ISSN 0378-6978

Official Journal of the European Communities

L 252

Volume 41

12 September 1998

English edition

Legislation

Contents

Price: ECU 19,50

(Continued overleaf)

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other Acts are printed in bold type and preceded by an asterisk.

II *Acts whose publication is not obligatory*

(1) Text with EEA relevance

EN

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 1936/98

of 11 September 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 1498/98 [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 12 September 1998.

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

Done at Brussels, 11 September 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 198, 15. 7. 1998, p. 4.
[3] OJ L 387, 31. 12. 1992, p. 1.
[4] OJ L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 11 September 1998 establishing the standard import values for determining the entry price of certain fruit and vegetables

(ECU/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	060	43,1
	064	73,6
	999	58,3
0707 00 05	052	55,8
	999	55,8
0709 90 70	052	97,6
	999	97,6
0805 30 10	388	77,6
	524	77,2
	528	74,8
	999	76,5
0806 10 10	052	84,6
	064	55,0
	999	69,8
0808 10 20, 0808 10 50, 0808 10 90	388	55,9
	400	62,1
	508	42,5
	512	88,8
	524	42,1
	528	91,0
	800	199,9
	804	67,4
	999	81,2
0808 20 50	052	86,5
	064	60,4
	388	90,5
	528	81,5
	999	79,7
0809 30 10, 0809 30 90	052	73,8
	999	73,8
0809 40 05	052	60,8
	060	46,3
	064	59,3
	066	71,4
	068	50,8
	093	70,4
	400	86,6
	624	140,6
	999	73,3

(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 1937/98

of 11 September 1998

amending Regulation (EC) No 2805/95 fixing the export refunds in the wine sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine [1], as last amended by Regulation (EC) No 1627/98 [2], and in particular Article 55 (3) thereof,

Whereas, pursuant to Article 55 of Regulation (EEC) No 822/87 to the extent necessary to enable the products listed in Article 1 (2) (a) and (b) of that Regulation to be exported on the basis of the prices for those products on the world market and within the limits of the Agreements concluded in accordance with Article 228 of the Treaty, the difference between those prices and the prices in the Community may be covered by an export refund;

Whereas, pursuant to Article 56 (3) of Regulation (EEC) No 822/87, refunds are to be fixed taking into account the situation and likely trends with regard to:

— prices and availability of the products in question on the Community market,

— world market prices for those products;

Whereas account must also be taken of the other criteria and objectives referred to in Article 56 (3) of Regulation (EEC) No 822/87; whereas, in particular, consideration must be given to the limits of the Agreements concluded in accordance with Article 228 of the Treaty, and in particular those resulting from the agreements concluded in the framework of the Uruguay Round of multilateral trade negotiations;

Whereas, when applying the abovementioned rules to the current market situation, the refunds should be fixed in accordance with the Annex to this Regulation; whereas Commission Regulation (EC) No 2805/95 of 5 December 1995 fixing the export refunds in the wine sector [3], as last amended by Regulation (EC) No 1764/97 [4], should be amended accordingly and provision made to implement it immediately;

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

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 2805/95 is hereby replaced by the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 12 September 1998.

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

Done at Brussels, 11 September 1998.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 84, 27. 3. 1987, p. 1.
[2] OJ L 210, 28. 7. 1998, p. 8.
[3] OJ L 291, 6. 12. 1995, p. 10.
[4] OJ L 249, 12. 9. 1997, p. 2.

ANNEX

'ANNEX

CN code	Product code	For export to [1]	Refund (ECU/hl)
2009 60 11 2009 60 19 2009 60 51 2009 60 71 2204 30 92 2204 30 94 2204 30 96 2204 30 98	9100	01	43,359 43,359 43,359 43,359 43,359 11,488 43,359 11,488
2204 21 79 2204 21 79 2204 21 83	9120 9220 9120	02 and 09 02 and 09	4,782
2204 21 79	9180	02	8,068
2204 21 80	9180	02	10,065
2204 21 79	9180	09	7,549
2204 21 80	9180	09	9,419
2204 21 79	9280	02	9,445
2204 21 80	9280	02	11,785
2204 21 79	9280	09	8,838
2204 21 80	9280	09	11,027
2204 21 83	9180	02	11,019
2204 21 84	9180	02	13,749
2204 21 83	9180	09	10,311
2204 21 84	9180	09	12,865
2204 21 79	9910	02 and 09	4,782
2204 21 94 2204 21 98	9910	02 and 09	14,250
2204 29 62 2204 29 64 2204 29 65 2204 29 83	9120	02 and 09	4,782
2204 29 62 2204 29 64 2204 29 65	9220	02 and 09	4,782
2204 29 62 2204 29 64 2204 29 65	9180	02	8,068
2204 29 71 2204 29 72 2204 29 75	9180	02	10,065

CN code	Product code	For export to (1)	Refund (ECU/hl)
2204 29 62 2204 29 64 2204 29 65	9180	09	7,549
2204 29 71 2204 29 72 2204 29 75	9180	09	9,419
2204 29 62 2204 29 64 2204 29 65	9280	02	9,445
2204 29 71 2204 29 72 2204 29 75	9280	02	11,785
2204 29 62 2204 29 64 2204 29 65	9280	09	8,838
2204 29 71 2204 29 72 2204 29 75	9280	09	11,027
2204 29 83	9180	02	11,019
2204 29 84	9180	02	13,749
2204 29 83	9180	09	10,311
2204 29 84	9180	09	12,865
2204 29 62 2204 29 64 2204 29 65	9910	02 and 09	4,782
2204 29 94 2204 29 98	9910	02 and 09	14,250

(1) The destinations are as follows:

01 — Libya, Nigeria, Cameroon, Gabon,

— Saudi Arabia, United Arab Emirates, India, Thailand, Vietnam, Indonesia, Malaysia, Brunei, Singapore, Philippines, China, Hong Kong SAR, South Korea, Japan, Taiwan, Equatorial Guinea,

02 all countries of the African continent with the exception of those explicitly excluded under 09,

09 all destinations other than those in 02, with the exception of the following third countries and territories:

— all countries of the American continent within the meaning of Commission Regulation (EEC) No 208/93 (OJ L 25, 2. 2. 1993, p. 11),

— Algeria,

— Australia,

— Bosnia-Herzegovina,

— Croatia,

— Cyprus,

— Israel,

— Morocco,

— The Republic of Serbia and Montenegro,

— Slovenia,

— South Africa,

— Switzerland,

— The former Yugoslav Republic of Macedonia,

— Tunisia,

— Turkey,

— Hungary,

— Bulgaria,

— Romania.'

COMMISSION REGULATION (EC) No 1938/98
of 11 September 1998
on the supply of white sugar as food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

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

Whereas it is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EC) No 2519/97 of 16 December 1997 laying down general rules for the mobilisation of products to be supplied pursuant to Council Regulation (EC) No 1292/96 as Community food aid [2]; whereas it is necessary to specify the time limits and conditions of supply to determine the resultant costs,

HAS ADOPTED THIS REGULATION:

Article 1

White sugar shall be mobilised in the Community, as Community food aid for supply to the recipient listed in the Annex, in accordance with Regulation (EC) No 2519/97 and under the conditions set out in the Annex.

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

Article 2

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

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

Done at Brussels, 11 September 1998.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 166, 5. 7. 1996, p. 1.
[2] OJ L 346, 17. 12. 1997, p. 23.

ANNEX

LOT A

1. **Action No:** 295/96 (A1); 186/97 (A2); 215/97 (A3); 219/97 (A4); 226/97 (A5); 227/97 (A6)
2. **Beneficiary** ([2]): Euronaid, PO Box 12, 2501 CA Den Haag, Nederland
   tel.: (31-70) 33 05 757; fax: 36 41 701; telex: 30960 EURON NL
3. **Beneficiary's representative:** to be designated by the recipient
4. **Country of destination:** A1: Dominican Republic; A2: Haiti; A3 + A4: Madagascar; A5 + A6: Niger
5. **Product to be mobilized:** white sugar
6. **Total quantity (tonnes net):** 202
7. **Number of lots:** 1 in 6 parts (A1: 36 tonnes; A2: 90 tonnes; A3: 18 tonnes; A4: 18 tonnes; A5: 22 tonnes; A6: 18 tonnes)
8. **Characteristics and quality of the product** ([3]) ([5]) ([9]): see OJ C 114, 29.4.1991, p. 1 (V.A.(1))
9. **Packaging** ([7]) ([8]): see OJ C 267, 13.9.1996, p. 1 (11.2 A 1.b, 2.b and B.4)
10. **Labelling or marking** ([6]): see OJ C 114, 29.4.1991, p. 1 (V.A.(3))
    — Language to be used for the markings: A1: Spanish; A2-A6: French
    — Supplementary markings: —
11. **Method of mobilization of the product:** sugar produced in the Community in accordance with the sixth subparagraph of Article 24 (1a) of Council Regulation (EEC) No 1785/81 as follows: A or B sugar (points (a) and (b))
12. **Specified delivery stage:** free at port of shipment
13. **Alternative delivery stage:** —
14. a) **Port of shipment:** —
    b) **Loading address:** —
15. **Port of landing:** —
16. **Place of destination:** —
    — port or warehouse of transit: —
    — overland transport route: —
17. **Period or deadline of supply at the specified stage:**
    — first deadline: 19.10 — 8.11.1998
    — second deadline: 2 — 22.11.1998
18. **Period or deadline of supply at the alternative stage:**
    — first deadline: —
    — second deadline: —
19. **Deadline for the submission of tenders (12 noon, Brussels time):**
    — first deadline: 28.9.1998
    — second deadline: 12.10.1998
20. **Amount of tendering guarantee:** ECU 15 per tonne
21. **Address for submission of tenders and tendering guarantees** ([1]):
    Bureau de l'aide alimentaire, Attn Mr T. Vestergaard, Bâtiment Loi 130, bureau 7/46, Rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel; telex: 25670 AGREC B; fax: (32-2) 296 70 03 / 296 70 04 (exclusively)
22. **Export refund** ([4]): periodic refund applicable to white sugar on 7.9.1998, fixed by Commission Regulation (EC) No 1882/98 (OJ L 244, 3.9.1998, p. 5)

LOT B

1. **Action Nos:** 38/98 (B1); 39/98 (B2); 40/98 (B3)
2. **Beneficiary** (2): WFP (World Food Progamme), via Cristoforo Colombo 426, I-00145 Roma tel.: (39 6) 65 13 29 88; fax: 65 13 28 44/3; telex: 626675 WFP I
3. **Beneficiary's representative:** to be designated by the recipient
4. **Country of destination:** B1: Ethiopia; B2: Angola; B3: North Korea
5. **Product to be mobilized:** white sugar
6. **Total quantity (tonnes net):** 800
7. **Number of lots:** 1 in 3 parts (B1: 500 tonnes; B2: 100 tonnes; B3: 200 tonnes)
8. **Characteristics and quality of the product** (3) (5) (9): see OJ C 114, 29.4.1991, p. 1 (V.A.(1))
9. **Packaging** (7): see OJ C 267, 13.9.1996, p. 1 (11.2 A 1.b, 2.b and B.4)
10. **Labelling or marking** (6): see OJ C 114, 29.4.1991, p. 1 (V.A.(3))
    — Language to be used for the markings: B1 + B3: English; B2: Portuguese
    — Supplementary markings: —
11. **Method of mobilization of the product:** sugar produced in the Community in accordance with the sixth subparagraph of Article 24 (1a) of Council Regulation (EEC) No 1785/81 as follows: A or B sugar (points (a) and (b))
12. **Specified delivery stage:** free at port of shipment
13. **Alternative delivery stage:** —
14. a) **Port of shipment:** —
    b) **Loading address:** —
15. **Port of landing:** —
16. **Place of destination:** —
    — port or warehouse of transit: —
    — overland transport route: —
17. **Period or deadline of supply at the specified stage:**
    — first deadline: 26.10 — 15.11.1998
    — second deadline: 9 — 29.11.1998
18. **Period or deadline of supply at the alternative stage:**
    — first deadline: —
    — second deadline: —
19. **Deadline for the submission of tenders (12 noon, Brussels time):**
    — first deadline: 28.9.1998
    — second deadline: 12.10.1998
20. **Amount of tendering guarantee:** ECU 15 per tonne
21. **Address for submission of tenders and tendering guarantees** (1):
    Bureau de l'aide alimentaire, Attn. Mr T. Vestergaard, Bâtiment Loi 130, bureau 7/46, Rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel; tlx: 25670 AGREC B; fax: (32-2) 296 70 03 / 296 70 04 (exclusively)
22. **Export refund** (4): periodic refund applicable to white sugar on 7.9.1998, fixed by Commission Regulation (EC) No 1882/98 (OJ L 244, 3.9.1998, p. 5)

Notes:

(1) Supplementary information: André Debongnie (tel.: (32-2) 295 14 65)
Torben Vestergaard (tel.: (32-2) 299 30 50).

(2) The supplier shall contact the beneficiary or its representative as soon as possible to establish which consignment documents are required.

(3) The supplier shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.

(4) Commission Regulation (EC) No 259/98 (OJ L 25, 31.1.1998, p. 39), is applicable as regards the export refund. The date referred to in Article 2 of the said Regulation is that indicated in point 22 of this Annex.

(5) The supplier shall supply to the beneficiary or its representative, on delivery, the following document:

— health certificate.

(6) Notwithstanding OJ C 114 of 29.4.1991, point V.A(3)(c) is replaced by the following: 'the words "European Community"'.

(7) Since the goods may be rebagged, the supplier must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.

(8) Shipment to take place in 20-foot containers, condition FCL/FCL.

The supplier shall be responsible for the cost of making the container available in the stack position at the container terminal at the port of shipment. The beneficiary shall be responsible for all subsequent loading costs, including the cost of moving the containers from the container terminal.

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

The supplier has to seal each container with a numbered locktainer (Oneseal, Sysko, Locktainer 180 or a similar high-security seal) the number of which is to be provided to the beneficiary's representative.

(9) The rule provided at the second indent of Article 18(2)(a) of Commission Regulation (EEC) No 2103/77 (OJ L 246, 27.9.1977, p. 12), as last amended by Regulation (EC) No 260/96 (OJ L 34, 13.2.1996, p. 16), is binding for determination of the sugar category.

COMMISSION REGULATION (EC) No 1939/98
of 11 September 1998
on the supply of milk products as food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

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

Whereas it is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EC) No 2519/97 of 16 December 1997 laying down general rules for the mobilisation of products to be supplied pursuant to Council Regulation (EC) No 1292/96 as Community food aid [2]; whereas it is necessary to specify the time limits and conditions of supply to determine the resultant costs,

HAS ADOPTED THIS REGULATION:

Article 1

Milk products shall be mobilised in the Community, as Community food aid for supply to the recipient listed in the Annex, in accordance with Regulation (EC) No 2519/97 and under the conditions set out in the Annex.

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

Article 2

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

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

Done at Brussels, 11 September 1998.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 166, 5. 7. 1996, p. 1.
[2] OJ L 346, 17. 12. 1997, p. 23.

ANNEX

LOT A

1. **Action No:** 217/97 (A1); 220/97 (A2); 224/97 (A3); 225/97 (A4); 230/97 (A5)
2. **Beneficiary** ([2]): Euronaid, PO Box 12, 2501 CA Den Haag, Nederland
   tel.: (31-70) 33 05 757; fax: 36 41 701; telex: 30960 EURON NL
3. **Beneficiary's representative:** to be designated by the recipient
4. **Country of destination:** A1 + A2: Madagascar; A3 + A4: Niger; A5: Haiti
5. **Product to be mobilized:** vitaminized skimmed-milk powder
6. **Total quantity (tonnes net):** 180
7. **Number of lots:** 1 in 5 parts (A1: 15 tonnes; A2: 45 tonnes; A3: 45 tonnes; A4: 15 tonnes; A5: 60 tonnes)
8. **Characteristics and quality of the product** ([3]) ([5]): see OJ C 114, 29.4.1991, p. 1 (I.B.(1))
9. **Packaging** ([7]): see OJ C 267, 13.9.1996, p. 1 (6.3 A and B.2)
10. **Labelling or marking** ([6]): see OJ C 114, 29.4.1991, p. 1 (I.B.(3))
    — Language to be used for the marekings: French
    — Supplementary markings: —
11. **Method of mobilization of the product:** the Community market
    The manufacture of the skimmed-milk powder, and the incorporation of vitamins, must be carried out after the award of the tender
12. **Specified delivery stage:** free at port of shipment
13. **Alternative delivery stage:** —
14. a) **Port of shipment:** —
    b) **Loading address:** —
15. **Port of landing:** —
16. **Place of destination:** —
    — port or warehouse of transit: —
    — overland transport route: —
17. **Period or deadline of supply at the specified stage:**
    — first deadline: 19.10 — 8.11.1998
    — second deadline: 2 — 22.11.1998
18. **Period or deadline of supply at the alternative stage:**
    — first deadline: —
    — second deadline: —
19. **Deadline for the submission of tenders (12 noon, Brussels time):**
    — first deadline: 28.9.1998
    — second deadline: 12.10.1998
20. **Amount of tendering guarantee:** ECU 20 per tonne
21. **Address for submission of tenders and tendering guarantees** ([1]):
    Bureau de l'aide alimentaire, Attn. Mr T. Vestergaard, Bâtiment Loi 130, bureau 7/46, Rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel tlx: 25670 AGREC B; fax: (32-2) 296 70 03 / 296 70 04 (exclusively)
22. **Export refund** ([4]): refund applicable on 4.9.1998, fixed by Commission Regulation (EC) No 1846/98 (OJ L 240, 28.8.1998, p. 22)

Notes:

(1) Supplementary information: André Debongnie (tel.: (32-2) 295 14 65)
Torben Vestergaard (tel.: (32-2) 299 30 50).

(2) The supplier shall contact the beneficiary or its representative as soon as possible to establish which consignment documents are required.

(3) The supplier shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.

(4) Commission Regulation (EC) No 259/98 (OJ L 25, 31.1.1998, p. 39), is applicable as regards the export refund. The date referred to in Article 2 of the said Regulation is that referred to in point 22 of this Annex.

(5) The supplier shall supply to the beneficiary or its representative, on delivery, the following documents:

— health certificate issued by an official entity stating that the product was processed under excellent sanitary conditions which are supervised by qualified technical personnel. The certificate must state the temperature and duration of the pasteurisation, the temperature and duration in the spray-drying-tower and the expiry date for consumption,

— veterinary certificate issued by an official entity stating that the area of production of raw milk had not registered foot-and-mouth disease nor any other notifiable infectious/contagious disease during the 12 months prior to the processing.

(6) Notwithstanding OJ C 114 of 29.4.1991, point I.A(3)(c) is replaced by the following: 'the words "European Community"'.

(7) Shipment to take place in 20-foot containers, condition FCL/FCL (each containing maximum 15 tonnes net).

The supplier shall be responsible for the cost of making the container available in the stack position at the container terminal at the port of shipment. The beneficiary shall be responsible for all subsequent loading costs, including the cost of moving the containers from the container terminal.

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

The supplier has to seal each container with a numbered locktainer (Oneseal, Sysko, Locktainer 180 or a similar high-security seal) the number of which is to be provided to the beneficiary's representative.

COMMISSION REGULATION (EC) No 1940/98

of 11 September 1998

revising the maximum amount for the B production levy and amending the minimum price for B beet in the sugar sector for the 1998/99 marketing year

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 organisation of the markets in the sugar sector [1], as last amended by Commission Regulation (EC) No 1148/98 [2], and in particular the second and third indents of Article 28(8) thereof,

Whereas Article 28(3) and (4) of Regulation (EEC) No 1785/81 provides that the losses resulting from the obligation to export surpluses of Community sugar are to be covered by production levies on the production of A and B sugar, of A and B isoglucose and of inulin syrup A and B within certain limits;

Whereas Article 28(5) of Regulation (EEC) No 1785/81 provides that, where the receipts expected from the basic production levy and the B levy, which must not exceed 2 % and 30 % respectively of the intervention price for white sugar for that marketing year, may well fail to cover the foreseeable total loss for the current marketing year, the maximum percentage of the B levy is to be adjusted to the extent necessary to cover the said total loss but without exceeding 37,5 %;

Whereas the foreseeable receipts, prior to adjustment, of the levies to be collected in respect of the 1998/99 marketing year are below the equivalent of the average loss multiplied by the exportable surplus; whereas accordingly, in the light of the data at present available, the maximum amount of the B levy for 1998/99 should be raised to 37,5 % of the intervention price for the white sugar concerned;

Whereas the second subparagraph of Article 5(2) of Regulation (EEC) No 1785/81 provides that, subject to Article 28 of that Regulation, the minimum price for B beet is 68 % of the basic price for beet; whereas Article 28(5) of the said Regulation provides that the revised maximum percentage for the B levy should be fixed for the current marketing year before 15 September of that marketing year, together with the corresponding adjustment of the minimum price for B beet set for the 1998/99 marketing year by way of Council Regulation (EC) No 1361/98 [3];

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. For the 1998/99 marketing year the maximum amount referred to in the first indent of Article 28(4) of Regulation (EEC) No 1785/81 shall be increased to 37,5 % of the intervention price for white sugar for that marketing year.

2. For the 1998/99 marketing year, the minimum price for B beet referred to in the second subparagraph of Article 5(2) of Regulation (EEC) No 1785/81 shall be 60,5 % of the basic price for beet for that marketing year.

Article 2

For the 1998/99 marketing year the minimum price for B beet shall, pursuant to Article 28(5) of Regulation (EEC) No 1785/81, be amended to ECU 28,84 per tonne.

Article 3

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

[1] OJ L 177, 1. 7. 1981, p. 4.
[2] OJ L 159, 3. 6. 1998, p. 38.
[3] OJ L 185, 26. 6. 1998, p. 3.

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

Done at Brussels, 11 September 1998.

For the Commission
Franz FISCHLER
Member of the Commission

COMMISSION REGULATION (EC) No 1941/98

of 11 September 1998

deciding not to accept tenders submitted in response to the 208th partial invitation to tender as a general intervention measure pursuant to Regulation (EEC) No 1627/89

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organisation of the market in beef and veal [1], as last amended by Regulation (EC) No 1633/98 [2], and in particular Article 6(7) thereof,

Whereas, pursuant to Commission Regulation (EEC) No 2456/93 of 1 September 1993 laying down detailed rules for the application of Council Regulation (EEC) No 805/68 as regards the general and special intervention measures for beef [3], as last amended by Regulation (EC) No 2602/97 [4], an invitation to tender was opened pursuant to Article 1(1) of Commission Regulation (EEC) No 1627/89 of 9 June 1989 on the buying in of beef by invitation to tender [5], as last amended by Regulation (EC) No 1898/98 [6];

Whereas, in accordance with Article 13(1) of Regulation (EEC) No 2456/93, a maximum buying-in price is to be fixed for quality R3, where appropriate, under each partial invitation to tender in the light of tenders received; whereas, in accordance with Article 13(2) of that Regulation, a decision may be taken not to proceed with the tendering procedure;

Whereas, once tenders submitted in respect of the 208th partial invitation to tender have been considered and taking account, pursuant to Article 6(1) of Regulation (EEC) No 805/68, of the requirements for reasonable support of the market and the seasonal trend in slaughterings and prices, it has been decided not to proceed with the tendering procedure;

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

No award shall be made against the 208th partial invitation to tender opened pursuant to Regulation (EEC) No 1627/89.

Article 2

This Regulation shall enter into force on 14 September 1998.

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

Done at Brussels, 11 September 1998.

For the Commission
Franz FISCHLER
Member of the Commission

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[1] OJ L 148, 28. 6. 1968, p. 24.
[2] OJ L 210, 28. 7. 1998, p. 17.
[3] OJ L 225, 4. 9. 1993, p. 4.
[4] OJ L 351, 23. 12. 1997, p. 20.
[5] OJ L 159, 10. 6. 1989, p. 36.
[6] OJ L 247, 5. 9. 1998, p. 3.

COMMISSION REGULATION (EC) No 1942/98

of 11 September 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 Commission Regulation (EC) No 1148/98 [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 1379/98 [5], as last amended by Regulation (EC) No 1879/98 [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 12 September 1998.

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

Done at Brussels, 11 September 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 159, 3. 6. 1998, p. 38.
[3] OJ L 141, 24. 6. 1995, p. 16.
[4] OJ L 85, 20. 3. 1998, p. 5.
[5] OJ L 187, 1. 7. 1998, p. 6.
[6] OJ L 243, 2. 9. 1998, p. 13.

ANNEX

to the Commission Regulation of 11 September 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)	14,93	9,19
1701 11 90 (1)	14,93	15,50
1701 12 10 (1)	14,93	8,96
1701 12 90 (1)	14,93	14,98
1701 91 00 (2)	17,50	18,16
1701 99 10 (2)	17,50	12,71
1701 99 90 (2)	17,50	12,71
1702 90 99 (3)	0,18	0,46

(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 1943/98

of 11 September 1998

fixing the maximum aid for concentrated butter for the 188th special invitation to tender opened under the standing invitation to tender provided for in Regulation (EEC) No 429/90

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products [1], as last amended by Regulation (EC) No 1587/96 [2], and in particular Article 7a(3) thereof,

Whereas, in accordance with Commission Regulation (EEC) No 429/90 of 20 February 1990 on the granting by invitation to tender of an aid for concentrated butter intended for direct consumption in the Community [3], as last amended by Regulation (EC) No 417/98 [4], the intervention agencies are opening a standing invitation to tender for the granting of aid for concentrated butter; whereas Article 6 of that Regulation provides that in the light of the tenders received in response to each special invitation to tender, a maximum amount of aid is to be fixed for concentrated butter with a minimum fat content of 96 % or a decision is to be taken to make no award; whereas the end-use security must be fixed accordingly;

Whereas, in the light of the tenders received, the maximum aid should be fixed at the level specified below and the end-use security determined accordingly;

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 188th special invitation to tender under the standing invitation to tender opened by Regulation (EEC) No 429/90, the maximum aid and the amount of the end-use security shall be as follows:

— maximum aid: ECU 134/100 kg

— end-use security: ECU 148/100 kg.

Article 2

This Regulation shall enter into force on 12 September 1998.

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

Done at Brussels, 11 September 1998.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 148, 28. 6. 1968, p. 13.
[2] OJ L 206, 16. 8. 1996, p. 21.
[3] OJ L 45, 21. 2. 1990, p. 8.
[4] OJ L 52, 21. 2. 1998, p. 18.

COMMISSION REGULATION (EC) No 1944/98

of 11 September 1998

fixing the minimum selling prices for butter and the maximum aid for cream, butter and concentrated butter for the 16th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products [1], as last amended by Regulation (EC) No 1587/96 [2], and in particular Articles 6(3) and 12(3) thereof,

Whereas the intervention agencies are, pursuant to Commission Regulation (EC) No 2571/97 of 15 December 1997 on the sale of butter at reduced prices and the granting of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs [3], as last amended by Regulation (EC) No 1550/98 [4], to sell by invitation to tender certain quantities of butter that they hold and to grant aid for cream, butter and concentrated butter; whereas Article 18 of that Regulation stipulates that in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed for butter and maximum aid shall be fixed for cream, butter and concentrated butter; whereas it is further stipulated that the price or aid may vary according to the intended use of the butter, its fat content and the incorporation procedure, and that a decision may also be taken to make no award in response to the tenders submitted; whereas the amount(s) of the processing securities must be fixed accordingly;

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum aid and processing securities and the minimum selling prices, applying for the 16th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97, shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 12 September 1998.

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

Done at Brussels, 11 September 1998.

For the Commission
Franz FISCHLER
Member of the Commission

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[1] OJ L 148, 28. 6. 1968, p. 13.
[2] OJ L 206, 16. 8. 1996, p. 21.
[3] OJ L 350, 20. 12. 1997, p. 3.
[4] OJ L 202, 18. 7. 1998, p. 27.

ANNEX

to the Commission Regulation of 11 September 1998 fixing the minimum selling prices for butter and the maximum aid for cream, butter and concentrated butter for the 16th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97

(ECU/100 kg)

Formula			A		B	
Incorporation procedure			With tracers	Without tracers	With tracers	Without tracers
Minimum selling price	Butter ≥ 82 %	Unaltered	—	227	—	—
		Concentrated	—	—	—	—
Processing security		Unaltered	—	120	—	—
		Concentrated	—	—	—	—
Maximum aid	Butter ≥ 82 %		109	105	—	105
	Butter < 82 %		104	100	—	—
	Concentrated butter		134	130	134	130
	Cream		—	—	46	44
Processing security	Butter		120	—	—	—
	Concentrated butter		148	—	148	—
	Cream		—	—	51	—

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 13 July 1998

approving the text of the amendment to the trade-related provisions of the Energy Charter Treaty and its provisional application agreed by the Energy Charter Conference and the International Conference of the Signatories of the Energy Charter Treaty

(98/537/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 113 thereof, in conjunction with the first sentence of Article 228(2),

Having regard to Article 3(2) of Council and Commission Decision 98/181/EC, ECSC, Euratom of 23 September 1997 [1],

Having regard to the proposal from the Commission,

Whereas the Energy Charter Treaty was signed on 17 December 1994 by the European Communities and their Member States;

Whereas the European Communities and a large majority of their Member States deposited their instruments of approval or ratification on 16 December 1997 with the Depositary, the Government of the Portuguese Republic;

Whereas the remaining Member States will ratify the Energy Charter Treaty soon;

Whereas the Energy Charter Treaty entered into force on 16 April 1998;

Whereas since the day of its signature the Energy Charter Treaty has been applied, to the extent possible, on a provisional basis and will continue to be so applied to the extent possible, by those signatories who have not yet ratified the Treaty;

Whereas the Energy Charter Treaty provides for the examination of its trade provisions in the light of the results of the Uruguay Round of Multilateral Trade Negotiations and of the inclusion of energy related equipment in the trade provisions, with a view to the adoption of such amendments by the Energy Charter Conference;

Whereas the introduction in the Treaty of the relevant WTO provisions by reference instead of the GATT 1947 provisions contained therein, as well as the inclusion of energy-related equipment in the trade provisions, are in the interest of the Community;

Whereas the Community has exclusive competence for common commercial policy;

Whereas an International Conference was held at the same time as the Energy Charter Treaty Conference in order to enable the participation of all the signatories to the Energy Charter Treaty in the decision-making procedure;

Whereas the Energy Charter Conference and the said International Conference held on 24 April 1998 agreed on the text of the Amendment to the trade-related provisions of the Energy Charter Treaty, including the list of energy related equipment, and on related decisions, understandings and declarations (Trade Amendment);

Whereas the Community should give formal definitive approval to the text of the Trade Amendment;

[1] OJ L 69, 9. 3. 1998, p. 1.

Whereas the Trade Amendment should be applied on a provisional basis pending its entry into force, in accordance with its provisions,

HAS DECIDED AS FOLLOWS:

Article 1

1. The text of the Amendment to the trade-related provisions of the Energy Charter Treaty, which was agreed within the Energy Charter Conference/International Conference on 24 April 1998, including the list of energy-related equipment and the related decisions, understandings and declarations, is hereby definitively approved on behalf of the European Community.

2. The text of the Trade Amendment is attached to this Decision.

3. The formal approval of the text of the Trade Amendment by the Community shall be notified to the Energy Charter Secretariat by the Commission.

Article 2

The Trade Amendment shall be applied on a provisional basis in accordance with its provisions 90 days after its adoption by the Energy Charter Conference and shall be definitively applied upon its entry into force.

Done at Brussels, 13 July 1998.

For the Council

The President

W. SCHÜSSEL

FINAL ACT OF THE INTERNATIONAL CONFERENCE AND DECISION BY THE ENERGY CHARTER CONFERENCE IN RESPECT OF THE AMENDMENT TO THE TRADE-RELATED PROVISIONS OF THE ENERGY CHARTER TREATY

FINAL ACT OF THE INTERNATIONAL CONFERENCE AND DECISION OF THE ENERGY CHARTER CONFERENCE

I. Between 17 December 1994 and 18 December 1997 the Provisional Energy Charter Conference met to negotiate an amendment to the trade-related provisions of the Energy Charter Treaty. A Conference to adopt the amendment was held at Brussels on 23 and 24 April 1998. Representatives of the Republic of Albania, the Republic of Armenia, Australia, the Republic of Austria, the Azerbaijani Republic, the Kingdom of Belgium, the Republic of Belarus, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the Republic of Cyprus, the Czech Republic, the Kingdom of Denmark, the Republic of Estonia, the European Communities, the Republic of Finland, the French Republic, the Republic of Georgia, the Federal Republic of Germany, the Hellenic Republic, the Republic of Hungary, the Republic of Iceland, Ireland, the Italian Republic, Japan, the Republic of Kazakhstan, the Republic of Kyrgyzstan, the Republic of Latvia, the Principality of Liechtenstein, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Malta, the Republic of Moldova, the Kingdom of the Netherlands, the Kingdom of Norway, the Republic of Poland, the Portuguese Republic, Romania, the Russian Federation, the Slovak Republic, the Republic of Slovenia, the Kingdom of Spain, the Kingdom of Sweden, the Swiss Confederation, the Republic of Tajikistan, the former Yugoslav Republic of Macedonia, the Republic of Turkey, Turkmenistan, Ukraine, the United Kingdom of Great Britain and Northern Ireland and the Republic of Uzbekistan (hereinafter referred to as 'the representatives') participated in the Conference, as did invited observers from certain countries and international organizations.

II. The Energy Charter Conference, which was definitively established on the entry into force on 16 April 1998 of the Energy Charter Treaty 1994, also met on 23 and 24 April 1998 to consider adoption of the amendment to the Trade-Related Provisions of the Energy Charter in accordance with the provisions of the Energy Charter Treaty.

AMENDMENT TO THE TRADE-RELATED PROVISIONS OF THE ENERGY CHARTER TREATY

III. The text of the Amendment to the Trade-Related Provisions of the Energy Charter Treaty (hereinafter referred to as the 'Amendment') which is set out in Annex I and Decisions with respect thereto which are set out in Annex II were adopted in accordance with the modalities of the international conference called for this purpose and under the Energy Charter Treaty in accordance with the procedure provided for in the Treaty.

UNDERSTANDINGS

IV. The following understandings with respect to the Amendment were adopted:

1. **understanding with respect to Article 29(2)(a) and Annex W:**

   Notwithstanding the listing of paragraph 6 of Article XXIV of the GATT 1994 in Annex W(A)(1)(a)(i), any signatory affected by an increase in customs duties or other charges of any kind imposed on or in connection with importation or exportation referred to in the first sentence of that paragraph, is entitled to seek consultations in the Charter Conference.

2. **understanding with respect to Article 29(7):**

   In the case of a signatory, not a member of the WTO, which is listed in Annexes BR or BRQ or both, any concession offered formally in the process of its accession to the WTO with respect to energy materials or products listed in Annex EM II or energy-related equipment listed in Annex EQ II shall, for the purpose of this Article, be regarded as a commitment under the WTO.

3. **understanding with respect to Articles 29(6) and (7) and 34(3)(o):**

   The Charter Conference shall conduct an annual review with respect to any possibility of moving items of energy materials and products or energy-related equipment from Annexes EM I or EQ I to Annexes EM II or EQ II.

DECLARATIONS

V. The following Declarations were made with respect to the Amendment:

Joint declaration on trade-related intellectual property rights

Signatories confirm their commitment to provide effective protection of intellectual property rights following the highest international standards.

Intellectual property rights include for the purpose of this declaration in particular copyright and related rights (including computer programmes and data bases), trademarks, geographical indications, patents, designs, topographies of semiconductor products and undisclosed information.

Joint declaration by the Russian Federation and the European Union

The Russian Federation has raised the issue of trade in nuclear materials. The Russian Federation and the EU agreed that the partnership and cooperation agreement between the Russian Federation, the European Union and its Member States, which entered into force on 1 December 1997, is the appropriate framework to deal with this issue, as confirmed in the conclusions of 27 January 1998 Cooperation Council.

ANNEX I

AMENDMENT TO THE TRADE-RELATED PROVISIONS OF THE ENERGY CHARTER TREATY

Article 1

Article 29 of the Treaty shall be replaced by the following text:

'Article 29

Interim provisions on trade-related matters

1. The provisions of this Article shall apply to trade in energy materials and products and energy-related equipment while any Contracting Party is not a member of the WTO.

2. (a) Trade in energy materials and products and energy-related equipment between Contracting Parties at least one of which is not a member of the WTO shall be governed, subject to subparagraph (b) and to the exceptions and rules provided for in Annex W, by the provisions of the WTO Agreement, as applied and practised with regard to energy materials and products and energy-related equipment by members of the WTO among themselves, as if all Contracting Parties were members of the WTO;

(b) Such trade of a Contracting Party which is a State that was a constituent part of the former Union of Soviet Socialist Republics may instead be governed, subject to the provisions of Annex TFU, by an agreement between two or more such States, until 1 December 1999 or the admission of that Contracting Party to the WTO, whichever is the earlier;

3. (a) Each signatory to this Treaty, and each State or regional economic integration organisation acceding to this Treaty before 24 April 1998, shall on the date of its signature or of its deposit of its instrument of accession provide to the Secretariat a list of all customs duties and charges of any kind imposed on or in connection with importation or exportation of energy materials and products, notifying the level of such customs duties and charges applied on such date of signature or deposit. Each signatory to this Treaty, and each State or regional economic integration organisation acceding to this Treaty before 24 April 1998, shall on that date provide to the Secretariat a list of all customs duties and charges of any kind imposed on or in conncection with importation or exportation of energy-related equipment, notifying the level of such customs duties and charges applied on that date;

(b) Each State or regional economic integration organisation acceding to this Treaty on or after 24 April 1998, shall, on the date of its deposit of its instrument of accession, provide to the Secretariat a list of all customs duties and charges of any kind imposed on or in connection with importation or exportation of energy materials and products and energy-related equipment, notifying the level of such customs duties and charges applied on such date of deposit.

Any changes to such customs duties or charges of any kind imposed on or in connection with importation or exportation shall be notified to the Secretariat, which shall inform the Contracting Parties of such changes.

4. Each Contracting Party shall endeavour not to increase any customs duty or charge of any kind imposed on or in connection with importation or exportation:

(a) in the case of the importation of energy materials and products listed in Annex EM I or energy-related equipment listed in Annex EQ I and described in Part I of the Schedule relating to the Contracting Party referred to in Article II of the GATT 1994, above the level set forth in that Schedule, if the Contracting Party is a member of the WTO;

(b) in the case of the exportation of energy materials and products listed in Annex EM I or energy-related equipment listed in Annex EQ I, and that of their importation if the Contracting Party is not a member of the WTO, above the level most recently notified to the Secretariat, except as permitted by the provisions made applicable by subparagraph (2)(a).

5. A Contracting Party may increase such customs duty or other charge above the level referred to in paragraph (4) only if:

(a) in case of a customs duty or other charge imposed on or in connection with importation, such action is not inconsistent with the applicable provisions of the WTO Agreement, other than those provisions of the WTO Agreement listed in Annex W; or

(b) it has, to the fullest extent practicable under its legislative procedures, notified the Secretariat of its proposal for such an increase, given other interested Contracting Parties reasonable opportunity for consultation with respect to its proposal, and accorded consideration to any representations from such Contracting Parties.

6. In respect of trade between Contracting Parties at least one of which is not a member of the WTO, no such Contracting Party shall increase any customs duty or charge of any kind imposed on or in connection with importation or exportation of energy materials and products listed in Annex EM II or energy-related equipment listed in Annex EQ II above the lowest of the levels applied on the date of the decision by the Charter Conference to list the particular item in the relevant Annex.

A Contracting Party may increase such customs duty or other charge above that level only if:

(a) in case of a customs duty or other charge imposed on or in connection with importation, such action is not inconsistent with the applicable provisions of the WTO Agreement, other than those provisions of the WTO Agreement listed in Annex W; or

(b) in exceptional circumstances not elsewhere provided for in this Treaty, the Charter Conference decides to waive the obligation otherwise imposed on a Contracting Party by this paragraph, consenting to an increase in a customs duty, subject to any conditions the Charter Conference may impose.

7. Notwithstanding paragraph 6, in the case of trade referred to in that paragraph, Contracting Parties listed in Annex BR in respect of energy materials and products listed in Annex EM II, or in Annex BRQ in respect of energy-related equipment listed in Annex EQ II, shall not increase any customs duty or other charge above the level resulting from their commitments or any provisions applicable to them under the WTO Agreement.

8. Other duties and charges imposed on or in connection with importation or exportation of energy materials and products or energy-related equipment shall be subject to the provisions of the understanding on the interpretation of Article II: 1(b) of the GATT 1994 as modified according to Annex W.

9. Annex D shall apply:

(a) to disputes regarding compliance with provisions applicable to trade under this Article;

(b) to disputes regarding the application by a Contracting Party of any measure, whether or not it conflicts with the provisions of this Article, which is considered by another Contracting Party to nullify or impair any benefit accruing to it directly or indirectly under this Article; and

(c) unless the Contracting Parties parties to the dispute agree otherwise, to disputes regarding compliance with Article 5 between Contracting Parties at least one of which is not a member of the WTO;

except that Annex D shall not apply to any dispute between Contracting Parties, the substance of which arises under an agreement that:

(i) has been notified in accordance with and meets the other requirements of subparagraph (2)(b) and Annex TFU; or

(ii) establishes a free-trade area or a customs union as described in Article XXIV of the GATT 1994.'

Article 2

The Treaty shall be amended as follows:

In the Preamble, paragraph 7, replace 'General Agreement on Tariffs and Trade and its Related Instruments' with 'Agreement Establishing the World Trade Organisation'.

In the Preamble, paragraph 8, replace 'related equipment' with 'energy-related equipment'.

In the Preamble, paragraph 9, replace 'General Agreement on Tariffs and Trade' and 'parties thereto' with 'World Trade Organisation' and 'members thereof'.

In the Preamble, paragraph 10, replace 'parties to the General Agreement on Tariffs and Trade and its Related Instruments' with 'members of the World Trade Organisation'.

In Article 1, replace the text of paragraph (4) with:

'4. "Energy materials and products", based on the Harmonised System of the World Customs Organisation and the Combined Nomenclature of the European Communities, means the items included in Annexes EM I or EM II.'

In Article 1, after the text of paragraph 4 insert:

'4a. "energy-related equipment", based on the Harmonised System of the World Customs Organisation, means the items included in Annexes EQ I or EQ II.'

In Article 1, replace the text of paragraph 11 with:

'11. (a) "WTO" means the World Trade Organisation established by the Agreement Establishing the World Trade Organisation;

(b) "WTO Agreement" means the Agreement Establishing the World Trade Organisation, its Annexes and the decisions, declarations and understandings related thereto, as subsequently rectified, amended and modified from time to time;

(c) "GATT 1994" means the General Agreement on Tariffs and Trade as specified in Annex 1A to the Agreement Establishing the World Trade Organisation, as subsequently rectified, amended or modified from time to time.'

In Article 3, after 'energy materials and products' insert 'and energy-related equipment'.

In Article 4, title, replace 'GATT and related instruments' with 'WTO Agreement' and in the text of Article 4, replace 'parties to the GATT' with 'members of the WTO' and replace 'GATT and related instruments' with 'WTO Agreement'.

In Article 5, paragraph 1, insert '1994' following 'Articles III and XI of the GATT' and replace 'GATT and related instruments' with 'WTO Agreement'

In Article 14, paragraph 6, replace 'GATT and related instruments' with 'WTO Agreement'.

In Article 20, paragraph 1, replace 'GATT and relevant related instruments' with 'WTO Agreement' and after 'energy materials and products' insert 'energy-related equipment'.

In Article 21, paragraph 4, replace 'Article 29(2) to (6)' with 'Article 29(2) to (8)'.

In Article 25, paragraph 3, replace 'GATT and related instruments' with 'WTO Agreement'.

In Article 34, paragraph 3, add after subparagraph (m):

'(n) consider and approve the listing of signatories in Annexes BR or BRQ or in both these Annexes;

(o) consider and approve the addition of items to Annex EM II from Annex EM I with the corresponding deletion of those items from Annex EM I and consider and approve the addition of items to Annex EQ II from Annex EQ I with the corresponding deletion of those items from Annex EQ I;'.

In Article 34, paragraph 3, replace the denomination of subparagraph '(n)' with subparagraph '(p)'.

In Article 36(1)(d), replace 'G' with 'W'.

In Article 36, in paragraph 1, after subparagraph (f) add:

'(g) approve the addition of items to Annex EM II from Annex EM I with the corresponding deletion of those items from Annex EM I and approve the addition of items to Annex EQ II from Annex EQ I with the corresponding deletion of those items from Annex EQ I.'

In Article 36, paragraph 4, replace '(f)' with '(g)'.

In the 'Table of Contents' of Annexes to the Energy Charter Treaty, rename 'Annex EM' as 'Annex EM I', insert as 2 to 4 the additional Annexes 'Annex EM II energy materials and products (In accordance with Article 1(4))', 'Annex EQ I List of energy-related equipment (In accordance with Article 1(4a))' and 'Annex EQ II list of energy-related equipment (In accordance with Article 1(4a))'.

In 9. Annex G, replace 'GATT and related instruments' with 'WTO Agreement', and rename 'Annex G' as 'Annex W'.

Renumber Annexes 2 to 10 as Annexes 5 to 13. Insert as 14 and 15 the additional Annexes 'Annex BR list of contracting Parties which shall not increase any customs duty or other charge above the level resulting from their commitments or any provisions applicable to them under the WTO Agreement (In accordance with Article 29(7))' and 'Annex BRQ list of Contracting Parties which shall not increase any customs duty or other charge above the level resulting from their commitments or any provisions applicable to them under the WTO Agreement (In accordance with Article 29(7))'.

Renumber Annexes 11 to 14 as Annexes 16 to 19.

In respect of Annex D, replace '(In accordance with Article 29(7))' with '(In accordance with Article 29(9))'.

In Annex EM, rename 'EM' as 'EM I'.

In Annex TRM, paragraph (1)(a) and (b) and in paragraph (3)(a) and (b), replace 'party to the GATT' with 'member of the WTO'.

In Annex TFU, paragraphs (2)(c), (4), first sentence, and (6), first sentence, replace 'GATT and related instruments' with 'WTO Agreement'.

Article 3

Annex D of the Treaty shall be amended as follows:

In the heading replace '(In accordance with Article 29(7))' with '(In accordance with Article 29(9))'.

At the end of paragraph 1(a), delete the period and add thereafter following '29':

', or about any measures that might nullify or impair any benefit accruing to a Contracting Party directly or indirectly under the provisions applicable to trade under Article 29.'

In paragraph 1(b), at the end of the first sentence, delete the period and insert thereafter following '29':

', or any measure that might nullify or impair any benefit accruing to a Contracting Party directly or indirectly under the provisions applicable to trade under Article 29.',

and in the second sentence, replace 'GATT and related instruments' with 'WTO Agreement'.

In paragraph 1(d), insert after the comma before 'the Contracting Parties':

'or to nullify or impair any benefit accruing to it directly or indirectly under the provisions applicable to trade under Article 29,'.

In paragraph 2(a), second sentence, replace 'GATT and related instruments' with 'WTO Agreement'.

In paragraph 3(a), second sentence, replace 'GATT and related instruments' with 'WTO Agreement',

and replace the penultimate sentence with:

'Panels shall be guided by the interpretations given to the WTO Agreement within the framework of the WTO Agreement and shall not question the compatibility with Article 5 or 29 of practices applied by any Contracting Party which is a member of the WTO to other members of the WTO to which it applies the WTO Agreement and which have not been taken by those other members to dispute resolution under the WTO Agreement.'

In paragraph 4(b), first sentence, replace 'GATT or a related instrument' with 'WTO Agreement'.

In paragraph 5(c), replace 'GATT or related instruments' with 'WTO Agreement'.

In paragraph 7, first sentence, replace 'party to the GATT', with 'member of the WTO'

and replace 'panellists currently nominated for the purpose of GATT dispute panels' with:

'persons whose names appear on the indicative list of governmental and non-governmental individuals, referred to in Article 8 of the understanding on rules and procedures governing the settlement of disputes contained in Annex 2 to the WTO Agreement or who have in the past served as panellists on a GATT or WTO dispute settlement panel.'

Add after paragraph 9:

'10. Where a Contracting Party invokes Articles 29(9)(b), this Annex shall apply, subject to the following modifications:

(a) the complaining party shall present a detailed justification in support of any request for consultations or for the establishment of a panel regarding a measure which it considers to nullify or impair any benefit accruing to it directly or indirectly under Article 29;

(b) where a measure has been found to nullify or impair benefits under Article 29 without violation thereof, there is no obligation to withdraw the measure; however, in such a case the panel shall recommend that the Contracting Party concerned make a mutually satisfactory adjustment;

(c) the arbitral panel provided for in paragraph (6)(b), upon the request of either party, may determine the level of benefits that have been nullified or impaired, and may also suggest ways and means of reaching a mutually satisfactory adjustment; such suggestions shall not be binding upon the parties to the dispute.'

Article 4

The following Annex shall replace Annex G of the Treaty:

'Annex W

EXCEPTIONS AND RULES GOVERNING THE APPLICATION OF THE PROVISIONS OF THE WTO AGRREMENT

(In accordance with Article 29(2)(a))

A. Exceptions to the application of the provisions of the WTO Agreement.

The following provisions of the WTO Agreement shall not be applicable under Article 29(2)(a):

1. Agreement establishing the World Trade Organisation
All except Article IX, paragraphs 3 and 4 and Article XVI, paragraphs 1, 3 and 4

(a) **Annex 1A to the WTO Agreement:**
Multilateral Agreements on trade in goods:

(i) *General Agreement on Tariffs and Trade 1994*

II.	Schedules of concessions, paragraphs (1)(a), (1)(b, first sentence), (1)(c) and (7)
IV.	Special provisions relating to cinematographic films
XV.	Exchange arrangements
XVIII.	Governmental assistance to economic development
XXII.	Consultation
XXIII.	Nullification and impairment
XXIV.	Customs unions and free-trade areas, paragraph 6
XXV.	Joint action by the contracting parties
XXVI.	Acceptance, entry into force and registration
XXVII.	Withholding or withdrawal of concessions
XXVIII.	Modification of schedules
XXVIIIa.	Tariff negotiations
XXIX.	The relation of this agreement to the Havana Charter
XXX.	Amendments
XXXI.	Withdrawal
XXXII.	Contracting Parties
XXXIII.	Accession
XXXV.	Non-application of the agreement between particular Contracting Parties
XXXVI.	Principles and objectives
XXXVII.	Commitments
XXXVIII.	Joint action
Appendix H	Relating to Article XXVI
Appendix I	Notes and supplementary provisions (related to the abovementioned GATT provisions)

Understanding on the interpretation of Article II: 1(b) of the GATT 1994

2. Date of incorporation of other duties and charges into the schedule.

4. Challenges, (first sentence only).

6. Dispute settlement.

8. Supersession of BISD 27S/24.

Understanding on the Interpretation of Article XVII of the GATT 1994

1. Only the phrase "for review by the working party to be set up under paragraph (5)".

5. Working Party on State trading.

Understanding on the balance-of-payments provisions of the GATT 1994

5. Committee on balance-of-payments restrictions, except last sentence.

7. Review by the Committee, the phrase "or under paragraph 12(b) of Article XVIII".

8. Simplified consultation procedures.

13. Conclusions of balance-of-payments consultations, first sentence, third sentence: the phrase "and XVIII: B, the 1979 Declaration" and last sentence.

Understanding on the interpretation of Article XXIV of the GATT 1994

All except paragraph 13

Understanding in Respect of Waivers of Obligations under the GATT 1994

3. Nullification and impairment.

Understanding on the Interpretation of Article XXVIII of the GATT 1994

Marrakesh Protocol to the GATT 1994

(ii) *Agreement on agriculture;*

(iii) *Agreement on the application of sanitary and phytosanitary measures;*

(iv) *Agreement on textiles and clothing;*

(v) *Agreement on technical barriers to trade.*

Preamble (paragraphs 1, 8, 9)

1.3 General Provisions.

10.5 The words "developed country" and the words "French or Spanish" which shall be replaced by "Russian".

10.6 The phrase "and draw attention of developing country Members ... interest to them."

10.9 Information about technical regulations, standards and certification systems (languages).

11. Technical assistance to other Parties.

12. Special and differential treatment of developing countries.

13. The Committee on technical barriers to trade.

14. Consultation and dispute settlement.

15. Final provisions (other than 15.2 and 15.5).

Annex 2 Technical expert groups;

(vi) *Agreement on Trade-related investment measures;*

(vii) *Agreement on implementation of Article VI of the GATT 1994 (Anti-dumping)*

15. Developing country members.
16. Committee on anti-dumping practices.
17. Consultation and dispute settlement.
18. Final provisions, paragraphs 2 and 6;

(viii) *Agreement on implementation of Article VII of the GATT 1994 (customs valuation)*

Preamble, paragraph 2, the phrase "and to secure additional benefits for the international trade of developing countries".

14. Application of Annexes (second sentence except as far as it refers to Annex III, paragraphs 6 and 7).
18. Institutions (Committee on customs valuation).
19. Consultation and dispute settlement.
20. Special and differential treatment of developing countries.
21. Reservations.
23. Review.
24. Secretariat.
Annex II Technical Committee on customs valuation.
Annex III Extra provisions (except paragraphs 6 and 7);

(ix) *Agreement on preshipment inspection*

Preamble, paragraphs 2 and 3

3.3 Technical assistance.
6. Review.
7. Consultation.
8. Dispute settlement;

(x) *Agreement on rules of origin*

Preamble, eighth indent
4. Institutions.
6. Review.
7. Consultation.
8. Dispute settlement.
9. Harmonisation of rules of origin.
Annex I Technical Committee on rules of origin;

(xi) *Agreement on Import Licensing Procedures*

1.4. (a) General provisions (last sentence).
2.2. Automatic import licensing (footnote 5).
3.5. (iv) Non-automatic import licensing (last sentence).
4. Institutions.
6. Consultations and dispute settlement.
7. Review (except paragraph 3).
8. Final provisions (except paragraph 2);

(xii) *Agreement on subsidies and countervailing measures*

4.	Remedies (except paragraphs 4.1, 4.2 and 4.3).
5.	Adverse effects, last sentence.
6.	Serious prejudice (paragraphs 6.6, the phrases "subject to the provisions of paragraph 3 of Annex V" and "arising under Article 7, and to the panel established purusuant to paragraph 4 of Article 7", 6.8 the phrase ", including information submitted in accordance with the provisions of Annex V" and 6.9).
7.	Remedies (except paragraphs 7.1, 7.2 and 7.3).
8.	Identification of non-actionable subsidies, paragraph 8.5 and footnote 25.
9.	Consultations and authorised remedies.
24.	Committee on subsidies and countervailing measures and subsidiary bodies.
26.	Surveillance.
27.	Special and differential treatment of developing country members.
29.	Transformation into market economy, paragraph 29.2 (except first sentence).
30.	Dispute settlement.
31.	Provisional application.
32.2, 32.7 and 32.8	(only insofar as it refers to Annexes V and VII) Final provisions.
Annex V	Procedures for developing information concerning serious prejudice.
Annex VII	Developing countries;

(xiii) *Agreement on safeguards*

9.	Developing country members.
12.	Notification and consultation, paragraph 10.
13.	Surveillance.
14.	Dispute settlement Annex exception

(b) **Annex 1B to the WTO Agreement:**

General Agreement on trade in services

(c) **Annex 1C to the WTO Agreement:**

Agreement on trade-related aspects of intellectual property rights

(d) **Annex 2 to the WTO Agreement:**

Understanding on rules and procedures governing the settlement of disputes

(e) **Annex 3 to the WTO Agreement:**

Trade policy review mechanism

(f) **Annex 4 to the WTO Agreement:**

Plurilateral trade agreements:

(i) *Agreement on trade in civil aircraft;*

(ii) *Agreement on government procurement*

(g) **Ministerial decisions, declarations and understanding:**

(i) *Decision on measures in favour of least-developed countries;*

(ii) *Declaration on the contribution of the WTO to achieving greater coherence in global economic policy making;*

(iii) *Decision on notification procedures;*

(iv) *Declaration on the relationship of the WTO with the IMF;*

(v) *Decision on measures concerning the possible negative effects of the reform programme on least-developed and net food-importing developing countries;*

(vi) *Decision on notification of first integration under Article 2.6 of the Agreement on textiles and clothing;*

(vii) *Decision on review of the ISO/IEC information centre publication;*

(viii) *Decision on proposed understanding on WTO-ISO standards information system;*

(ix) *Decision on anti-circumvention;*

(x) *Decision on review of Article 17.6 of the Agreement on implementation of Article VI of the GATT 1994;*

(xi) *Declaration on dispute settlement pursuant to the Agreement on implementation of Article VI of the GATT 1994 or Part V of the Agreement on subsidies and countervailing measures;*

(xii) *Decision regarding cases where customs administrations have reason to doubt the truth or accuracy of the declared value;*

(xiii) *Decision on texts relating to minimum values and imports by sole agents, sole distributors and sole concessionaires;*

(xiv) *Decision on institutional arrangements for the GATS;*

(xv) *Decision on certain dispute settlement procedures for the GATS;*

(xvi) *Decision on trade in services and the environment;*

(xvii) *Decision on negotiations on movement of natural persons;*

(xviii) *Decision on financial services;*

(xix) *Decision on negotiations on maritime transport services;*

(xx) *Decision on negotiations on basic telecommunications;*

(xxi) *Decision on professional services;*

(xxii) *Decision on accession to the Agreement on government procurement;*

(xxiv) *Decision on the application and review of the understanding on rules and procedures governing the settlement of disputes;*

(xxv) *Understanding on commitments in financial services;*

(xxvi) *Decision on the acceptance of and accession to the agreement establishing the WTO;*

(xxvii) *Decision on trade and environment;*

(xviii) *Decision on organisational and financial consequences following from implementation of the Agreement establishing the WTO;*

(xxix) *Decision on the establishment of the preparatory committee for the WTO.*

2. All other provisions in the WTO Agreement which relate to:

(a) governmental assistance to economic development and the treatment of developing countries, except for paragraphs 1 to 4 of the Decision of 28 November 1979 (L/4903) on differential and more favourable treatment, reciprocity and fuller participation of developing countries;

(b) the establishment or operation of specialist committees and other subsidiary institutions;

(c) signature, accession, entry into force, withdrawal, deposit and registration.

3. All agreements, arrangements, decisions, understandings or other joint action pursuant to the provisions listed as not applicable in paragraphs 1 or 2.

4. Trade in nuclear materials may be governed by agreements referred to in the Declarations related to this paragraph contained in the Final Act of the European Energy Charter Conference.

B. Rules governing the application of provisions of the WTO Agreement

1. In the absence of a relevant interpretation of the WTO Agreement adopted by the Ministerial Conference or the General Council of the World Trade Organisation under paragraph 2 of Article IX of the WTO Agreement concerning provisions applicable under Article 29(2)(a), the Charter Conference may adopt an interpretation.

2. Requests for waivers under Article 29(2) and (6)(b) shall be submitted to the Charter Conference, which shall follow, in carrying out these duties, the procedures of paragraphs 3 and 4 of Article IX of the WTO Agreement.

3. Waivers of obligations in force in the WTO shall be considered in force for the purposes of Article 29 while they remain in force in the WTO.

4. The provisions of Article II of the GATT 1994 which have not been disapplied shall, without prejudice to Article 29(4), (5) and (7), be modified as follows:

(i) All energy materials and products listed in Annex EM II and energy-related equipment listed in Annex EQ II imported from or exported to any other Contracting Party shall also be exempt from all other duties or charges of any kind imposed on or in connection with importation or exportation, in excess of those imposed on the date of the standstill referred to in Article 29(6), first sentence, or under Article 29(7), or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing or exporting territory on the date referred to in Article 29(6), first sentence;

(ii) Nothing in Article II of the GATT 1994 shall prevent any Contracting Party from imposing at any time on the importation or exportation of any product:

(a) a charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III of GATT 1994 in respect of the like domestic product or in respect of an article from which the imported product has been manufactured or produced in whole or in part;

(b) any anti-dumping or countervailing duty applied consistently with the provisions of Article VI of GATT 1994;

(c) fees or other charges commensurate with the cost of services rendered.

(iii) No Contracting Party shall alter its method of determining dutiable value or of converting currencies so as to impair the value of the standstill obligations provided for in Article 29(6) or (7);

(iv) If any Contracting Party establishes, maintains or authorises, formally or in effect, as monopoly of the importation or exportation of any energy material or product listed in Annex EM II or in respect of energy-related equipment listed in EQ II, such monopoly shall not operate so as to afford protection on the average in excess of the amount of protection permitted by the sandstill obligation provided for in Article 29(6) or (7). The provisions of this paragraph shall not limit the use by Contracting Parties of any form of assistance to domestic producers permitted by other provisions of this Treaty;

(v) If any Contracting Party considers that a product is not receiving from another Contracting Party the treatment which the first Contracting Party believes to have been contemplated by the sandstill obligation provided for in Article 29(6) or (7), it shall bring the matter directly to the attention of the other Contracting Party. If the latter agrees that the treatment contemplated was that claimed by the first Contracting Party, but declares that such treatment cannot be accorded because a court or other proper authority has ruled to the effect that the product involved cannot be classified under the tariff laws of such Contracting Party so as to permit the treatment contemplated in this Treaty, the two Contracting Parties, together with any other Contracting Parties substantially interested, shall enter promptly into further negotiations with a view to a compensatory adjustment of the matter;

(vi) (a) The specific duties and charges included in the Tariff Record relating to the Contracting Parties members of the International Monetary Fund, and margins of preference in specific duties and charges maintained by such Contracting Parties, are expressed in the appropriate currency at the par value accepted or provisionally recognised by the Fund at the date of the sandstill referred to in Article 29(6), first sentence, or under Article 29(7). Accordingly, in case this par value is reduced consistently with the Articles of Agreement of the International Monetary Fund by more than twenty per cent, such specific duties and charges and margins of preference may be adjusted to take account of such reduction; provided that the Conference concurs that such adjustments will not impair the value of the sandstill obligation provided for in Article 29(6) or (7) or elsewhere in this Treaty, due account being taken of all factors which may influence the need for, or urgency of, such adjustments;

(b) Similar provisions shall apply to any Contracting Party not a member of the Fund, as from the date on which such Contracting Party becomes a member of the Fund or enters into a special exchange agreement in pursuance of Article XV of GATT 1994.

(vii) Each Contracting Party shall notify the Secretariat of the customs duties and charges of any kind applicable on the date of the standstill referred to in Article 29(6), first sentence. The Secretariat shall keep a tariff record of the customs duties and charges of any kind relevant for the purpose of the standstill on customs duties and charges of any kind under Article 29(6) or (7).

5. The Decision of 26 March 1980 on "Introduction of a loose-leaf system for the schedules of tariff concessions" (BISD 27S/24) shall not be applicable under Article 29(2)(a). The applicable provisions of the Understanding on the Interpretation of Article II:1(b) of the GATT 1994 shall, without prejudice to Article 29(4), (5) or (7), apply with the following modifications:

(i) In order to ensure transparency of the legal rights and obligations deriving from paragraph 1(b) of Article II of GATT 1994, the nature and level of any "other duties or charges" levied on any energy materials and products listed in Annex EM II or energy-related equipment lsited in Annex EQ II with respect to their importation or exportation, as referred to in that provision, shall be recorded in the tariff record at the levels applying at the date of the standstill referred to in Article 29(6), first sentence, or under Article 29(7) respectively, against the tariff item to which they apply. It is understood that such recording does not change the legal character of "other duties or charges";

(ii) "Other duties or charges" shall be recorded in respect of all energy materials and products listed in Annex EM II and energy-related equipment listed in Annex EQ II;

(iii) It will be open to any Contracting Party to challenge the existence of an "other duty or charge", on the ground that no such "other duty or charge" existed at the date of the standstill referred to in Article 29(6), first sentence, or the relevant date under Article 29(7), for the item in question, as well as the consistency of the recorded level of any "other duty or charge" with the standstill obligation provided for by Article 29(6) or (7), for a period of one year after the entry into force of the Amendment to the trade-related provisions of this Treaty, adopted by the Charter Conference on 24 April 1998, or one year after the notification to the Secretariat of the level of customs duties and charges of any kind referred to in Article 29(6), first sentence, or Article 29(7), if that is the later;

(iv) The recording of "other duties or charges" in the tariff record is without prejudice to their consistency with rights and obligations under GATT 1994 other than those affected by subparagraph (iii) above. All Contracting Parties retain the right to challenge, at any time, the consistency of any "other duty or charge" with such obligations;

(v) "Other duties or charges" omitted from a notification to the Secretariat shall not subsequently be added to it and any "other duty or charge" recorded at a level lower than that prevailing on the applicable date shall not be restored to that level unless such additions or changes are made within six months of the notification to the Secretariat.

6. Where the WTO Agreement refers to "duties inscribed in the Schedule" or to "bound duties", there shall be substituted "the level of customs duties and charges of any kind permitted under Article 29(4) to (8)".

7. Where the WTO Agreement specifies the date of entry into force of the WTO Agreement (or an analogous phrase) as the reference date for an action, there shall be substituted the date of entry into force of the Amendment to the trade-related provisions of this Treaty adopted by the Charter Conference on 24 April 1998.

8. With respect to notifications required by the provisions made applicable by Article 29(2)(a):

(a) Contracting Parties which are not members of the WTO shall make their notifications to the Secretariat. The Secretariat shall circulate copies of the notifications to all Contracting Parties. Notifications to the Secretariat shall be in one of the authentic languages of this Treaty. The accompanying documents may be solely in the language of the Contracting Party;

(b) such requirements shall not apply to Contracting Parties to this Treaty which are also members of the WTO which provides for its own notification requirements.

9. Where Article 29(6)(a) or (6)(b) applies, the Charter Conference shall carry out any applicable duties that the WTO Agreement assigned to the relevant bodies under the WTO Agreement.

10. (a) Interpretations of the WTO Agreement adopted by the Ministerial Conference or the General Council of the WTO under paragraph 2 of Article IX of the WTO Agreement insofar as they interpret provisions applicable under Article 29(2)(a) shall apply;

(b) Amendments to the WTO Agreement under Article X of the WTO Agreement that are binding on all members of the WTO (other then those under paragraph 9 of Article X) insofar as they amend or relate to provisions applicable under Article 29(2)(a), shall apply unless a Contracting Party requests the Charter Conference to disapply or modify such amendment. The Charter Conference shall take the decision by a three-fourths majority of the Contracting Parties and determine the date of the disapplication or modification of such amendment. A request for the disapplication or modification of such amendment may include a request that the application of the amendment be suspended pending the decision of the Charter Conference.

A request to the Charter Conference made under this paragraph shall be made within six months of the circulation of a notification from the Secretariat that the amendment has taken effect under the WTO Agreement.

(c) Interpretations, amendments, or new instruments adopted by the WTO, other than the interpretations and amendments applied under paragraphs (a) and (b) shall not apply.'

Article 5

The following Annexes shall be inserted in the Annexes to the Treaty:

'2. *Annex EM II*

ENERGY MATERIALS AND PRODUCTS

(In accordance with Article 1(4))'.

'3. *Annex EQ I*

LIST OF ENERGY-RELATED EQUIPMENT

(In accordance with Article 1(4a))

For the purpose of this Annex, "Ex" has been included to indicate that the product description referred to does not exhaust the entire range of products within the World Customs Organisation Nomenclature headings or the Harmonised System codes listed below.

ex 3919	Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls.	
	ex 3919 10	— In rolls of a width not exceeding 20 cm
		— — To be used for oil and gas pipelines and sea lines protection
ex 7304 (*)	Tubes, pipes and hollow profiles, seamless, of iron (other than cast iron) or steel.	
	7304 10	— Line pipes of a kind used for oil or gas pipelines
		— Casing, tubing and drill pipe, of a kind used in drilling for oil or gas: (1)
	7304 21 (1)	— Drill pipe
	7304 29 (1)	— Other
ex 7305	Other tubes and pipes (for example, welded, riveted or similarly closed), having circular cross-sections, the external diameter of which exceeds 406,4 mm, of iron or steel.	
		— Line pipe of a kind used for oil or gas pipelines:
	7305 11	— Longitudinally submerged arc welded
	7305 12	— Other, longitudinally welded
	7305 19	— Other
	7305 20	— Casing of a kind used in drilling for oil or gas

ex 7306 (*)	Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel.
7306 10	— Line pipe of a kind used for oil or gas pipelines
7306 20	— Casing and tubing of a kind used in drilling for oil or gas
7307	Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel.
ex 7308	Structures (excluding prefabricated buildings of heading No 9406) and parts of structures (for example, bridges, and bridge-sections, lock-gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel.
7308 20	— Towers and lattice masts
7308 40	— Equipment for scaffolding, shuttering, propping or pitpropping
ex 7308 90	— Other
	— — Parts for oil and gas drilling platforms
ex 7309	Reservoirs, tanks, vats and similar containers for any material (other than compressed or liquefied gas), of iron or steel, of a capacity exceeding 300 litres, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment.
ex 7309 00	— — For liquids
	— — Of a capacity exceeding 1 000 000 litres, where specially designed for strategic oil reserves
	— — Heat insulated
ex 7311	Containers for compressed or liquefied gas, of iron or steel.
	— — Of more than 1 000 litres
ex 7312 (*)	Stranded wire, ropes, cables, plaited bands, slings and the like, of iron or steel, not electrically insulated.
ex 7312 10	— Stranded wires, ropes and cables
	— — Ropes and cables coated, non-coated or zinc coated of a kind used in the energy sector
ex 7326	Other articles of iron or steel.
ex 7326 90	— Other
	— — Connectors for optical fibre cables
ex 7613	Aluminium containers for compressed or liquefied gas.
	— — Of more than 1 000 litres
ex 7614	Stranded wire, cables, plaited bands and the like, of aluminium, not electrically insulated.
ex 7614 10	— With steel core
	— — Of a kind used in electricity generation, transmission and distribution
ex 7614 90	— Other
	— — Of a kind used in electricity generation, transmission and distribution

ex 7806	Other articles of lead. — — Containers with an anti-radiation lead covering, for the transport or storage of highly radioactive materials
ex 8109	Zirconium and articles thereof, including waste and scrap. ex 8109 90 — Other — — Cartridges or tubes for nuclear fuel elements
ex 8207	Interchangeable tools for hand tools, whether or not power-operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screw driving), including dies for drawing or extruding metal, and rock drilling or earth boring tools. — Rock drilling or earth boring tools: 8207 13 (2) — With working part of cermets 8207 19 — Other, including parts
ex 8307 (*)	Flexible tubing of base metal, with or without fittings. — — For exclusive use in oil and gas wells
8401	Nuclear reactors; fuel elements (cartridges), non-irradiated, for nuclear reactors; machinery and apparatus for isotopic separation.
8402	Steam or other vapour generating boilers (other than central heating hot water boilers capable also of producing low pressure steam); super-heated water boilers.
8403	Central heating boilers other than those of heading No 8402.
8404	Auxiliary plant for use with boilers of heading No 8402 or 8403 (for example, economisers, super-heaters, soot removers, gas recoverers); condensers for steam or other vapour power units.
8405	Producer gas or water gas generators, with or without their purifiers; acetylene gas generators and similar water process gas generators, with or without purifiers.
ex 8406	Steam turbines and other vapour turbines. — Other turbines (3): 8406 81 (3) — Of an output exceeding 40 MW 8406 82 (3) — Of an output not exceeding 40 MW 8406 90 — Parts
ex 8408 (*)	Compression-ignition internal combustion piston engines (diesel or semi-diesel engines). ex 8408 90 — Other engines — — New, of a power exceeding 50 kW
ex 8409	Parts suitable for use solely or principally with the engines of heading No 8407 or 8408 8409 99 — Other
8410	Hydraulic turbines, water wheels, and regulators therefor.
8411 (*)	Turbo-jets, turbo-propellers and other gas turbines.
8413 (*)	Pumps for liquids, whether or not fitted with a measuring device; liquids elevators.

ex 8414 (*)		Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters.
		– Fans:
	ex 8414 59	– Other
		– – For use in mining and power plants
	8414 80	– Other
	8414 90	– Parts
8416		Furnace burners for liquid fuel, for pulverised solid fuel or for gas; mechanical stokers, including their grates, mechanical ash dischargers and similar appliances.
ex 8417		Industrial or laboratory furnaces and ovens, including incinerators, non-electric.
	ex 8417 80	– Other
		– – Exclusively waste incinerators, laboratory furnaces and ovens and uranium sintering ovens
	ex 8417 90	– Parts
		– – Exclusively for waste incinerators, laboratory furnaces and ovens and uranium sintering ovens
ex 8418 (*)		Refrigerators, freezers, and other refrigerating or freezing equipment, electric or other; heat pumps other than air conditioning machines of heading No 8415.
		– Other refrigerating or freezing equipment; heat pumps:
	8418 61	– Compression type units whose condensers are heat exchangers
	8418 69	– Other
ex 8419 (*)		Machinery, plant or laboratory equipment, whether or not electrically heated, for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilising, pasteurising, steaming, drying, evaporating, vapourising, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, non-electric.
	8419 50	– Heat exchange units
	8419 60	– Machinery for liquefying air or other gases
		– Other machinery, plant and equipment:
	8419 89	– Other
ex 8421 (*)		Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids and gases.
		– Filtering or purifying machinery and apparatus for liquids:
	8421 21	– For filtering or purifying water
		– Filtering or purifying machinery and apparatus for gases:
	8421 39	– Other
ex 8425 (*)		Pulley tackle and hoists other than skip hoists; winches and capstans; jacks.
	8425 20	– Pit-head winding gear; winches specially designed for use underground

ex 8426 (*)	Ships' derricks; cranes, including cable cranes; mobile lifting frames, straddle carriers and works trucks fitted with a crane.	
	ex 8426 20	— Tower cranes
		— — For offshore platforms and onshore rigs
		— Other machinery:
	ex 8426 91	— Designed for mounting on road vehicles
		— — Lifting equipment for repairing and completion of wells
ex 8429	Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers.	
		— Mechanical shovels, excavators and shovel loaders:
	ex 8429 51	— Front-end shovel loaders
		— — Loaders specially designed for underground use
ex 8430	Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snow-ploughs and snow-blowers:	
		— Coal or rock cutters and tunnelling machinery:
	8430 31	— Self-propelled
	8430 39	— Other
		— Other boring or sinking machinery:
	ex 8430 41	— Self-propelled
		— — For the discovery or exploitation of deposits of oil and gas
	ex 8430 49	— Other
		— — For the discovery or exploitation of deposits of oil and gas
ex 8431	Parts suitable for use solely or principally with the machinery of heading Nos 8425 to 8430	
		— — Only for machinery covered
8471 (*)	Automatic data-processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included	
ex 8474	Machinery for sorting, screening, separating, washing, crushing, grinding, mixing or kneading earth, stone, ores or other mineral substances, in solid (including powder or paste) form; machinery for agglomerating, shaping or moulding solid mineral fuels, ceramic paste, unhardened cements, plastering materials or other mineral products in powder or paste form; machines for forming foundry moulds of sand:	
	8474 10	— Sorting, screening, separating or washing machines
	8474 20	— Crushing or grinding machines
	ex 8474 90	— Parts
		— — Of cast iron or cast steel
ex 8479 (*)	Machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter (4)	
		— Other machines and mechanical appliances:
	ex 8479 89	— Other
		— — Mobile hydraulic powered mine roof support

ex 8481	Taps, cocks, valves and similar appliances for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves	
	8481 10	— Pressure-reducing valves
	8481 20	— Valves for oleohydraulic or pneumatic transmissions
	8481 40	— Safety or relief valves
	8481 80	— Other appliances
	8481 90	— Parts
ex 8483	Transmission shafts (including cam shafts and crank shafts) and cranks; bearing housings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints)	
	ex 8483 40	— Gears and gearing, other than toothed wheels, chain sprockets and other transmission elements presented separately; ball or roller screws; gear boxes and other speed changers, including torque converters
		— — Transmission elements exclusively for use in sucker-rod pumping units in the oil and gas industry
ex 8484 (*)	Gaskets and similar joints of metal sheeting combined with other material or of two or more layers of metal; sets or assortments of gaskets and similar joints, dissimilar in composition, put up in pouches, envelopes or similar packings; mechanical seals	
	8484 10	— Gaskets and similar joints of metal sheeting combined with other material or of two or more layers of metal
	8484 20 (5)	— Mechanical seals
8501 (*)	Electric motors and generators (excluding generating sets)	
8502 (*)	Electric generating sets and rotary converters	
8503 (*)	Parts suitable for use solely or principally with the machines of heading No 8501 or 8502	
ex 8504 (*)	Electrical transformers, static converters (for example, rectifiers) and inductors	
		— Liquid dielectric transformers:
	8504 21	— Having a power handling capacity not exceeding 650 kVA
	8504 22	— Having a power handling capacity exceeding 650 kVA but not exceeding 10 000 kVA
	8504 23	— Having a power handling capacity exceeding 10 000 kVA
		— Other transformers:
	8504 33	— Having a power handling capacity exceeding 16 kVA but not exceeding 500 kVA
	8504 34	— Having a power handling capacity exceeding 500 kVA
	8504 40	— Static converters
	8504 50	— Other inductors
	8504 90	— Parts
ex 8507 (*)	Electric accumulators, including separators therefor, whether or not rectangular (including square)	
		— — Excluding the use for non-energy sectors
8514	Industrial or laboratory electric (including induction or dielectric) furnaces and ovens; other industrial or laboratory induction or dielectric heating equipment	

ex 8526 (*)	Radar apparatus, radio navigational aid apparatus and radio remote control apparatus.
8526 10	— Radar apparatus
	— Other:
8526 91	— — Radio navigational aid apparatus
8531 (*)	Electric sound- or visual-signalling apparatus (for example bells, sirens, indicator panels, burglar or fire alarms), other than those of heading Nos 8512 or 8530
ex 8532	Electrical capacitors, fixed, variable or adjustable (pre-set)
8532 10	— Fixed capacitors designed for use in 50/60 Hz circuits and having a reactive power handling capacity of not less than 0,5 kVar (power capacitors)
8535	Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, fuses, lightning arresters, voltage limiters, surge suppressors, plugs, junction boxes), for a voltage exceeding 1 000 volts
8536	Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1 000 volts.
ex 8536 10	— Fuses
	— — Exceeding 63 A
ex 8536 20	— Automatic circuit breakers
	— — Exceeding 63 A
ex 8536 30	— Other apparatus for protecting electrical circuits
	— — Exceeding 16 A
	— Relays:
8536 41	— — For a voltage not exceeding 60 V
8536 49	— — Other
ex 8536 50	— Other switches
	— — For a voltage exceeding 60 V
8537	Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading No 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of Chapter 90, and numerical control apparatus, other than switching apparatus of heading No 8517
8538	Parts suitable for use solely or principally with the apparatus of heading Nos 8535, 8536 or 8537
ex 8541	Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light emitting diodes; mounted piezo-electric crystals:
ex 8541 40	— Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light emitting diodes:
	— — Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels
ex 8544	Insulated (including enamelled or anodised) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors
8544 60	— Other electric conductors, for a voltage exceeding 1 000 V
8544 70	— Optical fibre cables

ex 8545	Carbon electrodes, carbon brushes, lamp carbons, battery carbons and other articles of graphite or other carbon, with or without metal, of a kind used for electrical purposes
8545 20	— Brushes
8546	Electrical insulators of any material
8547	Insulating fittings for electrical machines, appliances or equipment, being fittings wholly of insulating material apart from any minor components of metal (for example, threaded sockets) incorporated during moulding solely for purposes of assembly, other than insulators of heading No 8546; electrical conduit tubing and joints therefor, of base metal lined with insulating material
ex 8704	Motor vehicles for the transport of goods:
	— Other, with compression-ignition internal combustion piston engine (diesel or semi-diesel):
ex 8704 21	— gvw not exceeding 5 tonnes
	— — Specially designed for the transport of highly radioactive materials
ex 8704 22	— gvw exceeding 5 tonnes but not exceeding 20 tonnes
	— — Specially designed for the transport of highly radioactive materials
ex 8704 23	— gvw exceeding 20 tonnes
	— — Specially designed for the transport of highly radioactive materials
	— Other, with spark-ignition internal combustion piston engine:
ex 8704 31	— gvw not exceeding 5 tonnes
	— — Specially designed for the transport of highly radioactive materials
ex 8704 32	— gvw exceeding 5 tonnes
	— — Specially designed for the transport of highly radioactive materials
ex 8705	Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire-fighting vehicles, concrete-mixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological units)
8705 20	— Mobile drilling derricks
ex 8709	Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles:
	— Vehicles:
ex 8709 11	— Electrical
	— — Specially designed for the transport of highly radioactive materials
ex 8709 19	— Other
	— — Specially designed for the transport of highly radioactive materials
ex 8905	Light-vessels, fire-floats, dredgers, floating cranes, and other vessels the navigability of which is subsidiary to their main function; floating docks; floating or submersible drilling or production platforms
8905 20	— Floating or submersible drilling or production platforms

ex 9015	Surveying (including photogrammetrical surveying), hydrographic, oceangraphic, hydrological, meteorological or geophysical instruments and appliances, excluding compasses; rangefinders:	
ex 9015 80	– Other instruments and appliances	
	– – Geophysical instruments only	
9015 90	– Parts and accessories	
ex 9026 (*)	Instruments and apparatus for measuring or checking the flow, level, pressure or other variables of liquids or gases (for example, flow meters, level gauges, manometers, heat meters), excluding instruments and apparatus of heading Nos 9014, 9015, 9028 or 9032:	
	– – Except for use in the water distribution industry	
9027	Instruments and apparatus for physical or chemical analysis (for example polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; instruments and apparatus for measuring or checking quantities of heat, sound or light (including exposure meters); microtomes	
9028	Gas, liquid or electricity supply or production meters, including calibrating meters therefor	
ex 9029 (*)	Revolution counters, production counters, taximeters, mileometers, pedometers and the like; speed indicators and tachometers, other than those of heading No 9014 or 9015; stroboscopes:	
ex 9029 10	– Revolution counters, production counters, taximeters, mileometers, pedometers and the like	
	– – Production counters	
ex 9029 90	– Parts and accessories	
	– – For production counters	
ex 9030 (*)	Oscilloscopes, spectrum analysers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading No 9028; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionising radiations.	
ex 9030 10	– Instruments and apparatus for measuring or detecting ionising radiations	
	– – For use in the energy sector	
	– Other instruments and apparatus, for measuring or checking voltage, current, resistance or power, without a recording device:	
9030 31	– Multimeters	
9030 39	– Other	
	– Other instruments and apparatus	
ex 9030 83 ([6])	– Other, with a recording device	
	– – For use in the energy sector	
ex 9030 89	– Other	
	– – For use in the energy sector	
ex 9030 90	– Parts and accessories	
	– – For use in the energy sector	
9032 (*)	Automatic regulating or controlling instruments and apparatus.	

(*) Except products for use in civil aircraft.
([1]) Covered by 7304 20 20 in the 1992 version.
([2]) Covered by 8207 11 and 12 in the 1992 version.
([3]) Covered by 8406 19 in the 1992 version.
([4]) Chapter 84.
([5]) Not covered by separate subheading in the 1992 version.
([6]) Covered by 9030 81 in the 1992 version'.

'4. *Annex EQ II*

LIST OF ENERGY-RELATED EQUIPMENT

(In accordance with Article 1(4a))'.

'14. *Annex BR*

LIST OF CONTRACTING PARTIES WHICH SHALL NOT INCREASE ANY CUSTOMS DUTY OR OTHER CHARGE ABOVE THE LEVEL RESULTING FROM THEIR COMMITMENTS OR ANY PROVISIONS APPLICABLE TO THEM UNDER THE WTO AGREEMENT

(In accordance with Article 29(7))'.

'15. *Annex BRQ*

LIST OF CONTRACTING PARTIES WHICH SHALL NOT INCREASE ANY CUSTOMS DUTY OR OTHER CHARGE ABOVE THE LEVEL RESULTING FROM THEIR COMMITMENTS OR ANY PROVISIONS APPLICABLE TO THEM UNDER THE WTO AGREEMENT

(In accordance with Article 29(7))'.

Article 6

Provisional application

1. Each signatory which applies the Energy Charter Treaty provisionally in accordance with Article 45(1) and each Contracting Party agrees to apply this amendment provisionally pending its entry into force for such signatory or Contracting Party to the extent that such provisional application is not inconsistent with its constitution, laws or regulations.

2. (a) Notwithstanding paragraph (1):

(i) any signatory which applies the Energy Charter Treaty provisionally or Contracting Party may deliver to the Depositary within 90 days of the date of the adoption of this amendment by the Charter Conference a declaration that it is not able to accept the provisional application of this amendment;

(ii) any signatory which does not apply the Energy Charter Treaty provisionally in accordance with Article 45(2) may deliver to the Depositary not later than the date on which it becomes a Contracting Party or begins to apply the Treaty provisionally a declaration that it is not able to accept the provisional application of this amendment.

The obligation contained in paragraph (1) shall not apply to a signatory or Contracting Party making such a declaration. Any such signatory or Contracting Party may at any time withdraw that declaration by written notification to the Depositary.

(b) Neither a signatory or Contracting Party which makes a declaration in accordance with subparagraph (a) nor investors of that signatory or Contracting Party may claim the benefits of provisional application under paragraph (1).

3. Any signatory or Contracting Party may terminate its provisional application of this amendment by written notification to the Depositary of its intention not to ratify, accept or approve this amendment. Termination of provisional application for any signatory or Contracting Party shall take effect on the expiration of 60 days from the date on which such signatory's or Contracting Party's written notification is received by the Depositary. Any signatory which terminates its provisional application of the Energy Charter Treaty in accordance with Article 45(3)(a) shall be considered as also having terminated its provisional application of this amendment with the same date of effect.

Article 7

Status of the Decision

The Decision adopted in connection with the adoption of this amendment is an integral part of the Energy Charter Treaty.

ANNEX II

DECISIONS IN CONNECTION WITH THE ADOPTION OF THE AMENDMENT TO THE TRADE-RELATED PROVISIONS OF THE ENERGY CHARTER TREATY

1. A signatory which does not apply the amendment adopted on 24 April 1998 provisionally may at the time that it takes action to apply that amendment, whether on a definitive or a provisional basis, notify the secretariat in writing that until it is listed in Annexes BR and BRQ, it will apply the amendment as if all items of energy materials and products and of energy-related equipment continued to be listed in Annexes EM I and EQ I.

   The amendment shall apply accordingly to such a signatory.

   Any signatory may at any time withdraw the notification referred to above in writing to the secretariat.

2. The final provisions of the amendment shall be based on Part VIII, in particular Article 42, of the Energy Charter Treaty so far as relevant.

COMMISSION

COMMISSION DECISION

of 17 June 1998

relating to a proceeding pursuant to Article 86 of the EC Treaty

(IV/36.010-F3 — Amministrazione Autonoma dei Monopoli di Stato)

(notified under document number C(1998) 1437)

(Only the Italian text is authentic)

(Text with EEA relevance)

(98/538/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 17 of 6 February 1962, first Regulation implementing Articles 85 and 86 of the Treaty [1], as last amended by the Act of Accession of Austria, Finland and Sweden, and in particular Articles 3(1) and 15(2) thereof,

Having regard to the applications submitted pursuant to Article 3 of Regulation No 17 by R. J. Reynolds Tobacco GmbH and R. J. Reynolds Tobacco Company SAE, Rothmans International BV and International Tobacco Company for a finding that Amministrazione Autonoma dei Monopoli di Stato has infringed Article 86 of the EC Treaty,

Having regard to the Commission decision of 27 February 1997 to initiate proceedings in this case,

Having given the firm concerned the opportunity to make known its views on the objections raised by the Commission in accordance with Article 19(1) of Regulation No 17 and with Commission Regulation (EEC) No 99/63 of 25 July 1963 on the hearings provided for in Article 19(1) and (2) of Regulation No 17 [2],

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

PART I

THE FACTS

I. AAMS

(1) Amministrazione Autonoma dei Monopoli di Stato (hereinafter referred to as 'AAMS') is a body forming part of the financial administration of the Italian State which, in addition to carrying out various administrative activities, also engages in the production, import, export and wholesale distribution of manufactured tobaccos.

(2) Article 45 of Law No 907 of 17 July 1942 [3] gives AAMS the exclusive right to produce manufactured tobacco on national territory.

AAMS currently exercises that right through 21 production plants employing some 7 500 persons. In those plants, AAMS produces not only the cigarette brands it owns but also brands owned by Philip Morris. To that end, it has over several decades concluded licensing agreements with Philip Morris

[1] OJ 13, 21. 2. 1962, p. 204/62.
[2] OJ 127, 20. 8. 1963, p. 2268/63.
[3] Law on the salt and tobacco monopoly, GURI (Gazzetta Officiale della Repubblica Italiana) No 199, 28. 5. 1942.

to manufacture the Marlboro, Muratti Ambassador, Mercedes and Diana brands in particular. In 1995 AAMS manufactured some 54 million kilograms of cigarettes, of which 40 million kilograms were of its own brand and 14 million were branded as Philip Morris.

(3) In addition, AAMS engages in the import, introduction into the country by way of intra-Community acquisition, distribution and sale of manufactured tobaccos. It has a distribution capacity of some 102 million kilograms of cigarettes per annum.

II. **The products and their distribution in Italy**

1. *The products*

(4) The products concerned by these proceedings are cigarettes (and not, therefore, other tobacco products such as cigars, cigarillos, cut tobacco and snuff).

In 1995 legal sales of cigarettes in Italy totalled 90 million kilograms. The cigarettes were manufactured, variously, in Italy (about 54 million) by AAMS and in other Member States (about 36 million).

In recent years the market shares held by the various producers have been as follows:

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
AAMS	62,2	61,9	61,1	58,4	56,0	51,5	48,5	48,5	45,1	43,6	42,1
Philip Morris	30,4	30,9	31,8	34,1	36,3	40,1	42,6	42,9	46,9	49,9	51,6
BAT	2,9	2,9	2,6	2,7	2,7	2,9	3,1	2,9	2,7	2,2	2,0
Rothmans	1,1	1,1	1,2	1,3	1,6	2,0	2,4	2,4	2,4	2,1	1,9
Reynolds	1,5	1,6	1,8	2,0	2,1	2,3	2,3	2,2	1,9	1,4	1,5
Others	1,9	1,6	1,5	1,5	1,3	1,2	1,1	1,0	1,0	0,8	0,9

2. *Distribution of the products in Italy*

(5) The importation into Italy of cigarettes from other Member States and their wholesale distribution were 'authorized' — that is to say liberalised — by Article 1 of Law No 724 of 10 December 1975 [4], which provided that, by way of derogation from Article 45 of Law No 907/42 referred to above, imports were authorised through distribution warehouses other than those of AAMS provided, however, that the warehouses had been authorised by the financial administration and that the imports were already contained in the table listing the selling prices of cigarettes. Subsequent decrees of the Finance Ministry, and in particular the Ministerial Decree of 26 July 1983, laid down the criteria and arrangements for obtaining authorisation to set up warehouses and the rules governing the movement of the imports.

However, until now all Community cigarettes have been imported into Italy by AAMS, which also handles their wholesale distribution on the basis of agreements concluded by it with the foreign manufacturers wishing to sell their cigarettes in Italy.

(6) Law No 1293 of 22 December 1957 [5] provides for the organisation of the services for the distribution and sale of articles subject to monopoly and, therefore, cigarettes. Under that Law, the services are provided by:

(a) departmental inspectorates;

(b) warehouses;

(c) warehouse outlets;

(d) 'magazzini';

(e) retailers.

(7) The departmental inspectorates (hereinafter referred to as the 'inspectorates') supervise the distribution and sale of the monopoly goods. In accordance with the rules laid down by the AAMS Executive Board, they organise the said services and ensure their smooth operation (Article 2 of Law No 1293/57). The inspectorates are part of AAMS and are headed by AAMS officials having disciplinary authority over the staff of the inspectorate and dependent bodies, and over 'magazzini' staff and retailers.

(8) The warehouses for monopoly goods (also referred to as primary distribution units — hereinafter referred to as 'warehouses') are responsible for receiving the monopoly goods, storing

[4] GURI 1 4, 7. 1. 1976.

[5] GURI No 9, 13. 1. 1958.

them and distributing them for sale (Article 3(1) of Law No 1293/57). The warehouses collect the tax on sales of monopoly goods and all revenue accruing to AAMS and pay them to the Treasury (Article 3(2) of Law No 1293/57). They form part of AAMS and are run by AAMS officials. There are currently 21 warehouses.

The warehouse sales outlets remove the monopoly goods from the warehouses against payment of the appropriate amount and sell them to the authorised retailers. Exceptionally, they may also supply, on behalf of the warehouses, the 'magazzini' (Article 4(1) of Law No 1293/57). In order to carry out their tasks, the sales outlets receive an allocation of 'sale or return' goods (Article 4(2) of Law No 1293/57).

(9) The 'magazzini' (also referred to as secondary distribution units, but referred to hereinafter as 'magazzini') collect the monopoly goods from the warehouses and sales outlets against payment of the corresponding amount and sell them to authorized retailers. The 'magazzini' are managed under contract by private individuals who receive an allocation of 'sale or return' goods and are required to provide a guarantee (Article 5(1) and (2) of Law No 1293/57). The subcontractor is remunerated on the basis of the agreed weight of the goods sold (Article 5(3) of Law No 1293/57). Management of the 'magazzini' is governed by Decree No 1074 of 14 October 1958 [6], by a detailed list of specifications and by instructions from AAMS. There are currently some 600 'magazzini'.

(10) The retailers of monopoly goods (hereinafter referred to as 'retailers') purchase their cigarette supplies from the 'magazzini' and stock them with a view to selling them to the public.

The retailers are divided into ordinary and special retail stores. State retail stores were abolished by Law No 198 of 13 May 1993.

The ordinary retail stores are run by private-sector managers under contracts of not more than nine years' duration (Article 19 of Law No 1293/57). They are set up as and when AAMS deems it necessary and useful in the interests of the service (Article 21 of Law No 1293/57) and are classified as first- or second-category stores, depending on the revenue yielded by the premiums on tobacco and tobacco products.

[6] GURI No 308, 22. 12. 1958.

The special retail stores were set up to satisfy particular requirements of the retail sales service and may be temporary in cases where it is not possible to establish an ordinary store (Article 22 of Law No 1293/57).

AAMS may also authorise sales of monopoly goods in public commercial concerns, community centres and cooperatives. Such special authorisation is granted in the form of a 'temporary licence' (Article 23 of Law No 1293/57).

All retailers are required to pay AAMS an annual fee in proportion to their income and an additional flat-rate annual fee (Article 26 of Law No 1293/57). They are paid through a system of 'premiums', which means a fixed amount determined by decree of the Finance Ministry in agreement with the Treasury and in the light of the opinion of the AAMS Administrative Board (Article 24 of Law No 1293/57). When the retailer collects the monopoly goods, he pays an amount corresponding to their price, less the amount of the premium. Management of the retail outlets is governed by Decree No 1074/1958, by a detailed list of specifications and by instructions issued by AAMS.

There are at present some 58 000 retailers and some 18 000 public retail outlets with a 'temporary licence'.

(11) Even if Community cigarettes were brought direct into Italy by operators other than AAMS and were therefore sent to wholesale warehouses other than those controlled by the latter, sales to the public would nevertheless continue to be subject to the monopoly. As a result, other importers would in any event have to use the retailers referred to above in order to sell cigarettes to the public.

III. **Behaviour of AAMS**

(12) The behaviour of AAMS at issue here relates to:

— the standard distribution contract concluded by AAMS with certain cigarette manufacturers under which the latter entrust AAMS with the introduction and wholesale distribution of cigarettes manufactured in another Member State,

— certain unilateral decisions taken by AAMS concerning cigarettes manufactured in another Member State and subsequently brought into Italy.

1. *Distribution contracts*

(13) AAMS has developed a model contract (hereinafter referred to as the 'distribution contract') for the wholesale distribution in Italy of cigarettes manufactured in any other Member State by another producer (hereinafter referred to as 'foreign firm'). In that context, AAMS sends the distribution contract for signature by the foreign firm that plans to entrust AAMS with the distribution of its cigarettes in Italy. AAMS uses the same contract for all foreign firms. The latest version of the contract was produced at the end of 1993. It has a five-year duration and ends on 31 December 1998.

(14) The text of the distribution contract is unilaterally laid down by AAMS, foreign firms having no option but to sign it as submitted.

The facts relating to the renewal of the most recent distribution contract (end 1993/early 1994) show that foreign firms have no opportunity to negotiate any of the contract clauses or to suggest changes that take account of their views and interests.

It is pointed out in this connection that, by letter dated 10 November 1993, R. J. Reynolds Tobacco Company SAE (hereinafter referred to as 'Reynolds') sent AAMS a 'list of more specific observations we should like to discuss with you with a view to their subsequent incorporation in the contract in the form of clauses'. AAMS did not follow up the letter and simply presented Reynolds, by letter dated 28 December 1993, with a new distribution contract which did not take account of Reynolds' proposals contained in its letter of 10 November. Then, on 7 January 1994, AAMS informed Reynolds that, if it did not receive formal approval of the distribution contract, it would suspend distribution and sales of its cigarettes.

Similarly, the letters sent by British American Tobacco (Deutschland) Export GmbH (hereinafter referred to as 'BAT')) containing proposals relating to renewal of the contract received no reply.

Finally, a request made by Rothmans International BV (hereinafter referred to as 'Rothmans') for discussions on the possibility of amending the distribution contract met with the same response. In reply to the request for discussions made by Rothmans in its letter of 12 November 1993, AAMS simply forwarded on 21 December 1993 the text of the new contract, which took no account at all of the proposals by Rothmans, which 'wished to reach ... agreement to distribute [Rothmans] products in accordance with the provisions of the draft contract ... to avoid an interruption of continuity in distribution ...'. On 7 January 1994 AAMS informed Rothmans that it had 'studied with care the said request' adding that 'despite the best will in the world, it has not been possible to integrate them in the provisions of the contract already sent to your company, a contract already approved, moreover, by our administrative board. The draft contract submitted for approval by your company must, therefore, be regarded as definitive ... We await receipt of your copy of the contract, duly signed ... failing which AAMS will be compelled to suspend the distribution and sale of your company's products.' Faced with this stance, Rothmans informed AAMS by letter of 10 January 1994 that it would sign the new contract but added, 'We do, however, want to express our regrets that it has not been possible to include in the contract or even discuss with you the points we mentioned in our letter of 12 November 1993'.

(15) The most important clauses of the distribution contract may be summarised as follows:

(a) the foreign firm entrusts AAMS with the wholesale and retail distribution in Italy of the brands of processed tobacco listed in the appendix to the contract (first paragraph of Article 1);

(b) the list of tobacco brands in the appendix to the contract is updated directly by AAMS in consequence of and in conformity with administrative provisions issued by the competent government authority concerning any new additions to the price-list of brands (second paragraph of Article 1);

(c) once a brand has been added to the price list, AAMS allows the foreign firm, twice a year, to introduce new brands in its distribution system (third subparagraph of Article 1);

(d) the foreign firm pays AAMS an amount calculated, in respect of each brand, on the basis of parameters which take account of quantities sold (Article 7 and Appendix C). The payment for cigarettes is based on every kilogram sold in accordance with the annual scale of sales laid down for each brand:

— up to 100 000 kg and new brands:	ITL 4 430/kg
— from 100 001 kg to 500 000 kg:	ITL 3 800/kg
— from 5 001 kg to 1 million kg:	ITL 3 600/kg
— from 1 000 001 kg to 3 000 000 kg:	ITL 3 400/kg
— over 3 000 000 kg:	ITL 2 900/kg

(e) payment for products is subject to presentation by the foreign firm of a monthly invoice in respect of the quantities transferred during the same period from the warehouses to the 'magazzini'. To that end, AAMS makes available within the first 10 days, and in any case not later than the first 15 days of the following month, for each brand, a list showing the status in respect of each warehouse. AAMS then issues the order of payment to the State Accounting Department *(Contabile del Portafoglio dello Stato)* within 25 days of the date of receipt of the invoice from the foreign firm (Article 9);

(f) for the initial introduction of new brands, the quantities of cigarettes to be imported or acquired by way of intra-Community acquisition may not exceed 5 000 kg (fifth subparagraph of Appendix B). As regards subsequent imports and for the 12 months following the first order, orders presented by AAMS will correspond to sales for the previous month (sixth paragraph of Appendix B);

(g) AAMS undertakes to order from the foreign firm the quantities of products necessary to ensure that uninterrupted supplies are available to the primary and secondary distribution units, according to actual market demand (first subparagraph of Article 2);

(h) the monthly quantities necessary to ensure that those aims are achieved are determined as follows:

— the stock at the warehouses at the starting date of the contract and at the beginning of each subsequent calendar year is based on the average monthly sales of the previous year, commensurate with the number of months, as follows: two months for brands whose monthly sales do not exceed 500 000 kg and one month for the others (first paragraph of Appendix B),

— the foreign firm supplies monthly orders commensurate with the quantities sold during the preceding month (second paragraph of Appendix B),

— if the foreign firm intends to introduce extra supplies of products in excess of those defined above but not exceeding 30 % of the monthly order allowed for each brand, then the amount of such extra supplies must be agreed with ARMS, taking account of the latter's actual handling capacity and foreseeable demand (fifth subparagraph of Article 2),

— should the foreign firm introduce extra supplies of cigarettes, the payment due to AAMS is increased by ITL 600 per kg, calculated on the basis of the total quantity supplied during the month in question (sixth subparagraph of Article 2);

(i) the quantities of cigarettes ordered by AAMS are to be supplied by the foreign firm on the basis of monthly plans for distribution among the warehouses, agreed on each individual occasion by the two firms (second subparagraph of Article 2);

(j) the foreign firm supplies cigarettes packaged in accordance with current regulations. In addition, the cigarettes must have the word 'Monital' printed on them lengthways (first subparagraph of Article 4);

(k) AAMS may carry out inspections and qualitative analyses on samples of imported cigarettes (first subparagraph of Article 5). To that end, the foreign firm is required to pay a fixed annual amount for each brand (second subparagraph of Article 5);

(l) the foreign firm is entitled to appoint its own representative in Italy, who may visit warehouses, 'magazzini' and retailers (first and second subparagraphs of Article 10). In order to carry out these tasks, the representative may employ staff (fourth subparagraph of Article 10). The appointment of the representative and of staff must be notified to AAMS (fifth subparagraph of Article 10);

(m) both the foreign firm and AAMS agree to desist from any form of cigarette promotion or the granting of incentives to wholesalers and retailers. In the event of repeated breach and proven liability of the foreign firm or one of its representatives, the foreign firm may not undertake the abovementioned visit without having previously replaced the representative concerned (sixth subparagraph of Article 10);

(n) the foreign firm undertakes to supply to AAMS cigarettes that do not conflict with the relevant laws in force in Italy. In the event of any breach of this obligation, the foreign firm must withdraw the product and bear all expenses connected with the withdrawal, accepting all responsibility stemming from the marketing of the product (Article 11);

(o) AAMS is entitled to return to the foreign firm cigarettes that are no longer in perfect condition on account of lengthy storage or accident. In such cases, any expenses connected with returned goods are borne by the foreign firm (fifth and sixth subparagraphs of Article 13);

(p) AAMS undertakes to observe impartiality in its distribution network, at any time and at any level thereof, with regard to all products distributed, whether Italian or foreign, however well known or important, ensuring that such products are distributed at the various sales outlets in accordance with market requirements (Article 12);

(q) the distribution contract runs for five years (first subparagraph of Article 15). However, if the foreign firm decides to distribute its own cigarettes, directly or indirectly, to wholesalers in Italy, the distribution contract may be terminated by either party subject to notice of three months (second subparagraph of Article 15).

2. *Unilateral decisions concerning imported cigarettes*

(16) In recent years AAMS has acted in a manner which has had a direct effect on the position in Italy of cigarettes manufactured in another Member State and then brought into Italy. Its actions may be summarised under the following headings:

(a) refusal by AAMS to increase the quantities imported and distributed under the distribution contract;

(b) measures taken by AAMS in respect of the 'magazzini' in order to favour its own brands to the detriment of competing brands;

(c) action taken by AAMS in respect of retailers in order to favour its own brands to the detriment of competing brands.

(17) As was stated (point 15(h), third and fourth indents), foreign firms may apply to AAMS for an increase in the quantities allowed onto the Italian market up to a maximum of 30 % of the monthly order. However, such an increase is subject to approval by AAMS.

On the basis of the documents listed in and appended to the statement of objections, it is clear that AAMS refused to give approval in several cases without adequate justification.

In 1995 AAMS refused on four occasions to allow increases requested by Reynolds of up to 30 % in quantities of Amadis cigarettes.

In April 1996 it refused to grant increases requested by Rothmans of up to 30 % in quantities of Lord cigarettes. In August 1996 it refused to grant increases of up to 30 % in the cigarette brands listed by Rothmans.

In August 1996 AAMS refused to grant increases of up to 30 % in quantities of Barclay, Barclay UL, Kim Menthol and Lucky Strike 10s cigarettes requested by BAT. The refusals caused stocks to fall below the levels provided for in the distribution contract.

(18) AAMS constantly coordinates and supervises the distribution activities of the 'magazzini'. According to AAMS, the purpose of the monitoring is to allow it to assess real market requirements and supply flows.

However, on several occasions, AAMS instructed the 'magazzini' to reduce orders for introduced cigarettes and/or increase orders for AAMS cigarettes, threatening them with proceedings if they failed to comply.

There are a number of examples of such behaviour:

— in January 1990 Reynolds informed AAMS that a number of warehouses had repeatedly cut supplies of certain brands of cigarettes intended for the 'magazzini',

— in October 1993 an inspectorate sent a letter to the 'magazzini' on its territory informing them that, as far as some foreign brands and, in certain cases, all foreign brands were concerned, it had identified 'excessive stocks in relation to market requirements'. It therefore instructed the local warehouse 'to specifically check requests for supplies in order to improve the balance of stocks and rationalise the management of allocations' granted to the 'magazzini',

— on an unspecified date another inspectorate sent a letter to the 'magazzini' on its territory with almost exactly the same content as that referred to above,

— in January 1994 an AAMS inspectorate sent a letter to the 'magazzini' on its territory requiring them 'to comply with the abovementioned sales quota ... in order to maintain if not improve, where possible, the market shares of AAMS brands'. The inspectorate also added that 'it goes without saying that an increase in

sales of foreign products must go hand in hand with a proportional increase in the sales of domestic products. Exceptional sales of non-domestic products will in any case have to be offset within the next two months so that the "magazzino" in question obtains at the end of 1994, in relation to the market share referred to above, the following result. . .',

— in March 1994 an inspectorate sent a letter to the 'magazzini' on its territory requesting them to take action to achieve the market shares (domestic products/foreign products) laid down by the inspectorate in an earlier letter,

— in February 1995 an AAMS inspectorate sent a letter to a 'magazzino' stating that a retailer had received a consignment of foreign cigarettes which appeared to be high in relation to the total consignment of all products and higher even than the quantities of consumer goods taken. The inspectorate therefore decided that, in future, foreign cigarettes would be supplied only in quantities corresponding to the percentage of sales achieved by the 'magazzino' in question,

— in July 1995 an AAMS inspectorate sent a letter to a 'magazzino' informing it that, according to the checks it had carried out, the 'magazzino' had on several occasions requested a warehouse to supply quantities of foreign products which were 'normally purchased in smaller quantities, based far more closely on sales',

— in November 1995 an AAMS inspectorate sent a letter to a 'magazzino' inviting it to reduce its stocks of foreign products 'to bring them to the level essential to overall operating requirements'.

(19) AAMS also constantly monitors the trading activities of retailers as it is kept informed, by means of a system of standardised forms, of the choices of the retailers in question concerning their cigarette orders.

Various examples show that AAMS has pursued its monitoring activities with a view to favouring the cigarettes it produces itself. To that end, it should be noted that:

— in March 1995 an AAMS inspectorate reprimanded several retailers for having obtained, as from November 1994, quantities of foreign cigarettes which were comparable to the monthly sales of virtually the whole sector. For that reason, it considered that those retailers were favouring the cigarettes in question and had infringed the principle of impartiality in the distribution of products,

— in February 1995 an AAMS inspectorate informed a retailer that 'the minimum quantity of monopoly goods which must be kept permanently in stock in the shop you manage . . . has been fixed',

— in February 1995 an AAMS inspectorate informed a retailer that it had ordered an abnormally high quantity of foreign cigarettes compared with its total orders and with the quantities of products having a higher turnover,

— in April 1996 an AAMS inspectorate suspended supplies of cigarettes to a retailer because the latter had not only failed to promote the sale of domestic cigarettes but had also culpably favoured the distribution of a competitor's cigarettes.

PART II

LEGAL ASSESSMENT

A. *ARTICLE 86 OF THE TREATY*

(20) Article 86 of the Treaty prohibits as incompatible with the common market any abuse by one or more undertakings of a dominant position within the common market, or in a substantial part of it, in so far as it may affect trade between Member States. In order to determine the applicability of Article 86 to the present case, it is necessary to decide whether the conditions set out in the Article have been met.

I. **The undertaking**

(21) AAMS is an entity engaged in economic activities that are both industrial (production of manufactured tobacco) and commercial (wholesale distributor of processed tobaccos) in nature. According to the case-law of the Court of Justice [7], it therefore constitutes an undertaking within the meaning of Articles 85 to 90 of the Treaty. The fact that AAMS does not have a separate legal personality from that of the State does not affect this conclusion.

[7] Case 118/85 of 16 June 1987, Commission v. Italy [1987] ECR, p. 2599.

Although the State has a single legal personality, Italian law recognises that each ministry and each autonomous administration has its own legal personality and, therefore, the capacity to be a party to legal proceedings independently *(legitimatio ad causam)*. In order to achieve its ends, an autonomous administration may make use of an administrative system which, although continuing to belong to the State, nevertheless enjoys considerable organisational autonomy (autonomy with regard to management, decision-making, assets and budget).

The fact that the Italian State has delegated certain public authority powers to AAMS does not mean that the Community competition rules do not apply to the behaviour of AAMS in its business activities (production of goods and supply of services) ([8]).

II. **The relevant markets**

(22) In order to determine whether AAMS holds a dominant position within the meaning of Article 86 of the Treaty, it is necessary to define the relevant market — that is, the economic sectors and geographic areas forming the background to an assessment of the economic strength of AAMS with regard to its competitors and customers.

1. *The markets for products and services*

(23) From the standpoint of products and services, it is necessary to distinguish three markets. The first consists of a group of products, whilst the other two correspond to the supply of services.

(24) First, there is the market for cigarettes produced in Italy or in other Member States of the Community for distribution and sale on Italian territory in order to satisfy smokers' demand (hereinafter referred to as the 'cigarette market'). There are various competing cigarette manufacturers on this market which endeavour to attract the largest possible number of consumers to their own brands and ensure that existing customers remain loyal.

(25) Secondly, there is the market for services relating to the distribution and wholesale of the abovementioned cigarettes (hereinafter referred to as the 'wholesale distribution market'). On this market, AAMS collects the cigarettes from the place of manufacture (or, in the case of cigarettes manufactured abroad, at the frontier), stores them in its own warehouses and distributes them to 'magazzini' or, through the warehouse outlets, to retailers. The 'magazzini' stock the cigarettes and sell them on to authorised retailers.

(26) Lastly, there is the market for services relating to the retailing of the cigarettes (hereinafter referred to as the 'retail distribution market'). There are some 58 000 authorised retailers of monopoly goods and 18 000 public outlets with a 'temporary licence'.

(27) Although the markets in question are separate, they are clearly highly interdependent, so that any action taken in one of them can have an appreciable effect on the others. This is particularly so with the cigarette market, as the competitiveness of economic operators is considerably influenced by the way in which their products are affected by activities in the wholesale and retail distribution markets.

2. *The geographic markets*

(28) From a geographic point of view, the markets outlined at points 24, 25 and 26 are located on Italian territory. In the light of the Commission notice on the definition of relevant market for the purposes of Community competition law ([9]), that territory must be regarded as separate from the territories of the other Member States for the following reasons:

— the preferences of Italian smokers are different from those of smokers in other Member States; see point 46 of the Commission notice. The brands produced by AAMS have a very high market share in Italy (42,1 %), although they are virtually non-existent in other Member States. In addition, the Philip Morris brands have a much higher market share in Italy than in the other Member States,

— the retail prices for cigarettes differ considerably from those in other Member States,

— in order to meet the requirements of the prevailing Italian regulations, all foreign manufacturers wishing to sell their products in Italy are required to label their cigarette packages with appropriate warnings (such as: 'tobacco seriously damages your health') in Italian. Such differences in the market should be taken into account even if they stem from legal texts (see point 50 of the Commission notice),

([8]) Judgment of the Court of Justice of 20 March 1985 in Case 41/83 Italy v. Commission [1985] ECR, p. 873.

([9]) OJ C 372, 9. 12. 1997, p. 5.

— there are no imports and/or exports by entities other than the producers (in other words, there are no parallel imports of cigarettes).

3. *Conclusions concerning the relevant markets*

(29) On the basis of the foregoing, it must be concluded that the relevant markets for the purposes of the present proceedings are as follows:

— the Italian market for cigarettes,

— the Italian wholesale distribution market,

— the Italian retail distribution market.

III. **The position of AAMS on the relevant markets**

1. *The position of AAMS on the Italian market for cigarettes*

(30) The Italian cigarette market consists of a duopoly made up of Philip Morris and AAMS (together, they hold some 94 % of the market), while other firms have only a marginal share of the market although they occupy stronger positions in other Member States. This situation has existed for at least 10 years. It should, however, be pointed out that, although the combined market share of the duopoly has remained virtually unchanged (over 90 % in any event), the share held by Philip Morris has risen consistently and markedly in the last few years whilst that of AAMS has fallen by roughly the same amount. Philip Morris is therefore the only firm to benefit from AAMS's regular loss of market share, the other firms having generally retained the same share.

2. *The position of AAMS on the Italian wholesale distribution market*

(31) With regard to the wholesale market, it should first be noted that Italy has adopted legislation liberalizing the import and wholesale distribution of cigarettes ([10]). As a result, any firm satisfying the requirements of the laws in force may engage in the wholesale distribution of cigarettes on Italian territory. A Community cigarette manufacturer could create its own distribution network or use the services of a wholesale distributor already operating in Italy. However, until now no producers have taken advantage of the possibility, preferring to continue to use the AAMS network to distribute their products in Italy. It must be borne in mind when analysing this choice that foreign firms have considerable financial difficulty in setting up a sufficiently extensive independent distribution network. Furthermore, no firms (other than AAMS) are at present engaged in wholesale distribution which could possibly be used for such activities, nor is the economic climate likely to encourage Italian firms to seize the opportunities afforded by the rules in force in order to enter the market. Lastly, there are the very specific characteristics of the Italian distribution system in the cigarette sector (very strict control by AAMS of the activities of the 'magazzini' and retailers, the deeply ingrained habit of the 'magazzini' and retailers of having AAMS as their sole commercial interlocutor, etc.). It must therefore be concluded that foreign manufacturers have not had (and still do not have) a viable alternative enabling them to choose differently and that, therefore, AAMS is a 'mandatory partner' for such firms.

AAMS is thus the only operator present on the Italian market for the wholesale distribution of cigarettes and it therefore has a *de facto* monopoly.

In the course of these proceedings, AAMS argued that since 1 January 1993 foreign firms have been able to entrust the wholesale distribution of cigarettes to a number of traders with bonded warehouses currently used to market other products liable to excise duty (and are therefore subject to a similar administrative and accounting regime as cigarettes) ([11]).

In considering these arguments, it must be borne in mind that bonded warehouse operators wishing to distribute cigarettes under the relevant legislation would encounter insurmountable financial obstacles. First and foremost, Italian regulations require manufactured tobaccos to be kept on separate premises from other bonded goods (such as alcohol), and this would entail substantial investment by the economic operators concerned.

([10]) Article 1 of Law No 724/1975.

([11]) The Decree Law of 31 December 1992, converted into Law No 427 of 29 October 1993, transposes into Italian law Council Directive 92/12/EEC on the intra-Community movement of products subject to excise duty (OJ L 76, 23. 3. 1992, p. 1), as last amended by Directive 96/99/EC (OJ L 8, 11. 1. 1997, p. 12).

Furthermore, the potential purchasers of cigarettes (essentially the retailers) are very different from the customers for other excise goods (such as retailers in the food distribution sector, in respect of alcohol). This would involve setting up a new transport and distribution structure without the chance to benefit from operational synergies with the existing distribution structure.

Finally, it should be borne in mind that the market share held by foreign manufacturers (excluding Philip Morris, which is tied to AAMS by licensing contracts) is extremely small (about 7 %) and does not, therefore, provide a sufficient financial incentive for firms wishing to compete against AAMS in the wholesale distribution of tobacco. It is clear that it would not be in the interests of retailers to obtain supplies from a different wholesaler if the latter could supply them only with a small proportion of the cigarettes they required.

It must be concluded from the foregoing that AAMS holds a dominant position within the meaning of Article 86 of the Treaty on the Italian market for the wholesale distribution of cigarettes.

3. *The position of AAMS on the Italian retail distribution market*

(32) With regard to the retail market, the Italian State has prohibited AAMS from engaging in the direct retailing of cigarettes. On the other hand, AAMS retains sole administrative authority to issue the licences to operate as a retailer. The licences do not, however, constitute a business activity because:

— they represent an exercise of public authority consisting in the issue of administrative acts in the form of concessions granting authorisation to engage in the retailing of cigarettes,

— the fact that retail sales are subject to the issue of licences by AAMS is not sufficient evidence that the latter exercises economic control over retailers. As a result, AAMS does not exercise *de facto* control over retailers such as would deprive them of their independence on the market. Retailers are therefore independent firms in relation to AAMS, both legally and commercially, and compete against each other.

It must therefore be concluded that AAMS is not present on the market for retail sales of cigarettes ([12]).

IV. **Abuses of a dominant position**

(33) The Court of Justice has consistently held ([13]) that the concept of abuse is an objective concept relating to the behaviour of an undertaking in a dominant position which is such as to influence the structure of a market where, as a result of the very presence of the undertaking in question, the degree of competition is weakened and which, through recourse to methods different from those which condition normal competition in products or services on the basis of the transactions of commercial operators, has the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition.

1. *The distribution contracts*

(34) As is stated at paragraph 31, AAMS holds a dominant position on the market for the wholesale distribution of cigarettes, where it is the only operator present. As a result, foreign manufacturers have invariably decided to use AAMS to distribute their cigarettes in Italy.

In view of the factors described in point 31 above, it would be reasonable to conclude that the decision of the foreign firms to use AAMS to distribute their cigarettes in Italy and to sign a distribution contract to that end is based on understandable economic and commercial reasons.

However, scrutiny of the current distribution contract reveals that some clauses give AAMS an actual right of control and, whenever it considers it expedient, a right to intervene in the many choices facing a foreign firm which must be regarded as essential to the firm's competitive freedom. On the basis of the clauses in question, AAMS is able to limit the competitive initiatives of foreign firms on the Italian market and thus protect the sale of its own brands.

The clauses were imposed by AAMS since it unilaterally drafted the text of the distribution contract: the foreign firms had the choice of signing it, as drafted by AAMS, or dispensing with the latter's services for distributing their products in Italy. In view of their very close dependence on AAMS, the foreign firms were compelled to accept the clauses imposed by AAMS in full, after expressing their dissatisfaction.

([12]) See the judgment of 14 December 1995 in Case C-387/93 Banchero [1995] ECR I, p. 4663.
([13]) See the judgment of 13 February 1979 in Case 85/76 Hoffmann-La Roche v. Commission [1979] ECR, p. 461.

It can therefore be concluded that AAMS exploited its dominant position on the market for the wholesale distribution of cigarettes in order to incorporate in the distribution contract clauses allowing it to control and even veto the competitive initiatives of the foreign firms, in order to protect its own sales.

1.1. The clauses concerning the introduction of new cigarette brands onto the market

1.1.1. The clause relating to the time limit for the introduction of new cigarette brands onto the market

(35) Under the third subparagraph of Article 1 of the distribution contract, AAMS allows foreign firms to introduce new brands twice a year.

The clause limits the opportunities for a foreign firm to launch new cigarette brands on the Italian market at the moment it considers best. It must be borne in mind that the seasons have a considerable influence on certain brands of cigarettes. It may therefore genuinely be in the interests of the foreign firm to introduce a brand on a given date without being compelled to wait until AAMS has decided to rule on the matter in accordance with the abovementioned provision. In addition, if a manufacturer wishes to launch a new brand simultaneously throughout the Community, the delayed introduction in Italy will compel it, for no reason whatsoever, to modify its strategy and may harm its competitiveness.

It must therefore be concluded that the imposition of the clause limiting the introduction of new brands onto the Italian market to twice a year restricts the competitiveness of the foreign firm and thus constitutes an abuse of a dominant position within the meaning of Article 86 of the Treaty.

1.1.2. The clause relating to the maximum quantities of new cigarette brands allowed on the market

(36) The fifth paragraph of Appendix B of the distribution contract provides that the quantities of new brands may not exceed 5 000 kg, while the sixth paragraph of the Appendix provides that, in the first year, orders from AAMS must be the same as in the preceding month.

It should be noted that a producer must be free to decide the conditions and arrangements for the launch of a new product, including the quantity to be marketed at the time of the launch. The relevant provision of the contract deprives the foreign firm of this facility.

(37) In addition, the quantity in question is totally inadequate in relation to the requirements for launching a new product in Italy. Since the minimum order that can be placed by a retailer is one carton, only one third of retailers (or 25 000 out of 75 000 retailers) will be able to obtain the new product at the time of the launch. However, AAMS cigarettes and those manufactured under licence are not subject to the abovementioned quantitative ceiling ([14]). As a result, the cigarettes of foreign firms are discriminated against, compared with AAMS brands, for no valid reason ([15]).

In fact, the purpose of such a provision is to impede the marketing of new foreign cigarettes or, at the very least, to reduce their impact on the market. This affects the competitiveness of the foreign firm, as the clause arbitrarily fixes at a very low level the quantities that may be marketed when a new product is launched.

Such a provision must be regarded as having a particularly restrictive effect in the event of a foreign firm deciding to launch a new version (such as 'light' or 'ultra light') of a widely marketed brand, since it is likely in such a case that consumer demand will be strong.

For these reasons it must be concluded that the provision limiting the quantities of new products to be placed on the market at the time of the launch and in the following year constitutes a serious restriction of the competitiveness of the foreign firm and is accordingly an abuse within the meaning of Article 86 of the Treaty.

1.2. The clauses relating to the monthly quantities of cigarettes allowed on the market

1.2.1. The clause relating to the maximum monthly quantities of cigarettes allowed on the market

(38) The second paragraph of Appendix B of the distribution contract provides that the quantities of cigarettes of the foreign firm to be marketed in Italy must be commensurate with the quantities sold during the previous month.

([14]) In the course of the proceedings, examples were provided of recent launches of new brands by AAMS: in June 1996, the first month of the launch, AAMS sold 33 217 kilograms of MS E. Slim cigarettes and, in July 1996, also in the first month, it sold 35 543 kilograms of MS Personal cigarettes. These quantities are some seven times greater than the maximum allowed for foreign cigarettes.

([15]) It was stressed in the course of the proceedings that AAMS cigarettes are automatically distributed, from the first month of being launched, to all 'magazzini' and retailers.

The clause restricts the freedom of foreign firms to decide on the volume of goods to be sold. The foreign firm is thus deprived of the chance of competing on the Italian market and taking full advantage of the opportunities available. It must therefore be concluded that the clause is designed to protect the market position of AAMS cigarettes and is indeed capable of doing so.

(39) The clause in question does not appear to be justified by any objective need to protect any legitimate financial and/or commercial interests of AAMS.

First, AAMS has distribution capacities of some 102 million kilograms of cigarettes a year, which is considerably in excess of actual market requirements in Italy (about 90 million kilograms). As a result, it has far too much capacity, allowing it to respond favourably to any requests from foreign firms to increase the quantities distributed without strengthening its distribution structures.

Furthermore, the clause in question does not appear to be justified by any need for the quantities of foreign cigarettes distributed by AAMS to correspond to actual market demand, as was argued by AAMS in the course of the proceedings. It is not in the interests of foreign firms to make available through the AAMS distribution network more cigarettes than the market can actually absorb since, after a given time, they are required to withdraw all unsold cigarettes stocked in AAMS warehouses at their own expense (Article 10 of the distribution contract). In addition, if cigarettes remain in storage in the warehouses for a long time, the foreign firm must replace them with other, more recent products.

Lastly, the cigarettes produced by AAMS, whether as its own brand or under licence, are not subject to any comparable limitation and hence enjoy a considerable competitive edge compared with cigarettes manufactured abroad.

(40) For these reasons it must be concluded that the imposition of the said clause constitutes an abuse of a dominant position within the meaning of Article 86 of the EC Treaty, despite the fact that it allows for possible and partial derogation.

1.2.2. The clause relating to the increase in the monthly quantities of cigarettes allowed on the market

(41) The fifth subparagraph of Article 2 of the distribution contract provides that the foreign firm may ask AAMS to increase the quantities of cigarettes to be placed on the Italian market. This possibility, however, is subject to a threefold limitation. First, the agreement of AAMS is required. Second, any increases must not exceed 30 % of the 'monthly order allowed' (which must itself be commensurate with sales in the previous months). Third, AAMS approval of such increases gives rise to an obligation on the part of the foreign firm to pay a higher distribution fee calculated not on the basis of the 'additional' quantities, but on the basis of the entire quantity supplied (sixth subparagraph of Article 2 of the distribution contract).

These provisions seriously jeopardise the competitive freedom of the foreign firms. A manufacturer must be free to determine the quantities of products to be marketed. The need for AAMS approval in order to increase quantities clearly has the object of restricting the sales of foreign cigarettes. Limiting increases to 30 % of the 'monthly order allowed' seriously jeopardises the competitiveness of the firm concerned by preventing it from responding in full to existing demand on the Italian market. This has particularly serious effects in the case of cigarette sales, which are strongly affected by the seasons. Thus, for example, a foreign firm might be unable to meet the demand for a particularly popular brand of cigarettes during the summer months and might have to content itself with increasing the average quantities sold in off peak months by 30 %. Lastly, the obligation to pay AAMS an additional amount calculated on the basis of total quantities in the event of an increase in quantities does not appear to be in any way justified. The distribution fee is structured in such a way that its amount gradually diminishes as the quantities sold increase (thus the fee for annual sales in the 1 to 3 million kilogram range is ITL 3 400 per kilogram, whereas the fee for sales in excess of 3 million kg is ITL 2 900 per kilogram). Accordingly, an increase in quantities sold should lead to a reduction in the distribution fee and not to an increase as provided for in the contract.

It thus seems clear both that the sole aim of the provisions is to prevent foreign firms from increasing in response to market demand the quantities sold on the Italian market, and that the provisions are capable of achieving that aim.

(42) According to AAMS, the clause in question is justified in the first instance by the need to avoid excessive financial risk in the form of the payment made for quantities of foreign cigarettes exceeding market requirements. AAMS points out that the distribution contract requires it, no later than the 15th day of each month, to inform the foreign firm of the quantities of cigarettes that have left its warehouses and, within 25 days of the date of the receipt of the invoice from the foreign firm, to issue the order of payment. In practice, therefore, AAMS is required under the contract to arrange payment within some 50 days of removal of the foreign cigarettes from the warehouses. AAMS also claims that, in view of the fact it is paid only when the retailer purchases the cigarettes from the warehouse, it runs the risk of having to advance sums for a considerable period.

AAMS has not provided any information concerning the average time spent by cigarette stocks in the warehouses; it has referred only to a general risk of excessive periods of storage ([16]). On the other hand, Rothmans stated at the hearings that the average stock turnover rate was 20 days and that, therefore, AAMS would not in general incur any financial exposure but would, on the contrary, benefit from a financial advantage of 30 days (as it waits 20 days to receive payment and about 50 to pay).

It can also be assumed that the 'magazzini' operate a rational commercial policy and do not therefore usually acquire foreign cigarettes liable to stay in stock for a long time. On the contrary, it can reasonably be assumed that the 'magazzini' purchase their stock from the warehouses on the basis of actual demand from retailers, thus generally ruling out the risk of excessive storage periods (and the associated financial risk for AAMS).

([16]) AAMS states only that 'products may remain in stock for a long time in the distribution circuit (i.e. in the warehouses themselves) before reaching the retailer, in other words before the moment at which [AAMS] receives from the tobacco retailers the price for the sale of the products'.

(43) Secondly, AAMS claims that the clause in question is justified by the need to avoid a number of negative economic consequences. It claims that the fact that a foreign firm withdraws at its own expense cigarettes which have remained too long in warehouse storage is not sufficient to prevent AAMS from having to bear certain financial costs, e.g. expenditure on rail transport from the Italian frontier to the warehouse, for unloading the wagons, for storage and for stock management. However, AAMS has not given any figures on the extent of the financial charges.

The clause appears to be disproportionate to the objective. The parties could instead operate under other non-restrictive measures designed to take account of actual expenditure incurred by AAMS on cigarettes which have remained unsold in its warehouses and have therefore been removed by the foreign firm.

Lastly, the parties could incorporate into the contract similar measures aimed at reimbursing actual expenditure incurred by AAMS in connection with unsold cigarettes in 'magazzini' (a hypothetical situation that is unlikely to occur frequently, for the reasons stated in point 42).

(44) It is clear from the foregoing that the relevant clause in the distribution contract concerning the possibility of increasing the quantities of foreign cigarettes distributed on the Italian market considerably restricts the competitive scope of foreign manufacturers and, therefore, constitutes an abuse of a dominant position under Article 86 of the Treaty.

1.3. The clauses concerning packaging and quality control

1.3.1. The clause concerning the printing of the word 'Monital' on the cigarettes

(45) Article 4 of the distribution contract requires the foreign firm to print the word 'Monital' (an abbreviation of 'Italian monopolies') on each cigarette intended for sale on the Italian market.

The obligation does not appear to be justified by the need to distinguish legally marketed cigarettes from contraband cigarettes, since it would suffice simply to affix to each packet of cigarettes the mark provided for by Article 4 of Law No 724/975, as cigarettes cannot be sold singly.

In addition, the obligation is a means of promoting AAMS through a competing product. Lastly, the obligation may create doubt on the part of consumers as to the identity of the cigarette manufacturer in question.

It must therefore be concluded that the imposition of the clause in question constitutes an abuse of a dominant position under Article 86 of the Treaty.

1.3.2. The clause relating to quality control

(46) The quality controls provided for in Article 5 of the distribution contract cannot be regarded as necessary to enforce compliance with the rules in force; as a result, their imposition by AAMS is not justified. Consequently, AAMS cannot require a foreign firm to pay an annual amount for each packaging of each brand as payment for such inspections and analyses.

Article 11 of the distribution contract requires the foreign firm to supply to AAMS products that do not conflict with the relevant legislation in force in Italy. The legislation gives effect to Council Directive 89/662/EEC [17], as amended by Directive 92/41/EEC [18] on the labelling of tobacco products, and Council Directive 90/239/EEC [19] on the maximum tar yield of cigarettes, which aim *inter alia* at eliminating obstacles to intra-Community trade and hence the need for controls.

Furthermore, such controls cannot be justified by the need to protect AAMS from possible liability for having distributed cigarettes that fail to conform to the rules in force. Under Italian Law No 224 of 24 May 1988 giving effect to Council Directive 85/374/EEC [20] on liability for defective products, a distributor is liable only if the manufacturer cannot be identified.

It thus seems that, in practice, the controls had the effect of unjustifiably delaying the launch of new brands of foreign cigarettes on the Italian market, as no new brands can be marketed until AAMS has completed its checks.

The clause requiring the foreign firm to allow AAMS to check its products and pay a fixed amount in that connection is therefore an abuse of a dominant position under Article 86 of the Treaty.

2. *Unilateral action with regard to imported cigarettes*

2.1. Refusal to authorise increases in cigarette imports

(47) AAMS on several occasions refused to allow foreign firms to increase quantities of imported cigarettes (see point 17). Its behaviour had the effect of preventing foreign firms from marketing in Italy the quantities of cigarettes they considered desirable and hence weakened their competitiveness.

Under the distribution contract, AAMS has the right to reject requests for increases of more than 30 % in the monthly order allowed, whilst below that threshold (that is, for increases of 0,1 % to 30 %) it can approve or reject requests for increases. The AAMS refusals referred to above concern requests for increases complying with the contract (see point 17).

In its observations on the statement of objections, AAMS stated that the abovementioned refusals were not unjustified because: (a) as regards Reynolds, on 30 June of 1983, 1984, 1985 and 1986, in relation to a market share of 1,9 %, 1,4 %, 1,5 % and 1,6 % respectively, stocks in AAMS warehouses amounted to 3,47 %, 1,78 %, 1,60 % and 1,79 %; (b) as regards Rothmans, on 30 June of 1983, 1984, 1985 and 1986, in relation to a market share of 2,4 %, 2,1 %, 1,9 % and 1,8 % respectively, stocks in AAMS warehouses were 3,7 %, 2,87 %, 2,95 % and 3,06 % of total cigarettes in AAMS warehouses.

The comparison between the market shares of the foreign firm and the percentage of that firm's products in relation to total stocks in the warehouses is entirely without relevance as a justification for the behaviour of AAMS. A valid point would have been to check whether the stocks in AAMS warehouses could satisfy actual market demand for a specific brand of cigarette (and not for all the brands of a given foreign firm) at a specific time of year. AAMS has not provided any data to allow such an assessment to be made.

[17] OJ L 359, 8. 12. 1989, p. 1.
[18] OJ L 151, 11. 6. 1992, p. 30.
[19] OJ L 137, 30. 5. 1990, p. 36.
[20] OJ L 210, 7. 8. 1985, p. 29.

It is worth noting, however, that the distribution contract itself provides that cigarettes stocks (of a given brand with monthly sales of under 500 000 kilograms) in warehouses must be equal to double the average monthly sales (of that brand) in the previous year (Appendix B of the distribution contract). Such a clause (not called into question by this Decision) is consistent with normal commercial policy as regards stock management and could serve as a parameter for assessing requests for increases presented by foreign manufacturers.

The data provided by AAMS do not distinguish between the various brands of each foreign firm. However, the data for all brands show that warehouse stocks were lower than those provided for in the distribution contract and that consequently the requests for increases were justified.

Accordingly, the refusal to grant the increases requested by the foreign firms constitutes an abuse of a dominant position under Article 86 of the Treaty.

2.2. Behaviour with regard to the 'magazzini'

(48) AAMS supervises the activities of the 'magazzini' through its own inspectorates. On various occasions, AAMS inspectors did not confine themselves to exercising the supervisory powers conferred on AAMS by the legislation in force but took action aimed specifically at favouring domestic cigarettes and limiting sales of imported cigarettes (see point 18). As such behaviour does not form part of the public supervisory powers entrusted to AAMS, it constitutes an action of an undertaking. The fact that the behaviour constitutes an administrative act would tend, if anything, to aggravate the abuse.

(49) The restrictive effect of such behaviour was particularly severe in the cases where AAMS required 'magazzini' to comply with effective sales quotas applicable both to AAMS cigarettes and to foreign cigarettes.

Such behaviour is not required by any current legislation or by any contractual provision. On the contrary, it is clearly in breach of Article 12 of the distribution contract, which establishes the principle of an impartial distribution system.

(50) Accordingly, such behaviour in respect of 'magazzini' constitutes an abuse of a dominant position under Article 86 of the Treaty.

2.3. Behaviour with regard to retailers

(51) AAMS supervises the activities of retailers through its own inspectors. On various occasions, AAMS inspectors did not confine themselves to exercising the powers conferred on AAMS by the legislation in force but took action aimed specifically at favouring AAMS cigarettes and limiting sales of imported cigarettes (see point 19). On those occasions, the AAMS inspectors did not confine themselves to their power to supervise retailers ([21]) but acted with the sole aim of specifically favouring the business activities of AAMS to the detriment of its competitors. Such behaviour is manifestly unrelated to the public powers conferred on AAMS and therefore constitutes an act of an undertaking aimed at increasing the sales of AAMS cigarettes in relation to those of foreign firms. The fact that the behaviour in question is in the form of an administrative act does not alter that conclusion.

(52) The anti-competitive effect of such behaviour is particularly severe in the case of AAMS, which required retailers to purchase minimum quantities of domestic cigarettes or, without reason, ruled that the quantities of foreign cigarettes requested by retailers were excessive.

Such behaviour is not required by any rules currently in force or by any contract provisions. On the contrary, it is clearly in breach of Article 12 of the distribution contract, which establishes the principle of an impartial distribution system.

(53) Accordingly, such behaviour with regard to retailers constitutes an abuse of a dominant position within the meaning of Article 86 of the Treaty.

([21]) According to AAMS, the supervisory power 'is a power consisting exclusively in checking that the activity of retailing complies with the requirement of the act granting such powers'.

3. *Conclusions on the abuses of dominant position*

(54) It is clear from the foregoing that AAMS, benefiting from its dominant position on the market for the wholesale distribution of cigarettes, implemented a number of abusive measures aimed at protecting and strengthening its position on the market for cigarettes, having recourse to means other than those on which normal competition is based.

V. **The effect on trade between Member States**

(55) The behaviour referred to above is specifically aimed at hampering the introduction, distribution and sale in Italy of cigarettes manufactured in other Member States and therefore clearly satisfies the requirements relating to trade between Member States.

B. ***ARTICLE 3 OF REGULATION No 17***

(56) Article 3 of Regulation No 17 provides that, where the Commission finds that there is an infringement of Article 86 of the Treaty, it may require the undertakings concerned to bring such infringement to an end.

There are therefore grounds for requiring AAMS to put an end to the infringements that are continuing and to take the necessary steps to prevent the continuation or repetition of the infringements in question ([22]).

I. **Termination of the ongoing infringements**

(57) In order to determine which infringements are still taking place, it is necessary to consider the measures taken by AAMS while the case was under examination and after the initiation of proceedings.

AAMS informed the Commission by letter dated 10 October 1997 of an amendment to the model distribution contract consisting in the deletion of the clause limiting the possibility of introducing new cigarette brands to twice a year (third paragraph of Article 1 of the contract — see point 15(b) of this Decision) and the clause requiring the word 'Monital' to be printed on the cigarettes (first paragraph of Article 4 of the contract — see point 15(j) of this Decision). The foreign firms were informed of the amendment on 22 September 1997.

(58) On the basis of the foregoing, AAMS should modify the other abusive clauses of the distribution contract, namely, the clauses referred to in point 15(f), (h) and (k), in order to eliminate the abusive aspects referred to in points 36 to 44 and point 46.

II. **Measures to prevent the continuation and repetition of the infringements**

(59) In order to allow the Commission to ascertain whether the infringement has been terminated and cannot be repeated, AAMS should be asked to communicate to the Commission the new distribution contracts, amended in accordance with the information referred to in point 58.

(60) With regard to the unilateral behaviour referred to in point 17, it is necessary to require AAMS to refrain from taking, in respect of foreign firms, measures having an equivalent effect to such behaviour.

Accordingly, for a period of three years from the date of notification of this Decision, AAMS should present to the Commission, within two months of the end of the calendar year, a report indicating for the preceding year the quantities of foreign cigarettes distributed by AAMS and any refusals (total or partial) on its part to distribute such cigarettes.

(61) As regards the unilateral behaviour referred to in points 18 and 19, it is necessary to take account of certain measures taken by AAMS during the examination phase of the case and following the initiation of proceedings.

First, in its letter of 25 July 1997, AAMS provided the Commission with a copy of the circular sent on 16 June 1997 by its executive board to all its inspectorates. In that letter, AAMS first invited all the inspectors 'to refrain from initiatives which may constitute an infringement of the principle of impartiality... both in respect of tobacco produced domestically and foreign tobacco'. In addition, AAMS prohibited 'all initiatives aimed in any way whatsoever at influencing retailers' requests, even by fixing in advance the level for stock turnover, a practice which is incompatible with the obligation

([22]) In its judgment of 6 March 1974 in Joined Cases 6 and 7/73 Commercial Solvents v. Commission ([1974] ECR, p. 223), the Court of Justice held that the Commission had discretionary power to order measures to ensure its decision was effective, by requiring undertakings to do certain acts (paragraph 45).

on retailers to base their orders on consumer demand'. Lastly, AAMS required all its inspectorates to inform the AAMS executive board of all measures 'concerning the marketing of manufactured tobacco which they intended to notify to the "magazzini" and the retailers of monopoly goods'.

Secondly, it should be noted that, by letters dated 25 July and 10 October 1997, AAMS informed the Commission that, by circular of 18 April 1997, it had abolished the obligation on retailers to contribute to the development of domestic tobacco sales previously provided for in Article 15 of the general terms and conditions applicable to contracts for State monopoly goods shops ([23]). The obligation was replaced by the following provision: 'retailers shall ensure that they observe impartiality in the sale of tobacco, whether domestic or foreign, and in their display and presentation, which must comply with normal commercial practice' (Article 14(4) of the new terms and conditions). The new provision was referred to in the abovementioned circular of 16 June 1997. By circular of 24 September 1997, the AAMS executive board sent to all its inspectorates the text of the new terms and conditions for public contracts to operate monopoly goods shops, comprising several amendments, including the one referred to above. The circular also provides that 'to ensure that all retailers of monopoly goods are informed of the new text appended, the inspectors will make as many copies as there are outlets supplied by the "magazzini" within their jurisdiction, and will require the said "magazzini" to give a copy to each retailer and obtain acknowledgment of receipt'. Furthermore, in another circular dated 24 September 1997, AAMS provided the inspectorates with the text of the new terms and conditions for public contracts to manage 'magazzini' for the sale of monopoly goods ([24]). The new text abolishes the obligation to promote domestic tobacco previously imposed on the 'magazzini' and enshrines the principle of impartial distribution. The circular also requires inspectors to send the new text to the 'magazzini' located on their territory.

In view of the foregoing, it does not seem necessary to impose specific measures on AAMS to ensure that the abuses referred to in points 18 and 19 of this Decision are not repeated.

([23]) The terms and conditions for public contracts to manage State monopoly goods shops are State measures and are not covered by these proceedings. However, the amendment to the specifications is taken into account here as relevant to the assessment of the need to impose specific measures on AAMS to ensure that the abuses in question are not repeated.

([24]) See footnote 23.

C. ***ARTICLE 15 OF REGULATION No 17***

(62) Where, intentionally or negligently, undertakings infringe Article 86 of the Treaty, the Commission may, under Article 15(2) of Regulation No 17, impose fines on them of from ECU 1 000 to ECU 1 million, or a sum in excess thereof but not exceeding 10 % of the turnover in the preceding business year of the undertaking in question. In order to determine the amount of the fine, regard is had both to the gravity and the duration of the infringement.

The infringement was perpetrated by AAMS, which, whilst not having a legal personality as such, is an undertaking within the meaning of Article 86 of the Treaty. AAMS also enjoys organisational autonomy (in particular as regards asset management) and has its own capacity *ad litem* (see point 21).

In this case, it is appropriate to impose a fine on AAMS in view of its behaviour. In order to determine the amount of the fine, account should be taken of the gravity and duration of the infringement and of any aggravating and/or attenuating circumstances.

I. **Gravity of the infringement**

(63) In determining the gravity of the infringement, consideration must be given to the nature of the infringement, its actual impact on the market and the extent of the relevant geographic market.

1. *Nature of the infringement*

(64) The infringements of Article 86 of the Treaty committed by AAMS form part of a policy specifically aimed at obstructing, systematically and severely, access to the Italian cigarette market for competing producers, and at restricting their opportunities for increasing their share of that market.

(65) The breaches of Article 86 of the Treaty were committed intentionally by AAMS, which was specifically aiming, through such behaviour, severely to hinder access to the Italian cigarette market for competing producers.

It should be pointed out in this connection that, on several occasions, certain foreign firms expressly drew the attention of AAMS to the fact that many clauses of the distribution contract appeared to be incompatible with the Community competition rules.

2. *Actual impact on the market*

(66) In assessing the actual impact which the infringement has had on the market, two factors must be taken into consideration: the existence of restrictive State measures and the evolution of the Italian cigarette market.

(67) First, the difficulties encountered by foreign firms in gaining access to (and developing their activities on) the Italian market must to a large extent be ascribed to the measures adopted by the Italian State during the period concerned. It should be stressed here that:

— the Finance Ministry repeatedly omitted to adopt decrees adding new cigarette brands to the price list, despite being requested to do so by foreign firms (no decree adding foreign cigarette brands to the price list was adopted between 1992 and 1997), with the result that the new brands could not be placed on the Italian market ([25]). Such failure to act on the part of the State authorities meant that the clauses on the placing on the market of new cigarette brands (see point 15(c) and (f) of this Decision) were rendered inapplicable and without practical effect during the periods concerned,

— during the whole of the period in which the infringements were committed, retailers were required, under Article 15 of the general terms and conditions, to contribute to the development of domestic tobacco sales ([26]). The view should therefore be taken, here too, that the adverse effect of this State measure on the development of foreign cigarette sales partly neutralised the effect of the contractual clauses,

— up to August 1993, Italy had not brought its legislation into line with the Community rules on determination of the retail selling prices of imported manufactured tobacco ([27]). Before that date, Italian legislation had not allowed foreign firms freely to determine the retail selling prices of their cigarettes and was therefore a factor limiting the ability of those firms to compete. It was therefore also likely to hinder the development of sales of imported cigarettes on the Italian market, since foreign firms were denied the freedom to set the prices of their cigarettes in line with their own marketing strategies.

(68) Secondly, during the currency of the infringement, AAMS' market shares declined constantly and very considerably. Despite the existence of the infringement and of the above restrictive State measures, AAMS did not therefore succeed in reversing the downward trend in the sales of its own cigarettes on the Italian market. The infringement may, at the very most, have had the effect of slowing down a decline in AAMS' market share which could otherwise have been even more significant.

([25]) It should be noted here that Italian law requires, as an absolute precondition for placing a new brand of cigarettes on the Italian market, publication in the Official Gazette of the Italian Republic of a decree of the Minister for Finance adding the brand to certain schedules (Article 2 of Law No 825 of 13 July 1965 on the tax rules for products covered by the State monopoly, as amended by Article 27 of Decree-Law No 331 of 30 August 1993, converted by Law No 427 of 29 October 1993 (GURI No 225, 29.10.1993), and by Article 9 of Law No 76 of 7 March 1985. (GURI No 65, 16.3.1985)). The completion of this procedure is therefore to be regarded, to all intents and purposes, as a pre-condition to the placing on the market of new cigarette brands.

([26]) See point 61 and footnote 23.

([27]) Article 5 of Council Directive 72/464/EEC of 12 December 1972 on taxes other than turnover taxes which affect the consumption of manufactured tobacco (OJ L 303, 31.12.1972, p. 1). (This matter is currently governed by Article 9 of Council Directive 95/59/EC (OJ L 291, 6.12.1995, p. 40).) Up to August 1993, Italian legislation (Article 2 of Law 825/65) stipulated that 'the inclusion of each product subject to the State monopoly in the tariffs (...) and changes in that regard shall be effected by decree of the Minister for Finance in relation to the prices requested by suppliers for imported goods, after obtaining the opinion of the Administrative Board for State Monopolies, and in relation to the prices proposed by the said Board for other goods'. The Court of Justice of the European Communities declared that Italy had failed to fulfil its obligations under Article 5 of Directive 72/464/EEC by retaining legislation which did not expressly indicate and did not clearly entail an obligation on the part of the competent administrative authority to observe, under the conditions and within the limits laid down by the Directive, the principle that manufacturers and importers are free to determine the maximum prices of manufactured tobacco imported into Italy (judgment of 28 April 1993 in Case C-306/91 [1993] ECR I, p. 2133). In order to bring its legislation into line with that judgment, Italy adopted Decree-Law No 331/93, Article 27 of which, amending Article 2 of Law No 825/65, provides that 'retail selling prices and changes in those prices shall be established in line with the requests of manufacturers and importers'.

3. *Extent of the relevant geographic market*

(69) It should be borne in mind that the anti-competitive effects of the infringement are limited to a single Member State, Italy.

4. *Conclusion regarding the gravity of the infringement*

(70) In the light of the foregoing, the behaviour in question can be regarded, on the one hand, as constituting infringements of a nature and with a purpose that are markedly anti-competitive and, on the other hand, as having had effects on the market that are in practical terms relatively minor and limited to a single Member State.

In view of the concurrence of the above factors, it must be concluded that the behaviour in question constitutes a serious infringement.

(71) Since the amount of the fine must be determined, according to the gravity of the infringement, in such a way that it constitutes a sufficiently strong deterrent to any repetition of the infringement, an amount of ECU 3 000 000 is appropriate.

II. **Duration of the infringement**

(72) The current model distribution contracts came into effect on 1 January 1995 and are to expire on 31 December 1998. The abusive clauses in these contracts are identical in content to the corresponding clauses in the previous model distribution contracts, which were concluded at the beginning of 1985 and expired on 31 December 1993. The 1985 model distribution contracts in turn reproduced the corresponding clauses of the earlier model contracts (which are not, however, taken into consideration). On the basis of the information in the Commission's possession, the infringement appears to have been pursued for at least 13 years (namely since 1985).

Furthermore, the unilateral abusive behaviour (see points 16 to 19) extends over seven years (from 1990 to 1996).

(73) In the light of the foregoing, it is clear that the infringement has been in existence for a long time. It is therefore appropriate to increase the amount of the fine determined on the basis of the gravity of the infringement by 100 % (or ECU 3 000 000).

III. **Basic amount of the fine**

(74) In the light of the foregoing, the basic amount of the fine should be fixed at ECU 6 000 000.

IV. **Aggravating and attenuating circumstances**

(75) There are no aggravating or attenuating circumstances that would justify increasing or reducing the above basic amount.

V. **Amount of the fine**

(76) For the above reasons, the amount of the fine should be fixed at ECU 6 000 000.

HAS ADOPTED THIS DECISION:

Article 1

Taking advantage of its dominant position on the Italian market for the wholesale distribution of cigarettes, Amministrazione Autonoma dei Monopoli di Stato (hereinafter 'AAMS') has engaged in improper behaviour in order to protect its position on the Italian market for cigarettes, in breach of Article 86 of the EC Treaty, through the use of clauses compulsorily inserted in distribution contracts as set out in Article 2, and through unilateral practices as set out in Article 3.

Article 2

The compulsory clauses improperly inserted by AAMS in the distribution contracts are as follows:

(a) the clause relating to the time limit for the introduction of new cigarette brands onto the market (third paragraph of Article 1);

(b) the clause relating to the maximum quantities of cigarettes allowed on the market (Appendix B, fifth and sixth paragraph);

(c) the clause relating to the maximum monthly quantities of cigarettes allowed on the market (Appendix B, second paragraph);

(d) the clause relating to increases in the monthly quantities of cigarettes allowed on the market (fifth and sixth paragraph of Article 2);

(e) the clause relating to the printing of 'Monital' on the cigarettes (Article 4);

(f) the clause relating to inspection and analysis of the cigarettes (Article 5).

Article 3

The improper unilateral practices pursued by AAMS are as follows:

(a) refusal to authorise increases in the monthly quantities of foreign cigarette imports requested by foreign undertakings in conformity with the distribution contracts;

(b) behaviour with regard to 'magazzini' and retailers, designed to promote national cigarettes and to limit sales of foreign cigarettes.

Article 4

AAMS shall forthwith put an end to the infringements referred to in Articles 2 and 3, in so far as it has not already done so. In particular, AAMS shall amend the clauses of the distribution contracts referred to in Article 2 which are still in force, in such a way as to eliminate the abuses found by this Decision to have occurred. The new distribution contracts shall be submitted to the Commission.

Article 5

AAMS shall refrain from continuing or repeating the behaviour referred to in Articles 2 and 3 and from all activities having an equivalent effect.

To that end, AAMS shall, for a period of three years from the date of notification of this Decision, forward to the Commission within two months of the end of each calendar year, a report on the preceding year describing the quantities of foreign cigarettes distributed by AAMS as well as any refusal (total or partial) to distribute such cigarettes.

Article 6

A fine of ECU 6 000 000 is hereby imposed on AAMS in respect of the abuses referred to in Articles 2 and 3.

The above fine shall be paid, in ecus, within three months of notification of this Decision. The amount shall be transferred in ecus to the account of the Commission of the European Communities No 310-0933000-43, Banque Bruxelles Lambert, Agence Européenne, 5 Rond Point Schuman, B-1040 Brussels.

On expiry of that period, interest shall automatically be payable at the rate charged by the European Central Bank on the first working day of the month in which this Decision was adopted, plus 3,5 percentage points, that is to say 7,75 %.

Article 7

This Decision is addressed to Amministrazione Autonoma dei Monopoli di Stato, Piazza Mastai, 11, I-00153 Rome.

This Decision shall be enforceable pursuant to Article 192 of the Treaty.

Done at Brussels, 17 June 1998.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION

of 7 September 1998

updating the amounts specified in the Regulation laying down detailed rules for the implementation of the Financial Regulation

(notified under document number C(1998) 2581)

(98/539/EC, ECSC, Euratom)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Commission Regulation (Euratom, ECSC, EC) No 3418/93 of 9 December 1993 laying down detailed rules for the implementation of certain provisions of the Financial Regulation of 21 December 1977 [1], amended by Decision 97/594/EC, ECSC, Euratom [2], and in particular Article 145 thereof,

Whereas the European consumer price index (ECPI) was 98,6 in December 1995 and 100,7 in December 1996;

Whereas Article 1 of Decision 97/594/ECSC, EC, Euratom should be corrected to show that the ECU 98 700 threshold above which the powers of the ACPC (JRC) take effect for equipment and supply contracts not of a scientifc or technical nature (Article 110, second indent point (b) of Regulation (Euratom, ECSC, EC) No 3418/93) also applies to scientific and technical equipment and to R&TD works contracts (Article 110, first indent),

HAS DECIDED AS FOLLOWS:

Article 1

The fixed amounts specified in the Regulation laying down detailed rules for the implementation of certain provisions of the Financial Regulation are updated as follows with effect from 1 January 1998:

(ECU)

Annual indexing		1 January 1997	1 January 1998
Accounting officer	(Article 31, first indent)	131	134
Assistant accounting officer	(Article 31, second indent)	87	89
Imprest administrators	(Article 31, third indent)	44	45

Article 2

In Article 1 of Decision 97/594/EC, ECSC, Euratom the reference to 'Article 110, second indent point (b)' is amended to read 'Article 110, first indent and second indent point (b)'.

Article 3

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

The Commission's Accounting Officer shall communicate this Decision to the other Community institutions and bodies.

Done at Brussels, 7 September 1998.

For the Commission
Erkki LIIKANEN
Member of the Commission

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[1] OJ L 315, 16. 12. 1993. In accordance with Article 149, Regulation (Euratom, ECSC, EC) No 3418/93 entered into force on 1 January 1994.
[2] OJ L 239, 30. 8. 1997, p. 54.

COMMISSION DECISION

of 11 September 1998

amending Decision 97/634/EC accepting undertakings offered in connection with the anti-dumping and anti-subsidies proceedings concerning imports of farmed Atlantic salmon originating in Norway

(notified under document number C(1998) 2624)

(98/540/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], as last amended by Regulation (EC) No 905/98 [2] and in particular Articles 8(9) and 9 thereof,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community [3], and in particular Articles 13(9) and 15 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) On 31 August 1996, the Commission announced, by two separate notices published in the *Official Journal of the European Communities,* the initiation of an anti-dumping proceeding [4] as well as an anti-subsidy proceeding [5] in respect of imports of farmed Atlantic salmon originating in Norway.

(2) The Commission sought and verified all information that it deemed necessary for the purpose of its definitive findings. As a result of this examination, it was established that definitive anti-dumping and countervailing measures should be adopted in order to eliminate the injurious effects of dumping and subsidisation. All interested parties were informed of the results of the investigation and were given the opportunity to comment thereon.

(3) On 26 September 1997, the Commission adopted Decision 97/634/EC [6], as last amended by Regulation (EC) No 1126/98 [7], accepting undertakings offered in connection with the two abovementioned proceedings by the exporters mentioned in the Annex to that Decision and terminated the investigations in their respect.

(4) On the same day, the Council, by Regulation (EC) No 1890/97 [8], as last amended by Regulation (EC) No 772/98 [9], imposed an anti-dumping duty of ECU 0,32 per kilogram on imports of farmed Atlantic salmon originating in Norway. Imports of farmed Atlantic salmon exported by companies from which an undertaking had been accepted were exempted from that duty pursuant to Article 1(2) of the Regulation.

(5) On the same day, the Council, by Regulation (EC) No 1891/97 [10], as last amended by Regulation (EC) No 772/98, also imposed a countervailing duty of 3,8 % on imports of farmed Atlantic salmon originating in Norway. Imports of farmed Atlantic salmon exported by companies from which an undertaking had been accepted were exempted from that duty pursuant to Article 1(2) of that Regulation.

(6) The abovementioned Regulations set out the definitive findings and conclusions on all aspects of the investigations.

B. WITHDRAWAL OF UNDERTAKINGS

(7) In monitoring the undertakings submitted by the Norwegian exporters, the Commission gradually found that a number of exporters had no sales to the European Community for consecutive reporting quarters. On verification, some of these companies also declared that they had not exported during the reference period of the original invesigations having led to the present anti-dumping and countervailing measures, and that they have no binding contractual obligations to do so in the near future.

(8) The Commission informed the parties concerned of these findings and pointed out that, in view of these facts, the companies did not qualify as exporters within the meaning of Regulation (EC) No 384/96 (hereinafter the 'Basic Anti-dumping Regulation') and Regulation (EC) No 2026/97 (herein-

[1] OJ L 56, 6. 3. 1996, p. 1.
[2] OJ L 128, 30. 4. 1998, p. 18.
[3] OJ L 288, 21. 10. 1997, p. 1.
[4] OJ C 253, 31. 8. 1996, p. 18.
[5] OJ C 253, 31. 8. 1996, p. 20.
[6] OJ L 267, 30. 9. 1997, p. 81.
[7] OJ L 157, 30. 5. 1998, p. 82.
[8] OJ L 267, 30. 9. 1997, p. 1.
[9] OJ L 111, 9. 4. 1998, p. 10.
[10] OJ L 267, 30. 9. 1997, p. 19.

after the 'Basic Anti-subsidies Regulation'). Furthermore, it was made known to these parties that to maintain the undertakings in force under these circumstances would be administratively cumbersome for the Commission in terms of monitoring. These parties were also informed that they could offer, when the relevant conditions are met, again an undertaking as new exporters in accordance with Article 2 of Regulation (EC) No 1890/97 and with Article 2 of Regulation (EC) No 1891/97. Any application by these parties under those Articles would be treated expeditiously. Consequently, the following companies withdrew their undertakings voluntarily:

Undertaking No	Company name
002	A.B.A. AS
004	Alamar A/S
012	Arctic Product AS
025	Atlantis AS
029	Brødrene Karlsen AS
037	DM Direkte Markedsføringsbyrå
040	E. Slorer Jacobsen & Co. AS
054	Frøya Fiskeindustri AS
069	Imperial Salmon Co. AS
081	Kurt F. Løseth & Co. AS
097	Midtco AS
118	Nornir Group AS
131	NTC Norwegian Taste Company AS
133	Oddvin Bjørge AS
150	Sandanger AS
152	Scan-Mar AS
163	Sigerfjord-Fisk AS
169	Sotra Fiskeindustri AS
173	Stokfish Norway AS
179	Thorleif E. Ellingsen AS
181	Torget International AS

(9) In accordance with Article 8(9) of the Basic Anti-dumping Regulation, and with Article 13(9) of the Basic Anti-subsidies Regulation, there was no further need to give these parties an opportunity to comment since they themselves withdrew their undertakings.

C. AMENDMENT OF DECISION 97/634/EC

(10) Following the withdrawal of their undertakings, the companies concerned are not entitled to continue to benefit from an exemption from the anti-dumping and countervailing duties. Therefore, the names of the companies concerned need to be removed from the list of companies from which undertakings have been accepted.

(11) The Annex to Decision 97/634/EC listing the parties from which undertakings are being accepted, should be accordingly amended,

HAS DECIDED AS FOLLOWS:

Sole Article

The Annex to Decision 97/634/EC is hereby replaced by the Annex to the present Decision.

Done at Brussels, 11 September 1998.

For the Commission
Leon BRITTAN
Vice-President

ANNEX

COMPANIES FROM WHICH THE COMMISSION ACCEPTED UNDERTAKINGS

Undertaking No	Company name	TARIC additional code
001	A. Øvreskotnes AS	8095
003	Agnefest Seafood	8325
005	Alsvåg Fiskeprodukter A/S	8098
007	Aqua Export A/S	8100
008	Aqua Partner A/S	8101
011	Arctic Group International AS	8109
013	Arctic Superior AS	8111
014	Arne Mathiesen AS	8112
015	AS Aalesundfisk	8113
016	AS Austevoll Fiskeindustri	8114
017	AS Keco	8115
019	AS Nortraders Ltd	8117
020	AS Refsnes Fiskeindustri	8118
021	AS West Fish Ltd	8119
022	Astor AS	8120
023	Atlantic King Stranda AS	8121
024	Atlantic Seafood AS	8122
026	Borkowski & Røsnes AS	8124
027	Brødrene Aasjord AS	8125
028	Brødrene Eilertsen AS	8126
030	Brødrene Remø AS	8128
031	Christiansen Partner AS	8129
032	Clipper Seafood AS	8130
033	Coast Seafood AS	8131
035	Dåfjord Laks AS	8133
036	Delfa Norge AS	8134
039	Domstein Salmon AS	8136
041	Ecco Fisk & Delikatesse	8138
042	Edvard Johnsen AS	8139
043	Eurolaks AS	8140
044	Euronor AS	8141
045	Fader Martin AS	8142
046	Fiskeforsyningen AS	8143
047	Fjord Aqua Group AS	8144
048	Fjord Trading Ltd AS	8145
049	Fonn Egersund AS	8146
050	Fossen AS	8147
051	Fresh Atlantic AS	8148
052	Fresh Marine Company AS	8149
053	Fryseriet AS	8150
055	Gigante Fiskekroken AS	8152
058	Grieg Seafood AS	8300
059	Gunnar Klo AS	8301
060	Haafa fisk AS	8302
061	Hallvard Lerøy AS	8303
062	Herøy Filetfabrikk AS	8304

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064	Hirsholm Norge AS	8306
065	Hitramat & Delikatesse AS	8154
066	Hydro Seafood Sales AS	8159
067	Hydrotech-gruppen AS	8428
068	Icelandic Freezing Plants N. AS	8165
070	Incofood AS	8172
071	Inter Road AS	8173
072	Inter Sea AS	8174
075	Janas AS	8177
076	Joh. H. Pettersen AS	8178
077	Johan J. Helland AS	8179
079	Karsten J. Ellingsen AS	8181
080	Kr. Kleiven & Co. AS	8182
082	Labeyrie Norge AS	8184
083	Lafjord Group AS	8185
084	Langfjord Laks AS	8186
085	Leica Fiskeprodukter	8187
086	Leonhard Products A/S	8423
087	Lofoten Seafood Export AS	8188
088	Lorentz A. Lossius AS	8189
089	Ma-vo Norge AS	8190
090	Marex AS	8326
092	Marine Seafood AS	8196
093	Marstein Seafood AS	8197
095	Melands Røkeri Eftf. AS	8199
096	Memo Food AS	8200
098	Midsundfisk AS	8202
099	Myre Sjømat AS	8203
100	Naco Trading AS	8206
101	Namdal Salmon AS	8207
104	Nergård AS	8210
105	Nils Williksen AS	8211
106	Niscan Corporation	8212
107	Nisja Trading AS	8213
108	Nor-Food AS	8214
109	Nor-Trade International	8215
111	Nordic Group ASA	8217
112	Nordreisa Laks AS	8218
113	Norexport AS	8223
114	Norfi Produkter AS	8227
115	Norfood Group AS	8228
116	Norfra Eksport AS	8229
117	NorMan Trading Ltd AS	8230
119	Norsk Akvakultur AS	8232
120	Norsk Sjømat AS	8233
121	Northern Seafood AS	8307
122	Nortrade AS	8308
123	Norway Royal Salmon Sales AS	8309
124	Norway Royal Salmon AS	8312
125	Norway Seafarms AS	8313
126	Norway Seafoods ASA	8314

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128	Norwell AS	8316
129	Notfisk Arctic AS	8234
130	Nova Sea AS	8235
134	Ok-Fish Kvalheim AS	8239
136	Oster Sea Products AS	8241
137	Pan Fish Sales AS	8242
138	Pero Food AS	8243
140	Polar Seafood Norway AS	8247
141	Prilam Norvège AS	8248
142	Pundslett Fisk	8251
143	Roger AS	8253
144	Rolf Olsen Seafood AS	8254
145	Ryfisk AS	8256
146	Rørvik Fisk-og fiskematforretning AS	8257
147	Saga Lax Norge AS	8258
148	Sagalax Nord AS	8259
149	Salomega AS	8260
151	Sangoltgruppa AS	8262
153	Scanfood AS	8264
154	Sea Eagle Group AS	8265
155	Sea Star International AS	8266
156	Sea-Bell AS	8267
157	Seaco AS	8268
158	Seacom AS	8269
159	Seacom Nord AS	8270
160	Seafood Farmers of Norway Ltd AS	8271
161	Seanor AS	8272
162	Sekkingstad AS	8273
164	Sirena Norway AS	8275
165	Kinn Salmon AS	8276
166	Skarpsno Mat	8277
167	SL Fjordgruppen AS	8278
168	SMP Marine Produkter AS	8279
171	Stavanger Røkeri AS	8282
172	Stjernelaks AS	8283
174	Stolt Sea Farm AS	8285
175	Storm Company AS	8286
176	Superior AS	8287
177	Svenodak AS	8288
178	Terra Seafood AS	8289
180	Timar Seafood AS	8294
182	Torris Products Ltd AS	8298
183	Troll Salmon AS	8317
186	Vest Agentur AS	8320
187	Vie de France Norway AS	8321
188	Vikenco AS	8322
189	Wannebo International AS	8323
190	West Fish Norwegian Salmon AS	8324
191	Nor-Fa Food AS	8102