sources, and in particular the legal, socio-economic and administrative conditions;

(b) encourage private and public investments in the production and use of energy from renewable sources.

These two specific objectives shall contribute to achieving the following overall Community objectives — complementing those of the Member States — and priorities: the limitation of CO_2 emissions, increasing the share of renewable energy sources in the energy balance, reduction in energy import dependence, security of energy supply, promotion of employment, economic development, economic and social cohesion and local and regional development, including the strengthening of the economic potential of remote and peripheral regions.

2. Community financial support shall be granted under the programme for actions meeting the objectives set out in paragraph 1(a) and (b).

3. The financial reference amount for the implementation of the programme shall be ECU 22 million. The annual appropriations shall be authorised by the budget authority within the limits of the financial perspective.

Article 2

The following actions and measures relating to renewable energy sources shall be financed under the programme:

(a) studies and other actions, intended to implement and complement other measures by the Community and Member States taken to develop the potential of renewable energy sources. These involve in particular

([1]) OJ C 293, 8. 11. 1995, p. 4.

the development of sectoral and market strategies, the development of norms and certification, facilitating grouped procurement, analyses, based on projects, comparing the environmental impact and the long-term cost/benefit trends resulting from the use of traditional forms of energy and the use of renewable energy sources, the analysis of the legal, socio-economic and administrative conditions, including analysis of the possible use of economic measures, and/or tax incentives which are more favourable to the market penetration of renewable energies, the preparation of appropriate legislation to promote an environment favourable to investment and better methods which make it possible to evaluate the costs and benefits that are not reflected in the market price;

(b) pilot actions of interest to the Community aimed at creating or extending structures and instruments for the development of renewable energy sources in:

— local and regional planning,

— the tools for planning, design and evaluation,

— new financial products and market instruments;

(c) measures intended to develop information, education and training structures; measures to encourage the exchange of experience and know-how aimed at improving coordination between international, Community, national, regional and local activities; establishment of a centralised system for collecting, prioritising and circulating information and know-how on renewable energy sources;

(d) targeted actions facilitating the market penetration of renewable energy sources and relevant know-how, in order to facilitate the transition from demonstration to marketing, and encouraging investment, by advising on the preparation and presentation of projects and their implementation;

(e) monitoring and evaluation actions intended to:

— monitor the implementation of the Community strategy and action plan for the development of renewable energy sources,

— support initiatives taken in implementing the action plan, particularly with a view to promoting better coordination and greater synergy between actions, including all Community funded activities and those funded by other bodies such as the European Investment Bank,

— monitor the progress achieved by the Community and comment on that achieved by the Member States with regard to the development of renewable energy sources,

— evaluate the impact and cost effectiveness of actions and measures undertaken under this programme. This evaluation shall also take into account the environmental and social aspects, including the effects on employment.

Article 3

1. All costs relating to the actions and measures referred to in Article 2(1)(a), (c) and (e) shall be borne by the Community. Where a body other than the Commission proposes a measure covered by (c), the Community's financial contribution shall not exceed 50 % of the total cost of the measure; the balance may be defrayed by public or private sources or a combination of the two.

2. The level of funding under the programme for the actions and measures referred to in Article 2(1)(b) shall not exceed 50 % of their total cost; the balance may be defrayed by public or private sources or a combination of the two.

3. The level of funding under the programme for the actions and measures referred to in Article 2(1)(d) shall be established annually for each of the targeted actions in accordance with Article 4(2).

Article 4

1. The Commission shall be responsible for the financial execution and implementation of the programme. It shall also ensure that actions under the programme are subject to prior appraisal, monitoring and subsequent evaluation which, on completion of the project, shall include assessment of impact, extent of implementation and whether the original objectives have been achieved. The Commission shall ensure that the selected beneficiaries submit reports to the Commission at least on a six-monthly basis or, in the case of projects lasting less than one year, at the halfway point and on completion.

The Commission shall keep the committee provided for in Article 5 informed of the development of projects.

2. The conditions and guidelines to be applied for the support of the actions and measures referred to in Article 2(1) shall be defined each year taking into account:

(a) the priorities set out by the Community and the Member States in their programmes for the promotion of renewable energy sources;

(b) criteria relating to the cost effectiveness and development potential of renewable energy sources and their impact on employment and the environment, in particular the reduction of CO_2 emissions;

(c) for the actions referred to in Article 2(1)(d), the relative cost of the assistance, the long-term commercial viability, the new production capacity expected to arise and the extent of transregional and/or transnational benefits;

(d) the principles established in Article 92 of the Treaty and the relevant Community guidelines on State aid for environmental protection.

The committee provided for in Article 5 shall assist the Commission in defining these conditions and guidelines.

Article 5

The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time-limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith. In that event:

(a) the Commission may defer application of the measures which it has decided for a period of not more than one month from the date of such communication;

(b) the Council, acting by a qualified majority, may take a different decision within the time limit referred to in point (a).

Article 6

1. During the second year of the programme, the Commission shall present a report to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on the measures taken to promote renewable energy sources at the level of the Community and of the Member States, with reference in particular to the objectives set out in Article 1. That report shall be accompanied by proposals for any amendments to the programme which may be necessary in the light of those results.

2. On the expiry of the programme, the Commission shall assess the results obtained from the application of this Decision on the basis of a report by independent experts and the consistency of national and Community actions. It shall present a report thereon to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions.

Article 7

The programme shall be open to participation by associated central and eastern European countries (CEEC) in accordance with the conditions, including financial provisions, laid down in the additional protocols to the Association Agreements, or in the Association Agreements themselves, relating to participation in Community programmes. The programme shall also be open to participation by Cyprus on the basis of additional appropriations, under the same rules as those applied to EFTA/EEA countries, in accordance with procedures to be agreed with that country.

Article 8

This Decision shall apply from 1 January 1998 until the entry into force of the multiannual framework programme for measures in the energy sector and until 31 December 1999 at the latest.

Article 9

This Decision is addressed to the Member States.

Done at Brussels, 18 May 1998.

For the Council

The President

LORD SIMON of HIGHBURY

COMMISSION

COMMISSION DECISION

of 16 September 1997

on State aid for Gemeinnützige Abfallverwertung GmbH

(notified under document number C(1997) 2903)

(Only the German text is authentic)

(Text with EEA relevance)

(98/353/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Agreement establishing the European Economic Area, and in particular Article 62(1)(a) thereof,

Having given the parties concerned the opportunity to submit their comments, in accordance with Article 93 of the EC Treaty,

Whereas:

I

On 15 December 1995, in response to several complaints, the Commission initiated proceedings pursuant to Article 93(2) of the EC Treaty against aid for the Aachen company Gemeinnützige Abfallverwertung GmbH (GAV). GAV is a non-profit-seeking enterprise operated by Sozialwerk Aachener Christen eV. It operates on the waste disposal market, where, as part of the Germany dual system (Duales System Deutschland — DSD), it collects and sorts recyclable waste and sells it as secondary raw materials. GAV competes in this sector with profit-seeking private firms. They consider that GAV has displayed aggressive market behaviour, which is why they lodged complaints with the Commission.

GAV normally employs between 40 and 60 persons, 25 % of whom are handicapped and 50 % of whom are long-term unemployed persons who are difficult to place in employment. These 'problem' categories, who are not selected by GAV itself but by the local social services and labour office, are given contracts of employment for a limited period. The aim in employing them with GAV is to train such persons and subsequently to reintegrate them into the 'normal' labour market. So as to be able to perform this particular task of training and reintegrating persons facing special problems, GAV also employs specialist staff (social workers, educational staff) to look after them. From 1987 to 1995, GAV employed and trained a total of 440 persons through the use of temporary employment contracts. In 1993, GAV's turnover amounted to DEM 2,8 million, equivalent to 0,004 % of the overall German market, whose total turnover was DEM 75 billion. GAV had a turnover of DEM 3,6 million in 1994 and a turnover of DEM 4,1 million in 1995. The company's balance sheet total was DEM 4,7 million in 1995.

Until 1992, GAV performed the collection of recyclable waste (which at that time was a purely municpal function) solely for the city of Aachen and received from the city an amount to offset the costs involved in performing this activity. Since GAV was running up substantial deficits, the city of Aachen decided to integrate it into the new municipal waste-disposal plan. The city of Aachen's decision was based on the conclusions and recommendations of an independent consultant whose job it was to submit annual reports to the city of Aachen on GAV's economic situation and, if necessary, recommendations for improving its viability and hence reducing the financial support for GAV provided by the city of Aachen. The consultant's report for 1992 recommended that GAV's activities should be integrated in the German dual system (DSD), which is a non-State-assisted private-sector system for the collection of packaging waste and is based on an

agreement between a large number of commercial firms which are in competition with one another. GAV was obliged to collect, sort and market all recyclable waste in the city of Aachen. Since the owner of the sorting-depot originally leased by GAV had given notice to terminate the lease, GAV undertook, with a view to performing this activity, to build a new sorting-depot on a site belonging to the city of Aachen, to which it acquired the leasehold. The annual lease currently amounts to DEM 118 000.

Since, because of its precarious financial situation, GAV was not in a position to finance the new sorting-depot entirely from its own resources (the total capital costs amounted to some DEM 4 million), it received an *ad hoc* subsidy from the Cologne municipal government. According to its administrative decision, however, the subsidy was granted with the proviso that the firm should use the building only for the sorting of recyclable waste and that it should continue to employ disadvantaged people for at least 25 years. If that condition was not met, GAV would have to repay the subsidy immediately.

In addition, GAV received from the city of Aachen annual subsidies for measures connected with work motivation. According to the agreement between the city of Aachen and GAV, the financial contribution consisted of a payment of up to DEM 240 000 in 1992, plus a subsidy that would be necessary in order to fully cover the lease. For 1993, it was provided that the total payments including a lease subsidy should not exceed DEM 240 000. The agreement provided that, as from 1994, the subsidies would decrease to a level amounting to no more than the annual lease. In accordance with the agreement, GAV received the following amounts from the city of Aachen:

1992	DEM 244 968
1993	DEM 179 243
1994	DEM 59 621.

Although they were not based on any approved aid schemes, neither the subsidy for the building of the new sorting-depot nor the payments by the city of Aachen were notified to the Commission, as both the Aachen and the Cologne authorities took the view that no State aid within the meaning of Article 92(1) of the EC Treaty was involved. They based this view on two arguments. Firstly, they argued that GAV was not a profit-seeking enterprise, but an undertaking of public utility. Secondly, the money made available to GAV served only to offset additional costs imposed by the employment, training and support of young unemployed people and the disadvantaged. The authorities did concede that GAV was in competition with other firms. However, they said that they monitored GAV and had not identified any aggressive market behaviour on its part.

GAV's competitors, who had lodged complaints with the Commission, simultaneously applied to German administrative courts for interim legal protection against the decision of the Cologne government to subsidise the construction of the new sorting-depot. They based their applications on an alleged infringement of German competition law and of Articles 92 and 93 of the EC Treaty. They therefore attempted to persuade two administrative courts to impose an immediate halt on the payments, but were turned down by both courts. Both courts held that the competitors, in contrast to GAV, were achieving large profits and that, if interlocutory decisions were given in favour of the competitors, GAV would have to declare itself bankrupt. Furthermore, both courts harboured doubts that the measures to assist GAV were 'aid' within the meaning of Article 92 of the EC Treaty. Lastly, they held that the competitors had been unable to prove any aggressive market behaviour.

In assessing the financial support for GAV, the Commission came to the conclusion that the measures were individually notifiable aid within the meaning of Article 92(1) of the EC Treaty. In addition, it doubted that the criteria for applying the derogations in Article 92(2) and (3) of the EC Treaty were met. It therefore decided to initiate proceedings.

II

By letter dated 2 April 1996, the German authorities submitted their comments on the Commission's decision to initiate proceedings pursuant to Article 93(2) of the EC Treaty in respect of the aid for GAV.

In that letter, they reiterated their view that the measures did not constitute State aid, since 75 % of GAV's activities related to the collection of household waste. They pointed out that the Commission had taken the view that incentives for such collections did not constitute State aid so long as the secondary raw materials were sold at market prices.

In addition, in their view, the payments to GAV were not aid, since GAV was not a profit-seeking enterprise and, because of this status, could not be compared with 'normal' enterprises operating on the same market.

In this connection, they pointed out once again that GAV's main purpose was not to operate on the waste-recycling market in competition with other firms, but to train disadvantaged persons. Such persons, who would otherwise be excluded from the 'normal' labour market, could be much more easily integrated into that market at the end of their temporary contract with GAV and consequently did not need any further financial support from

the State. The annual subsidies from the city of Aachen merely offset the additional costs which GAV incurred as a result of its special status as a non-profit-seeking firm and its objective of training disadvantaged persons.

The German authorities also emphasised that steps had been taken to ensure that the annual subsidies did not enable GAV to undercut prices for final products. The agreement between the city of Aachen and GAV provided that, before each payment by the city, checks were to be carried out at various levels by mutually independent auditors. The subsidies were granted each year on condition that:

— GAV employed an independant auditor to report continuously on the firm's financial prospects,

— the municipal auditing office had permanent access to the firm's balance sheets and could carry out effective checks,

— the Youth Assistance Committee of the city of Aachen received regular reports on GAV's economic situation and the use made of the subsidies received.

These checks carried out before each payment ruled out any possibility that GAV could abuse its position and behave aggressively on the market.

As regards the investment subsidy of DEM 2,7 million from the Cologne administration for the construction of the new sorting-depot, the German authorities pointed out that the construction of this building had become necessary not only because the owner of the old, leased building had given notice to terminate the lease, but also because the old building did not meet the requirements of German environmental protection legislation, in particular the rules on air and water pollution and the prevention of noise. Since the old building did not meet these environmental requirements, official authorisation for GAV to carry out its activites there had always been provisional and limited in time. The move to a new sorting-depot was therefore necessary for the continued existence of the firm, which, however, was unable to finance the building from its own resources because of its difficult financial situation. In this connection, the German authorities reiterated that the granting of the investment subsidy was, under the administrative decision, subject to the proviso that GAV used the building solely for the sorting of recyclable waste and continued to employ disadvantaged persons for at least 25 years. If it failed to meet this condition, GAV had to repay the subsidy immediately.

Lastly, the German authorities argued that all the measures in support of GAV were in line with the fifth recommendation of the European Council at its meeting in Essen, since GAV's activities were without exception intended to promote the integration or reintegration of disadvantaged persons into the labour market and GAV would not be able to pursue those activities without financial support from the public authorities.

III

By letter dated 10 July 1996, the Commission communicated to Germany the comments submitted by interested parties in response to the notice on initiation of proceedings ([1]), namely comments from a lawyer representing a regional competitor in Germany and from the German association 'Sekundärrohstoffe und Entsorgung' (secondary raw materials and disposal). The lawyer representing the German regional competitor expressly agreed with the Commission's view that the measures in support of GAV were to be regarded as aid within the meaning of Article 92(1) of the EC Treaty. In his view, none of the exceptions provided for in Article 92(2) and (3) of the EC Treaty were applicable. Consequently, the aid had to be recovered.

As far as the annual payments by the city of Aachen were concerned, the lawyer acknowledged that, because of its special status, GAV had to bear higher costs than a normal firm, so that some compensation for these extra costs might be justified. However, the payments made by the city of Aachen went beyond mere compensation and enabled GAV to use the funds for its business and to act aggressively on the market. In such circumstances his client, who received no aid, was no longer competitive and was losing his customers. In this connection, the lawyer also denied emphatically that the municipal authorities in Aachen were carrying out an effective monitoring of GAV's pricing policy.

As regards the investment subsidy provided by the Cologne government, the lawyer doubted that there was any connection between such payment and the offsetting of the additional costs incurred by GAV. On the contrary, the construction of the new building actually allowed GAV to expand its activities and hence to step up the competition with other firms in the recycling sector that did not receive any public funds. Consequently, the support provided for the construction of the new sorting-depot also resulted in an unacceptable distortion of competition.

The German association 'Sekundärrohstoffe und Entsorgung' shared the lawyer's opinion that the payments made by the city of Aachen overcompensated for the economic disadvantages of GAV. The association also disputed any connection between the investment subsidy provided by the Cologne government and the ad-

([1]) OJ C 144, 16. 5. 1996, p. 9.

ditional costs to be borne by GAV. GAV had received more public money than was required to offset its disadvantages and had thereby been enabled to act agressively on the market and to distort competition. Such conduct was not justified under the Community rules on State aid. Consequently, the aid must be recovered.

IV

By letter dated 29 August 1996, Germany sent its reply to the comments submitted by interested third parties. At the Commission's specific request, made in a letter dated 28 October 1996 and at a meeting held on 15 April 1997, the reply was supplemented by two letters dated 11 December 1996 and 7 July 1997. Numerous annexes were attached to these letters in order to substantiate GAVS's special status, its pricing policy and the monitoring carried out by the authorities, and also the need for State support for the building of the sorting-depot.

The company's balance sheets for the period from 1990 to 1995 indicated that, while the firm had equity capital of DEM 350 000 in 1990, this contrasted with a loss carryover of DEM 370 000. This loss carryover was reduced over the reporting period as a result of modest annual profits, but still amounted to DEM 42 400 at the end of 1995.

A detailed list of names showed that from 1987 to 1995, 440 persons had been employed and trained on a temporary basis by GAV.

A report drawn up in November 1994 by an independent consultant contained, amongst other things, a comparison between the public funds received and the extra costs which GAV incurred as a result of the employment and training of disadvantaged persons in the period from 1991 to 1995. The comparison showed that the amount of public funds exceeded the economic disadvantages of GAV in 1991 — the last year in which GAV had been exclusively active in waste disposal for the city of Aachen and had thus performed an exclusively municipal function — by DEM 700 000, but that this excess was continually reduced to the point where, in 1994, the economic disadvantages exceeded the public allocations by DEM 124 000. For 1995, it was even estimated that the economic disadvantages would be DEM 393 000 higher than the public allocations.

A further report drawn up in March 1996 by an independent consultant contained a comparison between the average prices for recycled paper calculated monthly by the independent market research company Europäischer Wirtschaftsdienst GmbH (EUWID) and the prices charged by GAV between February 1994 and January 1996. The figures contained in this report showed that GAV had not at any time undercut the prices determined by EUWID. Extracts from contracts between GAV and some of its customers were also submitted to the Comission, and these confirmed the conclusions of the consultant, since it had consistently been agreed that the prices for each delivery of recycled paper would be based on the EUWID price index valid at such time.

A copy of the framework agreement between the city of Aachen and GAV governing their respective tasks and obligations showed that each payment by the city of Aachen had to be preceded by checks carried out at several levels by mutually independent auditors. The minutes of the Youth Assistance Committee meeting held on 3 September 1991, which was presented as an example of the carrying-out of the checks, confirmed that such a check had in fact been carried out and that the firm had presented all economic data in accordance with the framework agreement.

The copies of two administrative decisions taken on 24 February and 3 September 1993 in which GAV was exceptionally and provisionally authorised to continue its activities in the old sorting-depot pending the construction of the new building confirmed that production in the old building did not comply with German environmental protection rules (in particular, those governing air pollution and the prevention of noise). A copy of the notice served on 27 December 1994 showed that the owner of the old building wished to terminate the lease at the end of 1995 and was not prepared to extend the leasing agreement beyond then.

V

In the course of the Article 93(2) proceedings, the view taken by the Commission in initiating the proceedings that the measures taken by the city of Aachen and by the Cologne government were to be regarded as State aid within the meaning of Article 92(1) of the EC Treaty became more firmly established.

As was explained above, GAV received payments from the public authorities totalling DEM 3 183 832, including DEM 2,7 million in the form of an investment subsidy in 1992 and DEM 483 832 in the form of annual subsidies in the period 1992, 1993 and 1994 (in the agreement between the city of Aachen and GAV, such subsidies were no longer provided as from 1995).

The classification of such payments as aid within the meaning of Article 92(1) of the EC Treaty is not to be ruled out simply because GAV collects household waste. The Commission has in the past stated (answer to Written Question No 2057/92) [1] that incentives for such collections do not constitute State aid so long as the secondary raw materials are sold at market prices. Germany has emphasised to the Commission, and has substantiated

[1] OJ C 47, 18. 2. 1993, p. 14.

through reports, that at least 75 % of GAV's activities relate to the collection of household waste. However, it was not demonstrated that GAV thereby performs a task which, under German law, is normally the responsibility of the municipalities or that no competition is involved here. Rather, since the introduction of the dual system, the collection, sorting and marketing of recyclable waste has been a private-sector activity. The dual system involves a large number of firms which are in competition with one another. It is entirely possible that this may involve cross-border competition, particularly if the assisted firm is located not far from the frontier with other Member States. Consequently, payments to such firms may amount to aid that distorts competition within the meaning of Article 92(1) of the EC Treaty and adversely affects trade between Member States. It must also be noted that the payments to GAV were not granted as an incentive for the separate collection of recyclable waste but to support the employment by GAV of unemployed persons who are difficult to place in employment.

In addition, the fact that GAV is owned by Sozialwerk Aachener Christen eV and, like its owners, is not profit-seeking, is not relevant to assessing the effects of the aid on trade and competition so long as GAV is competing on the waste market with profit-seeking firms. The argument that the aid merely offsets additional costs does not alter the fact that it is aid, though this point should be taken into account in assessing whether the aid is eligible for any of the derogations provided for in Article 92(3) of the EC Treaty.

Neither the investment subsidy of DEM 2,7 million nor the annual subsidies which GAV received from 1992 to 1994 was notified in advance in accordance with Article 93(3) of the EC Treaty, even though they were not based on any approved aid schemes. The aid was thus granted unlawfully.

However, both the investment subsidy and the annual subsidies could be eligible for one of the exemptions provided for in Article 92 of the EC Treaty and Article 61 of the EEA Agreement.

The derogations provided for in Article 92(2) of the EC Treaty are not applicable in this case, given the characteristics of the aid and the fact that it does not meet the conditions that would allow the derogations to be applied.

Furthermore, it should be pointed out that the city of Aachen is not situated in an area eligible for regional aid pursuant to Article 92(3)(a) or (c) of the EC Treaty.

However, in view both of the social aspect of the annual subsidies that were paid in order to enable GAV to recruit and train disadvantaged persons and the importance of the new sorting-depot (built as part of the implementation of a restructuring plan) to the continuation of GAV's social activities and the fact that the aid was not misued for the purposes of aggressive market behaviour, the Commission concludes that trading conditions are not adversely affected to an extent contrary to the common interest. For these reasons and having regard to the following considerations relating to the Community guidelines on aid to employment ([1]) and the Community guidelines on State aid for rescuing and restructuring firms in difficulty ([2]), the Commission concludes that the aid is covered by the derogation provided for in Article 92(3)(c) of the EC Treaty and can be approved as aid to facilitate the development of certain economic activities.

The annual subsidies totalling DEM 0,48 million (payments now suspended)

It must be borne in mind here that although, as a firm operating in the waste recycling sector, GAV is in competition with other firms, its role goes beyond such economic activities. The firm is required to employ handicapped persons and the long-term unemployed for a limited period and to train them. This benefits such persons in two ways. First, they have a job for a certain period at least, and second, the special training provided by GAV may increase their prospects of finding employment on the 'normal' labour market, from which they would perhaps otherwise have been permanently excluded. GAV's activity is thus in line with the recommendations of the European Council at its meeting in Cannes, which called for priority to be given to the strengtening of measures to promote the employment of disadvantaged groups such as the long-term unemployed, young people and older employees.

Nor, moreover, are GAV's activities in conflict with the Community guidelines on aid to employment, point 13 of which expressly states that 'the Commission has traditionally been sympathetic to employment aid, particularly where it is entended to encourage firms to create jobs or to hire individuals who face particular difficulties in finding work'. The annual subsidies which GAV received from 1992 to 1994 were in fact intended to induce it to recruit disadvantaged rather than 'normal' job seekers; however, since it is in any case obliged, under its articles of association, to employ such persons, the abovementioned provision may not be applicable to the annual subsidies. In addition, the annual subsidies do not directly contribute to the creation of long-term jobs for such persons. However, as may be deduced from point 21

([1]) OJ C 334, 12. 12. 1995, p. 4.
([2]) OJ C 368, 23. 12. 1994, p. 12.

of the guidelines, in the case of the employment of disadvantaged persons, the requirement of long-term employment and net job creation is not essential if the temporary recruitment — as in the case of GAV — is voluntarily terminated; the main reason for the provision in point 13 is to ensure that a firm regularly employing disadvantaged persons on the basis of temporary work contracts does not then dismiss them when the temporary work contract has expired, only to recruit further disadvantaged persons, for a limited period once again, with the help of further aid. Such conduct would be a clear abuse of employment aid and, rather than helping to create jobs for disadvantaged persons, would merely provide operating aid for the relevant firm. As already explained, as regards GAV's activities, any such risk is excluded by its objective of helping to overcome the employment problems of disadvantaged persons (440 such persons were in fact recruited and trained between 1987 and 1995). GAV's activities can, therefore, quite readily be regarded as being compatible with the Community guidelines on aid to employment.

Furthermore, there is no evidence whatsoever that GAV might misuse the aid in order to undercut prices. The German authorities have shown unequivocally that such conduct is out of the question thanks to the procedure for monitoring GAV's activities. The agreement between the city of Aachen and GAV provides for use of the aid to be supervised by the Youth Office, an independent adviser and the Audit Office. The documents presented by Germany show that these checks actuallly take place.

Moreover, the report drawn up in November 1994 by an independent consultant shows that the amount of the annual subsidies was not only limited, but also decreased from year to year to the point where the economic disadvantages incurred by GAV as a result of its special social task were actually DEM 124 000 higher than the public funds which it had received by way of compensation. Furthermore, the two reports drawn up by independent consultants in November 1994 and March 1996 and passed on to the Commission show clearly that GAV's prices were not below the average market prices, but in most cases actually exceeded them.

In view of the social effects of the aid, which was supposed to enable GAV to perform its special social tasks, and the fact that the aid was not misused for the purposes of persuing aggressive market behaviour, it can be assumed that trading conditions are not adversely affected to an extent contrary to the common interest and that the derogation provided for in Article 92(3)(c) of the EC Treaty can be applied to the annual subsidies.

The investment subsidy

As regards the investment subsidy of DEM 2,7 million granted in 1992 for the construction of a new sorting-depot, it should be noted at the outset that the subsidy was not intended directly to offset the additional social costs which GAV incurred as a result of its particular task of employing and training disadvantaged persons.

However, in the course of the Article 93(2) proceedings, it emerged that there are a whole series of grounds for granting the subsidy, including the successful implementation of the decision by the city of Aachen to integrate GAV into the city's new waste removal system in order to reduce GAV's annual deficits, and thus to enable it to continue to carry out its social activities. The investment subsidy could therefore be authorised under the derogation provided for in Article 92(3)(c) of the EC Treaty in conjunction with the Community guidelines on State aid for rescuing and restructuring firms in difficulty, on condition, however, that the conditions laid down in the guidelines are met in the case of GAV.

In 1992, GAV could certainly be regarded as a firm in difficulties within the meaning of the guidelines, since at that time it was overloaded with debt and should in normal circumstances have declared bankruptcy. According to its 1992 balance sheet, its loss carryover was DEM 20 000 higher than its equity capital, and it has no other assets to offer as securities. In such a situation, no private bank would have granted GAV a loan that would have enabled it to finance the construction of the building and thus continue to perform its social activities consisting of the employment and training of disadvantaged persons.

The construction of the new building was urgently necessary in order to integrate GAV into the German dual system, a plan which had been proposed by an independent consultant and approved by the city of Aachen in order to cut back the enormous deficits which the firm had built up when it was still operating exclusively within the ambit of the city of Aachen's municipal waste removal.

The consolidated annual accounts presented to the Commission show that the goal of reducing GAV's deficits and thus improving its viability was achieved. The firm's loss carryover, which in 1992 had amounted to DEM 370 000, was reduced to DEM 42 400 as a result of modest annual profits.

Furthermore, it became clear during the Article 93(2) proceedings that the financial support for building the new sorting-depot provided by the public authorities was an essential precondition for implementing the new policy of integrating the firm into the waste disposal system of the city of Aachen and hence for consulting its social activities.

The old sorting-depot had only been leased, and the owner had given notice to terminate the lease. Consequently, GAV would have had to cease business if the new depot had not been built.

The German authorities have also pointed out that the building of the new sorting-depot was necessary in order to bring GAV's activities into line with German environmental protection provisions, particularly those on air and water pollution and the prevention of noise. Since production in the old building did not meet the requirements of these provisions, the administrative decisions authorising GAV to perform its activities in the old building were only provisional and temporary. The standards incorporated into the new building actually go beyond those laid down in the provisions.

Moreover, it is clear from the administrative decision of the Cologne government that there was a close connection between the granting of the investment subsidy and GAV's social activities; the granting of the investment subsidy was made subject to the proviso that GAV continue to employ disadvantaged persons for at least 25 years. Otherwise it will have to repay the subsidy.

Furthermore, as regards its balance sheet, turnover and its workforce ranging between 40 and 60 persons, GAV is very similar to a small enterprise within the meaning of the Community guidelines on State aid for small and medium-sized enterprises. In addition, GAV's share of the German market for recyclable waste in 1993 amounted to only 0,004 % and consequently to a much smaller share of the total Community market.

Nor should it be forgotten that GAV itself contributed substantially to the construction of the sorting-depot and hence to the restructuring of its activities by providing DEM 1,3 million from its own resources for the investment amounting in total to DEM 4 million.

Lastly, it must be borne in mind that the German authorities have demonstrated that GAV has not behaved aggressively on the market and has therefore not misused for such purposes the aid which it has received.

In view of these arguments and in particular the importance of the new building for the continuation of GAV's social tasks, it can be concluded that trading conditions are not adversely affected to an extent contrary to the common interest and that the derogation provided for in Article 92(3)(c) of the EC Treaty in conjunction with the Community guidelines on State aid for rescuing and restructuring firms in difficulty can be applied to the investment subsidy provided by the Cologne government administrative division.

VI

Since GAV has only a limited market share and has demonstrably not engaged in any aggressive market behaviour, and since the abovementioned arguments in favour of the aid outweigh any disadvantges for the common market, the aid for GAV can be approved. In addition, if the Commission were to reject the aid, this would contradict its own policy of promoting employment possibilities for disadvantaged persons. However, approval of the aid must be made subject to the condition that Germany continue to carry out appropriate measures to monitor GAV's market behaviour and in particular its pricing policy,

HAS ADOPTED THIS DECISION:

Article 1

The annual subsidies totalling DEM 0,48 million in the period from 1992 to 1994 and the investment subsidy of DEM 2,7 million which were granted to Gemeinnützige Abfallverwertung GmbH (GAV) by the city of Aachen and by the Cologne government administrative district are unlawful aid pursuant to Article 93(3) of the EC Treaty, since they were not notified to the Commission in advance.

The aid referred to in the first paragraph is compatible with the common market on condition that Germany continues to carry out the appropriate measures to monitor GAV's market behaviour and in particular its pricing policy, and that the aid is intended to facilitate the development of certain economic activities and does not adversely affect trading conditions to an extent contrary to the common interest.

Article 2

Germany shall inform the Commission, within two months of being notified of this Decision, of the measures taken to comply with it.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 16 September 1997.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION

of 19 May 1998

adopted pursuant to Council Regulation (EC) No 3286/94 concerning obstacles to trade represented by Japanese practices in respect of imports of leather

(notified under document number C(1998) 1373)

(98/354/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3286/94 of 22 December 1994 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organisation (WTO) [1], as amended by Regulation (EC) No 356/95 [2], and in particular Articles 13 and 14 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) On 24 February 1997 the Commission received a complaint pursuant to Article 4 of Council Regulation (EC) No 3286/94, regarding Japanese practices in relation to trade in leather. The complaint was lodged by Cotance, the Confederation of National Associations of Tanners and Dressers of the European Union. The products concerned were leather in the piece of bovine or equine animals tanned and ready to finish and/or dyed, coloured, stamped or embossed, whether or not split and leather in the piece of ovine or caprine animals, tanned and dyed, coloured or embossed.

(2) Cotance contended that it was almost impossible to export any such leather from the European Community to Japan on account of the combined effect of the following obstacles to trade: the way in which the tariff quotas for such leather was managed which, it was alleged, prevented their exhaustion, subsidisation of the Japanese leather industry and the restrictive business practices of Japanese importers and traders.

(3) The complaint adduced sufficient evidence to justify initiating a procedure pursuant to Regulation (EC) No 3286/94. On 9 April 1997 the Commission therefore initiated an examination procedure [3] which resulted in its conducting an in-depth investigation, from the legal and factual standpoints, of the conditions under which leather is imported into Japan. On completion of that investigation, the Commission finds as follows:

B. OBSTACLES TO TRADE

(a) Management of the tariff quotas

(4) In 1986 Japan established three tariff quotas for imports of finished leather in the piece of bovine or equine animals (first and second quotas) and of ovine or caprine animals (third quota), under which imports of the said products are subject to a reduced rate of duty. In 1997 this reduced rate stood at between 13,9 % and 18,5 % while the rate for non-quota imports was 48,8 %, i.e. clearly a deterrent level. Although the level of the three quotas, fixed each year by the Diet, is low, they are regularly under-utilised despite the very considerable interest of Community tanners in the Japanese market.

(5) The Commission has established that management of the licensing system, under which goods may be imported under the tariff quotas, is extremely complex. The quantities allocated to traditional importers are calculated on the basis of their previous import operations and a flat-rate ceiling is fixed for new importers. This system would appear open to criticism in a number of respects.

(6) In the first place, the quantity allocated to traditional importers is not increased — or is increased only to a very limited extent — from one year to the next and new importers are allocated only a very small quantity even though the quotas are not exhausted at the end of the year.

(7) Secondly, licences are sometimes issued for quantities that are of no real economic interest and the very short period of validity of certain licences, issued at the end of the year, is not such as would enable them to be used to their optimum extent. The validity of unused licences may not be extended from one year to the next.

[1] OJ L 349, 31. 12. 1994, p. 71.
[2] OJ L 41, 23. 2. 1995, p. 3.
[3] OJ C 110, 9. 4. 1997, p. 2.

(8) Thirdly, applications for licences under the 'general' quota, which accounts for 95 % of the total quota, must be submitted on one day only , at the beginning of the year. This requirement does not seem reasonable.

(9) Lastly, certain features of the administration of the system, such as the criteria governing recognition as a traditional importer, tend to deter foreign companies from establishing an office in Japan in order to import leather directly, i.e. without resorting to the services of Japanese intermediaries.

(10) The Commission concludes from the above that the system for issuing import licences under the three tariff quotas open for leather is more complex than necessary and is such as to constitute indirect protection for domestic leather in Japan.

(11) On the basis of these considerations, the Commission finds that compliance of the system for issuing import licences with Article 1(6) and Article 3(5)(g), (h), (i) and (j) of the Agreement on import licensing procedures, annexed to the Marrakech Agreement Establishing the WTO, is open to challenge.

(b) **Subsidies**

(12) The Commission has also established that the Japanese Government has, for many years, granted substantial subsidies to improve the regions referred to as 'Dowa'. The budget earmarked for 1996 was JPY 126 000 million. These subsidies, which have not been notified to the WTO, may be regarded as specific in so far as they are granted only to certain enterprises established in territory under the jurisdiction of the Japanese Government and there is no neutral or horizontal criterion determining entitlement to them. The parts of Japanese territory where the said enterprises are located appear to be precisely those where the Japanese tanneries have traditionally been established.

(13) There is also a programme of subsidies to the leather industry, notified by Japan under Article XVI of the 1994 GATT and Article 25 of the Agreement on Subsidies and Countervailing Measures, which totalled slightly more than JPY 300 million in 1996. Lastly, there is also a guarantee fund covering loans to the leather industries, which yields interest amounting to JPY 300 million per annum.

(14) It appears that the total value of these different programmes is likely to reach the *ad valorem* threshold of 5 % of sales of leather finished in the Dowa regions, which entails a presumption of serious prejudice to Community interests pursuant to Articles 5 and 6 of the Agreement on Subsidies and Countervailing Measures, annexed to the Marrakech Agreement Establishing the World Trade Organisation. The Commission concludes that these subsidies are actionable pursuant to Article 7 of the Agreement on Subsidies and Countervailing Measures on account of their effects on Community interests.

(15) The conclusions of the Commission have been established on the basis of the facts available. In these circumstances, some further information might be necessary in order to confirm the analysis of adverse trade effects caused to the interests of the Community by the subsidies which have been identified. Where appropriate, this information will be obtained during the dispute settlement procedure through recourse to Annex V of the Agreement on Subsidies and Countervailing Measures.

(c) **Business practices of Japanese importers**

(16) Restrictive business practices on the part of Japanese importers and traders have not been proven so that that obstacle to trade cannot be accepted as established.

C. ADVERSE TRADE EFFECTS

(17) The system for managing import licences under the tariff quotas is a source of uncertainty for exporters, who are unable to plan increases in their sales in Japan, and this uncertainty acts as a deterent to making any real effort to penetrate the market. Furthermore, it increases considerably the Community tanneries' export costs which are, in any event, abnormally high.

(18) The subsidies granted to the Japanese industry artifically maintain the competitiveness of Japanese tanners within a market that is already highly protected in other respects. This makes it even more difficult for Community tanners to penetrate the Japanese market.

(19) The result is that Community exports of finished leather to Japan are lower than what may reasonably be expected in a market of this size. Only roughly 1,7 % of Community exports, in terms of volume or value, of the leather to which the

complaint relates is intended for Japan. These difficulties in securing access to the Japanese market have significant adverse trade effects on a Community industry which is highly dependent on exports to the industrialised countries, the only markets in a position to purchase substantial quantities of luxury leather.

D. **THE COMMUNITY INTEREST**

(20) It is in the Community's interest to act on account of the abovementioned adverse trade effects suffered by tanners in a number of Member States.

(21) Moreover, following the adoption in 1984 of the report of the GATT panel on the measures applied by Japan to imports of leather [1], the Community expected that Japan would bring about a genuine improvement in the conditions governing access to that market. In so far as that objective has not been fully attained, it appears in the Community's interest to act in order to rectify this situation.

E. **CONCLUSIONS AND MEASURES TO BE TAKEN**

(22) The investigation has established that the current Japanese arrangements do not make it possible to significantly increase Community exports of leather to Japan. A substantial improvement in the conditions governing access to this market would require that significant changes first be made to the system for managing licences and the subsidy programmes.

(23) It is clear from the different replies received from the Japanese authorities that they have no intention of making the expected changes. In these circumstances, recourse to the dispute settlement procedures under the Marrakech Agreement Establishing the WTO constitutes the sole means whereby the Community can assert its rights.

(24) The Commission will therefore request that Japan enter into international consultations under the WTO dispute settlement procedure pursuant to Article 6 of the Agreement on Import Licensing procedures and Articles 7 and 30 of the Agreement on Subsidies and Countervailing Measures,

HAS DECIDED AS FOLLOWS:

Article 1

1. Management of the three tariff quotas opened for imports of leather into Japan and the effects on Community interests of the subsidies granted to the Japanese leather industry by the Japanese Government constitute 'obstacles to trade' within the meaning of Article 2 of Regulation (EC) No 3286/94.

2. The European Community takes action against Japan pursuant to the Understanding on Rules and Procedures Governing the Settlement of Disputes and any other relevant provision of the Marrakech Agreement Establishing the World Trade Organisation with regard to the obstacles to trade identified in Article 1(1).

Article 2

This Decision shall be applicable from the date of its publication in the *Official Journal of the European Communities*.

Done at Brussels, 19 May 1998.

For the Commission
Leon BRITTAN
Vice-President

[1] Panel on the measures applied by Japan to imports of leather; panel report adopted on 15 and 16 May 1984 (L/5623).

CORRIGENDA

Corrigendum to Council Regulation (EC) No 782/98 of 7 April 1998 amending Regulation (EC) No 1626/94 laying down certain technical measures for the conservation of fishery resources in the Mediterranean

(Official Journal of the European Communities L 113 of 15 April 1998)

On page 6, in the third recital, second line:

for: '... the future accession ...',

read: '... the accession ...'.