ISSN 0378-6978

Official Journal of the European Communities

L 304

Volume 41

14 November 1998

English edition

Legislation

Contents

I *Acts whose publication is obligatory*

* **Council Regulation (EC) No 2450/98 of 13 November 1998 imposing a definitive countervailing duty on imports of stainless steel bars originating in India and collecting definitively the provisional duty imposed** 1

Commission Regulation (EC) No 2451/98 of 13 November 1998 establishing the standard import values for determining the entry price of certain fruit and vegetables 13

Commission Regulation (EC) No 2452/98 of 13 November 1998 fixing the maximum aid for concentrated butter for the 192nd special invitation to tender opened under the standing invitation to tender provided for in Regulation (EEC) No 429/90 15

Commission Regulation (EC) No 2453/98 of 13 November 1998 fixing the minimum selling prices for butter and the maximum aid for cream, butter and concentrated butter for the 20th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97..... 16

Commission Regulation (EC) No 2454/98 of 13 November 1998 fixing the maximum buying-in price and the quantities of beef to be bought in under the 212th partial invitation to tender as a general intervention measure pursuant to Regulation (EEC) No 1627/89 18

* **Commission Regulation (EC) No 2455/98 of 13 November 1998 providing for the grant of private storage aid fixed in advance for carcases and half-carcases of lamb in Sweden**..... 19

Commission Regulation (EC) No 2456/98 of 13 November 1998 on the issuing of A1 export licences for fruit and vegetables 20

Commission Regulation (EC) No 2457/98 of 13 November 1998 fixing the import duties in the cereals sector..... 21

(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*

Commission

98/639/EC:

* **Commission Decision of 14 July 1998 concerning aid schemes in Germany under which aid could be awarded which is subject to the notification requirement of the multisectoral framework on regional aid for large investment projects** (1) *(notified under document number C(1998) 2271)* 24

98/640/EC:

* **Commission Decision of 13 October 1998 authorising the Member States to permit temporarily the marketing of forest reproductive material not satisfying the requirements of Council Directive 66/404/EEC** *(notified under document number C(1998) 3105)* 30

98/641/EC:

* **Commission Decision of 4 November 1998 amending Decision 93/452/EEC authorising the Member States to provide for derogations from certain provisions of Council Directive 77/93/EEC, in respect of plants of *Chamaecyparis* Spach, *Juniperus* L. and *Pinus* L., respectively, originating in Japan** *(notified under document number C(1998) 3333)* 36

(1) Text with EEA relevance

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2450/98

of 13 November 1998

imposing a definitive countervailing duty on imports of stainless steel bars originating in India and collecting definitively the provisional duty imposed

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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 [1], and in particular Article 15 thereof,

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

Whereas:

A. PROVISIONAL MEASURES

(1) By Commission Regulation (EC) No 1556/98 [2] (hereinafter referred to as 'the provisional duty Regulation') provisional countervailing duties were imposed on imports into the Community of stainless steel bars (hereinafter referred to as 'SSB' or 'the product concerned') falling within CN codes 7222 20 11, 7222 20 21, 7222 20 31 and 7222 20 81 originating in India. The measures took the form of *ad valorem* duties varying between 0 and 25,0 % with a residual duty of 25,0 %.

(2) Pursuant to Article 12(1) of Regulation (EC) No 2026/97 (hereinafter referred to as the 'basic Regulation'), provisional anti-dumping duties originally imposed by Commission Regulation (EC) No 1084/98 [3] were reduced by the provisional duty Regulation. This amendment of the anti-dumping duties was necessary in order to avoid that the product would be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidisation.

B. SUBSEQUENT PROCEDURE

(3) Following the adoption of the Regulation imposing provisional duties, several interested parties submitted comments in writing. The parties who so requested were granted an opportunity to be heard by the Commission.

(4) The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

(5) Parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive countervailing duty and the definitive collection of amounts secured by way of the provisional duty. They were also granted a period to make representations subsequent to this disclosure.

(6) The oral and written comments submitted by the interested parties were considered, and, where appropriate, definitive findings were changed accordingly.

C. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(7) The product concerned by the investigation is stainless steel bars and rods, not further worked than cold-formed or cold-finished, containing by weight 2,5 % or more of nickel, of circular cross-section as well as of other cross sections.

(8) Following the adoption of the Regulation imposing provisional duties, some Indian exporting producers argued that the products exported to the Community and those sold on the domestic market in India were not comparable, for instance in terms of chemical characteristics, and consequently could not be considered to be a like product.

[1] OJ L 288, 21. 10. 1997, p. 1.
[2] OJ L 202, 18. 7. 1998, p. 40.
[3] OJ L 155, 29. 5. 1998, p. 3.

(9) This claim could not be accepted since it was found that SSB produced and sold domestically in India as well as Indian SSB sold on the Community market had the same basic physical, technical and chemical characteristics and uses.

(10) One exporting producer claimed that products corresponding to the standard DIN 1013 fell within the scope of the current anti-subsidy proceeding and should therefore be taken into consideration. It was found, however, that these products were hot rolled bars and therefore not covered by the scope of the investigation as set out in the notice of initiation [1] and the provisional duty Regulation. In addition, it was noted that they do not fall within the relevant CN codes subject to measures. Consequently, this claim was not accepted.

(11) As no other arguments were presented, the findings set out in recitals 8 to 11 of the provisional duty Regulation are confirmed.

D. SUBSIDIES

1. Passbook scheme (PBS)

(12) The Government of India (GOI) claimed that this scheme, which is described in recitals 16 to 24 of the provisional duty Regulation, was not countervailable since it was a permitted drawback system within the meaning of Annex I(i) and Annexes II and III to the basic Regulation. Furthermore, it alleged that there was no requirement under Annex I(i) that imported inputs are used for export production.

However, Annex I(i) clearly states that imported inputs must either be consumed in the production of the exported product (i.e. a drawback scheme as provided for within the meaning of Annex II) or the imported inputs must have the same quantity and the same quality and characteristics as home market inputs (i.e. a substitution drawback scheme as provided for within the meaning of Annex III). The PBS in fact allows the importation of goods free of duty which are not inputs used in producing goods for export or inputs having the same quantity and the same quality and characteristics as home market inputs actually incorporated in the exported product. It is therefore considered that the PBS is not a permitted drawback or substitution drawback scheme under the provisions of the basic Regulation.

(13) Four Indian exporting producers have argued that the scheme operates in practice as a legitimate duty drawback scheme, and that this is proved by the fact that adjustments to normal value have been granted in respect of the PBS in the parallel anti-dumping proceeding. However, such an allowance is not relevant in the assessment of the countervailability of the PBS, which has been established on the basis of the provisions of the basic Regulation, for the reasons stated in recital 12. Once such a countervailable subsidy is found to exist, the benefit to the recipient is the full amount of import duty not paid by the exporting producer on all import transactions. In this regard, it is not adequate to reconstruct the PBS in order to determine which products are physically incorporated and which are not.

(14) The GOI further referred to the existence of a verification procedure, based on 'Standard input/output norms' as described in recital 19 of the provisional duty Regulation. These norms were issued for exported products and set out quantities of normally imported raw materials required to produce one unit of the finished product. The GOI argued that the system was in place to ensure that there was no excess drawback of import duties as required by Annex I(i) and Annexes II and III to the basic Regulation and that, furthermore, the Commission had the opportunity to verify all actual transactions to determine whether there was an excess drawback.

This argument cannot be accepted as the issue of excess remission only arises in the context of assessing properly constituted drawback/substitution drawback schemes and it has been established that the PBS is not such a drawback or substitution drawback scheme within the meaning of Annex I(i) and Annexes II and III to the basic Regulation.

(15) The GOI argued that the element of minimum value addition (MVA) in the Standard input/output norms does not render the PBS an import substitution subsidy since there was no minimum prescribed domestic input requirement and the MVA could also be achieved by the use of, for example, imported inputs.

As the PBS is already considered countervailable on the basis that it is contingent upon export performance within the meaning of Article 3(4)(a) of the basic Regulation, it is not necessary to make a further finding on the issue of an import substitution subsidy.

[1] OJ C 264, 30. 8. 1997, p. 2.

(16) The GOI claimed that the benefits under the PBS should not be countervailed since the PBS had been abolished as from 31 March 1997 and only a limited number of companies could continue to avail themselves of credits previously granted. The GOI made reference to Article 17 of the basic Regulation, which provides that a countervailing measure remains in force only as long as, and to the extent that, it is necessary to counteract the countervailable subsidies which are causing injury, and also referred to previous Community practice. Four Indian exporting producers claimed that it is highly questionable that a scheme which is no longer in force may be deemed countervailable.

In response to this point, it should be noted that even though the PBS has been abolished, companies can still claim credits under this scheme for export transactions made up to 31 March 1997, and during the investigation it was established that they may use these credits up to 31 March 2000. Substantial benefits under this scheme could, therefore, continue to be granted until that time and they constitute countervailable subsidies. With regard to the continuing countervailability of benefits, it is considered that the principle stated in Article 5 of the basic Regulation applies, i.e. that the amount of countervailable subsidies shall be calculated in terms of the benefit conferred on the recipient in the investigation period. During the investigation period, the PBS was, as stated by the GOI, abolished and replaced by its successor, the Duty Entitlement Passbook Scheme (DEPBS), which is also considered countervailable (see recital 34 of the provisional duty Regulation). Since benefits will continue to be granted in the future under the DEPBS it is considered necessary to impose measures based on the total benefits received during the investigation period under both the PBS and the DEPBS because, as prescribed by Article 17 of the basic Regulation, it will still be necessary to counteract the countervailable subsidies which are causing injury.

(17) Subsequent to the above claim, the GOI provided information that, following an instruction in July 1998 from the Ministry of Commerce, Indian producers had only until 30 September 1998 at the latest to claim passbook credits, and not 31 March 2000 as previously provided for (see recital 16). The GOI asked, therefore, that this development be taken into consideration in making a final determination.

It should first be noted that since it was presented very late in this investigation, it is not possible to verify the practical application of this instruction. Furthermore, as explained above, as the PBS has been replaced by a successor scheme, the DEPBS (which is also considered to be a countervailable subsidy), and that benefits will continue to be granted in future under the DEPBS, it is not appropriate to disregard benefits which accrued to exporters under the PBS during the investigation period. Therefore, measures should be imposed on benefits received during the investigation period under both the PBS and the DEPBS. Any other approach would enable subsidising governments to escape from countervailing measures simply by changing the name of a scheme during the investigation period.

(18) Four Indian exporting producers claimed that the credits received on the export turnover for the period of investigation for the products concerned should have been used for calculating the subsidy, instead of the debits made from the passbook. They argued that basing the amount of benefit on the debits had led in this case to an exaggerated amount of subsidy in relation to the actual volume of exports to the European Community, which was brought about by the timing of the use of the benefit.

It should be noted that the subsidy amount is determined on the basis of the benefit to the recipient company during the period of investigation. It is only when the debit is made in the passbook that the credit obtained on the basis of previous export volume is actually used; consequently it is only at this moment that the recipient receives a benefit in terms of a relief from import duty which should otherwise have been paid.

(19) Four Indian exporting producers alleged that double counting had occurred when the provisional dumping margins and amounts of subsidisation were established. In particular, they alleged that the part of the PBS benefits for which no allowance was granted in the anti-dumping proceeding had been double-counted with the subsidy amount and that the dumping margin should have been reduced.

In reply to this point, it should first be noted that the question of allowances in an anti-dumping proceeding and the extent of countervailability in an anti-subsidy proceeding require different analysis, since each procedure is based on separate

basic Regulations. Article 2(1)(a)(ii) of the basic Regulation provides that the exemption of an exported product from duties/charges shall not be deemed to be a subsidy provided that it is granted in accordance with the provisions of Annexes I to III to the basic Regulation. The PBS is considered countervailable for the reasons explained in recital 25 in the provisional duty Regulation, and the countervailable benefit to the exporters has been calculated on the basis of the amount of customs duty normally due on all imports made during the investigation period but which remained unpaid under the PBS. Consequently, the establishment of the subsidy amount and the dumping margin is the product of two separate exercises.

In addition, it should be recalled that, since all of the investigated schemes were found to constitute export subsidies within the meaning of Article 3(4)(a) of the basic Regulation, the provisional anti-dumping duties were reduced by the amount of countervailing duty.

(20) Finally, the GOI claimed that the inclusion of an amount for interest in arriving at the total benefit to companies which availed themselves of this scheme is not provided for under the Agreement on subsidies and countervailing measures (ASCM) of the World Trade Organisation (WTO). The GOI also claimed that it was not the Community's normal practice to include such an amount in calculating the amount of benefit to companies availing themselves of such subsidy schemes.

With regard to this claim, the interest element is added in order to reflect the benefit to the recipient obtained by the subsidised firm by not having to raise an equivalent amount of money from commercial sources. Indeed, Article 6 of the basic Regulation (which reproduces Article 14 of the ASCM) makes it clear that the benchmark for the calculation of the subsidy is the equivalent cost of funds on the commercial market. The Community's established practice in this area since the entry into force of the WTO Agreement is to add an amount for interest in calculating the total benefit; this has been done in a number of recent cases. This claim is therefore rejected.

2. **Export Promotion Capital Goods Scheme (EPCGS)**

(21) The GOI has made a number of claims regarding the Export Promotion Capital Goods Scheme (EPCGS), which is described in recitals 36 to 39 of the provisional duty Regulation. These concern the qualification of the scheme as a subsidy and the calculation of the subsidy amount.

(22) It was argued that there is no requirement under the law that capital goods purchased under this scheme should be exclusively used for the manufacture of export goods and that, consequently, the exemption from import charges of goods imported under this scheme cannot be considered as a countervailable subsidy.

In regard to this claim, the investigation has shown that to avail itself of the EPCGS, a company must make a commitment to export a certain value of goods within a certain time period. This scheme is therefore contingent in law upon export performance i.e. the benefit cannot be obtained without a commitment to export goods. As such, it is deemed to be specific under the provisions of Article 3(4)(a) of the basic Regulation and, therefore, countervailable. In the light of these facts, the question of whether capital goods are used exclusively or not for the manufacture of goods for export is of no relevance.

(23) It is further argued that the scope of the term 'input' under paragraph (i) of Annex I (the illustrative list of export subsidies) of the basic Regulation also covers capital goods and that, under this paragraph, the remission of any duty cannot *per se* be considered as a subsidy unless there is an excess remission.

However, it is considered that capital goods do not constitute 'inputs' within the meaning of the basic Regulation because they are not physically incorporated into the exported products.

(24) The GOI contested the fact that, for calculating the subsidy amount per unit, in the provisional findings, benefits from the scheme had been allocated only over export turnover. It claimed that as capital goods imported under the EPCGS are used for producing goods for both the export and domestic markets, benefits under the scheme should be spread over total turnover.

In reply to this, it has been determined that this scheme is contingent solely upon export performance (see recital 22). In conformity with Article 7(2) of the basic Regulation, it is considered appropriate that the benefit for this scheme should be spread over export turnover only since the subsidy is granted by reference to a certain value of exports of goods within a certain time period. The claim, therefore, that benefits under the scheme should be allocated over total turnover is rejected.

(25) One Indian exporting producer submitted that the depreciation period used in the provisional findings (i.e. 15,5 years as mentioned in recital 42 of the provisional Regulation) is incorrect, and that a depreciation period of 21 years, corresponding to the period the company uses to write off its fixed assets, should have been used.

In reply to this claim, it should be noted that in the provisional findings, the normal depreciation period of capital goods in the stainless steel industry concerned was used i.e. 15,5 years, which is an average based on information provided by the cooperating Indian exporting producers. This is in accordance with the requirements of Article 7(3) of the basic Regulation which states that where a subsidy can be linked to the acquisition of fixed assets, the amount of the countervailable subsidy shall be calculated by spreading the subsidy across a period which reflects the normal depreciation of such assets in the industry concerned. In view of this provision, it is not appropriate to use the company's specific depreciation periods. The claim is therefore rejected.

(26) One Indian exporting producer claimed that the benefit on some machinery should not have been counted, since it had not been commissioned during the period of investigation. Having further examined this matter, it is clear that the company has in fact obtained a benefit under this scheme, in the form of an exemption from import duty which would normally have been payable during the period of investigation. The fact that the machinery may not have been fully operational during the period of investigation does not affect this conclusion.

(27) Finally, the GOI claimed that the inclusion of an amount for interest in arriving at the total benefit to companies which availed themselves of this scheme is not provided for under the ASCM of the WTO. The GOI also claimed that it is not the Community's practice to include such an amount in calculating the amount of benefit to companies availing themselves of such subsidy schemes.

This argument is rejected for the reasons explained in recital 20.

3. **Income tax exemption scheme**

(28) The rate of corporate income tax in India, which is described in recitals 44 to 48 of the provisional duty Regulation, has been reduced since the 1996/97 tax year (i.e. the period on which the Commission made its provisional findings for this scheme). It is considered that account should now be taken of the reduced rate in calculating any benefit to the Indian exporting producers concerned.

In this regard, it is noted that Article 5 of the basic Regulation provides that the amount of countervailable subsidies shall be calculated in terms of the benefit conferred on the recipient which is found to exist during the investigation period for subsidisation. As stated above, in the case of the provisional findings, the Commission calculated the benefit on the basis of the tax year 1996/97 (i.e. 1 April 1996 to 31 March 1997) which corresponded most closely to the investigation period. During this tax year, the rate of corporate tax applied was 43 %. For the subsequent tax year (i.e. from 1 April 1997 to 31 March 1998), the rate of tax to be applied was reduced to 35 %. It is considered that, as part of this latter tax year falls within the investigation period of this proceeding, it is appropriate to make the calculation of the amount of countervailable subsidies on the basis of a *pro rata* of the two tax rates which applied in the investigation period. Appropriate adjustments have accordingly been made to the amount of subsidy for the companies which availed of this scheme.

(29) The GOI has claimed that, in the provisional findings, the addition of an amount for interest in arriving at the total benefit to companies which availed of this scheme was in violation of previous Community practice as well as both the ASCM and the basic Regulation.

In response to this argument, it is considered that the amount of tax which remained unpaid by a company in the tax year corresponding most closely to the investigation period was the most reasonable indicator on which to base the benefit to a company under this scheme. This amount is considered to equate to a one-time grant which is available to a company during the investigation period. An amount is added to this grant for interest for the reasons set out in recital 20 and the GOI claim has accordingly to be rejected.

4. **Amount of countervailable subsidies**

(30) Taking account of the definitive findings relating to the various schemes as set out above, the amount of countervailable subsidies for each of the investigated exporting producers is as follows:

	Passbook	DEPB	EPCGS	Income tax	Total
Bhansali Bright Bars	13,7 %			0,7 %	14,4 %
Facor (Ferro Alloys Corp.)	84,5 %		1,1 %		85,6 %
Grand Foundry	84,5 %				84,5 %
Isibars	38,7 %		1,1 %	1,2 %	41,0 %
Mukand	18,1 %		0,1 %	1,4 %	19,6 %
Parekh				0,4 %	0,4 %
Panchmahal Steel	0,2 %		0,7 %		0,9 %
Raajratna Metal Industries	44,2 %			2,7 %	46,9 %
Venus Wire Industries	22,9 %			1,8 %	24,7 %
Viraj Impoexpo	25,6 %			1,4 %	27,0 %

(31) The subsidy amount definitively established for Indian companies other than those cooperating in this investigation, expressed as a percentage of the net, free-at-Community-frontier price, is 88,3 %, which is the sum of the highest amount granted to any cooperating exporter under each scheme.

(32) One exporting producer, Chandan Steel Ltd, co-operated in the anti-dumping proceeding, where an individual dumping margin and an individual injury margin was provisionally established, but did not cooperate fully in the anti-subsidy proceeding. In the context of this proceeding, Article 28 of the basic Regulation is applicable for the determination of the subsidy amount, which for this company, expressed as a percentage of the net, free-at-Community-frontier price, is 88,3 %. However, it is considered that account should be taken of the cooperation of this company in the anti-dumping proceeding, and that the definitive countervailing duty should be based on the injury elimination level established for this company's exports of the product concerned to the Community during the period of investigation in the anti-dumping proceeding, since it is lower than the subsidy amount.

(33) For the exporter mentioned in recital 6 of the provisional anti-dumping duty Regulation (Sindia Steel Ltd), it was considered appropriate that the weighted average subsidy amount found for the cooperating Indian companies should apply for this company. The subsidy amount definitively established for this company, expressed as a percentage of the net, free-at-Community-frontier price, is 34,5 %.

E. INJURY

1. Community industry

(34) After additional verification it was found that the cumulated production volume of the Community industry of SSB does not account for 45 % of total Community production, as erroneously set out in the provisional duty Regulation, but for 38 % of total Community production. This percentage suffices to comply with the conditions in Articles 9(1) and 10(8) of the basic Regulation.

2. Consumption in the Community, market shares and import volumes from India

(35) Following the disclosure, no comments were received as regards consumption of SSB in the Community, the market shares and the volume of imports from India. Consequently, the findings made in recitals 53 to 56 of the provisional duty Regulation are confirmed.

3. Prices of subsidised imports from India and undercutting

(a) *Calculation of the undercutting margins*

(36) As explained in the provisional duty Regulation (recitals 57 to 65), a detailed undercutting analysis was carried out for each of the Indian producers concerned showing significant undercutting margins. The undercutting margins were calculated by comparing per product type, the weighted

average export prices at Community frontier level with the weighted average ex-factory sales prices of the Community industry to unrelated parties. Indian product types for which no matching Community product type was found were excluded from the calculation after it had been established that the remaining transactions were sufficiently representative. If exports were made through related companies the export prices were duly adjusted for costs between importation and resale to the first independent customer in the Community as well as for profits accruing. An adjustment was made to the Community industry's sales prices for transport costs within the Community. Whereas the Indian exporters sold exclusively to traders, the Community industry sold to end-users and traders. Consequently, the Community industry's sales to end-users were adjusted to a trader level. In addition, the Indian export prices were adjusted for handling charges at Community border level.

(37) Several Indian producers reiterated their requests for an adjustment concerning differences in Indian and Community lead times between order and delivery and concerning differences in reliability of delivery time. They claimed in particular that they regularly had to issue credit notes to their customers due to late deliveries. However, credit notes for late deliveries do not indicate that longer Indian lead times or unreliability of delivery times affected the sales price when the price negotiations took place. Consequently, the claim for this adjustment cannot be granted. In this respect, it was also taken into account that the contractual delivery times of the Indian producers often varied between four and six months without this having an effect on the agreed sales price.

(38) All Indian producers also repeated their request for an adjustment for quality differences. In particular, they alleged that SSB produced by the Community producers had a higher machinability which would reduce cycle times in further transformation processes of the SSB. In this respect, it was noted that some Community producers did indeed sell a certain proportion of products under a trade mark indicating higher machinability. However, it was found that there was no consistent price pattern indicating that the products with higher machinability were sold at higher prices and would thus have a higher market value. Consequently, an adjustment could not be granted, since an effect on prices and price comparability was not established. In addition, it was noted that all Indian producers had made an identical claim for an adjustment, disregarding potential quality differences amongst their products.

(39) One Indian company claimed that the sales price of the Community industry consisted of a base price and a so-called 'alloy surcharge', i.e. a price element for alloys contained in SSB. The company requested that the alloy surcharge be excluded from the Community sales prices for the purpose of the undercutting and underselling calculations. This request could not be granted since the alloy surcharge was part of the sales price that was paid by the customers. In this respect, it was noted that the Indian sales prices also contained an alloy element, even if this was not expressly referred to in the invoice.

(40) Taking into account the corrections described above, the undercutting margins amount to:

— Bhansali Bright Bars Pvt Ltd/Bhansali Ferromet Pvt Ltd, Mumbai: 14,5 %
— Chandan Steel Ltd, Umbergaon: 14,9 %
— Facor (Ferro Alloys Corp. Ltd), Nagpur: 13,0 %
— Grand Foundry Ltd, Mumbai: 13,2 %
— Isibars Ltd, Mumbai: 19,4 %
— Mukand Ltd, Mumbai: 17,8 %
— Panchmahal Steel Ltd, Baroda: 13,9 %
— Parekh Bright Bars Pvt Ltd, Thane: 5,8 %
— Raajratna Metal Industries Ltd, Ahmedabad: 15,8 %
— Venus Wire Industries Ltd, Mumbai: 12,8 %
— Viraj Alloys Ltd/Viraj Impoexpo Ltd, Mumbai: 15,7 %

(41) The weighted average undercutting margin calculated for Sindia Steel Ltd (see recital 33) amounted to 16,8 %. It was concluded that these undercutting margins were significant.

(b) *Allegation of anti-competitive behaviour*

(42) In their comments following the disclosure, the Indian companies continued to argue that the calculation of undercutting margins as well as the findings on other injury factors, causality and Community interest would be meaningless in the context of this investigation in view of the Commission Decision ([1]) in the competition case IV/35.814, 'Alloy Surcharge'. This Decision stated that Community producers of stainless steel flat products had modified 'in a concerted fashion the reference values used to calculate the alloy surcharge, a practice having the object and effect of restricting and distorting competition within the common market'.

([1]) OJ L 100, 1. 4. 1998, p. 55.

(43) In this respect it is recalled that the Decision related to stainless steel 'flat products' as opposed to stainless steel bars which belong to the category of long products. Moreover, the producers of flat products and the producers of SSB are, to a large extent, not identical and the number of SSB producers is significantly higher than that of the flat steel producers.

(44) The Indian producers have, however, repeated their allegation that a concerted practice existed for SSB. Some of these companies have also lodged a formal complaint with the Commission, pursuant to Article 3 of Regulation (EEC) No 17/62 [1], concerning SSB. In order to support their allegation, the Indian companies submitted that one of the national steel associations in the Community circulated to all of its members on a monthly basis a list of the alloy surcharges applied by the most important producer in this country. In addition, they submitted that this producer applied the same coefficient (so-called yield factor) in order to calculate the alloy surcharge for SSB on the basis of the alloy surcharge for flat products as a trader in a different Member State. They alleged that the information provided conclusive evidence of a concerted practice in the SSB market.

(45) In this respect it is important to note that the application of an alloy surcharge system as such including the use of a yield factor is not illegal. The alloy surcharge system allows a stainless steel producer — in a legal manner — to reflect the price variations of the market prices for alloy elements in the sales prices to its customers and thus to protect itself against the risk of significant fluctuations in the cost of production. It was also noted that the use of an alloy surcharge is common to other steel markets outside the Community and has, with a short interruption, been applied in the Community for many years. In addition, for ECSC-products, Article 60 of the ECSC Treaty and the implementing Community legislation requires the Community producers to inform the Commission and anyone interested of the applicable surcharge (Article 6(b) of Decision No 37/54 [2]).

(46) Consequently and in accordance with the Commission Decision in Case IV/35.814, the application of an alloy surcharge system could only be illegal if the alloy surcharge system were applied in a concerted, i.e. anti-competitive, manner. However, no conclusive evidence of this was found in the course of the investigation.

(47) In addition, it was found that the price of the Community producers for identical products to comparable customers in identical periods varied, resulting in different levels of profitability for the Community industry.

(48) In the light of the above it was concluded that the findings on injury and Community interest, including the calculation of undercutting margins, were not meaningless as alleged by the Indian companies. Consequently, the Indian request that the investigation be terminated forthwith could not be granted. Similarly, it was not possible to suspend the anti-dumping investigation until the Commission had concluded its investigation relating to the alleged anti-competitive behaviour because anti-dumping investigations have to be concluded within a maximum of 13 months from initiation according to Article 11(9) of the basic Regulation.

(49) However, it was noted that the Commission is continuing its investigation regarding the alleged anti-competitive behaviour. Should the Commission find that a concerted practice existed, the conditions to initiate a review *ex officio* would be fulfilled. Such a review would be carried out expeditiously, i.e. within maximum 12 months, in order to investigate whether and to what extent the relevant findings on injury, causation and Community interest are affected by such an anti-competitive practice.

4. **Situation of the Community industry**

(50) Following the adoption of the Regulation imposing provisional duties no comments were received as regards the situation of the Community industry in respect of production volume, capacity and capacity utilisation, sales volume, market share, sales prices, profitability, employment and stocks. Consequently, the findings as laid down in recitals 67 to 78 of the provisional duty Regulation are confirmed.

However, the Government of India questioned the conclusions drawn from these findings, in particular it was alleged that the drop in the Community production figures cannot be blamed on the decreasing Indian imports. This argument concerns causality which is dealt with below. Finally, the Government of India claimed that the Community industry increased their sales to related parties from 1994 to the IP12 (see recital 52 of the provisional duty Regulation). This does, however, not invalidate the findings and conclusions on total sales (in particular a negative development of the market share since 1994) and on sales to unrelated parties which are also used for the purpose of price undercutting calculations.

[1] OJ 13, 21. 2. 1962, p. 204/62.
[2] OJ 18, 1. 8. 1954, p. 470/54.

5. **Conclusions**

(51) On the basis of the above it was concluded that the Community industry is suffering material injury as set out in recital 79 of the provisional duty Regulation.

F. CAUSATION

(52) Following the adoption of the Regulation imposing provisional duties, some Indian companies questioned whether the injury suffered by the Community industry was caused by the subsidised imports from India. In particular, it was alleged that the injury was caused by other factors, namely low priced imports from other countries. In addition, it was alleged that other Community producers had not followed the same trend as the Community industry.

(53) In this respect, it is worth noting that Indian imports were present in significant volumes throughout the period considered and peaked at a level of 9,1 % market share in 1996. It has also been established that these imports were made at prices significantly undercutting the Community industry's prices. Account was further taken of the fact that a number of traders buy SSB both from Indian and Community sources, which leads to the market being transparent and price sensitive.

It was noted that the above trends established for the Indian imports coincided with the deterioration of the Community industry's situation, in particular its loss of market share and the depression of its prices since 1995. In the presence of subsidised imports of SSB originating in India during the investigation period, the Community industry had to lower its prices significantly, regardless of the consequences for profitability. Consequently, a causal link between subsidised imports and material injury suffered by the industry was found to exist.

(54) It was also investigated whether factors other than the subsidised imports could have contributed to the injury suffered by the Community industry. In this respect, it was noted that imports from other countries were made either in quantities below or close to the thresholds set out in Article 14(4) of the basic Regulation and/or at higher prices than Indian imports. Consequently these imports cannot have broken the causal link between the subsidised imports from India and injury suffered by the Community industry.

(55) In addition, the allegation by some Indian producers that the situation of other Community producers was significantly better than that of the Community industry was investigated. In this respect, it should be recalled that detailed and verified data is only available for the Community industry. Taking into account the transparency and the price sensitivity of the SSB market in the Community, it seemed however, not unreasonable to conclude that other Community producers are likely to have followed a trend similar to that of the Community industry, in particular as regards prices.

(56) Finally, it was argued that the decrease in the SSB sales prices of the Community industry since 1995 was the result of a decrease in alloy prices. In this respect, it was however noted that any change in the world market prices for the alloys applies equally to the Indian producers and consequently has no influence on the undercutting found. In addition, it was noted that the Community industry had also significantly lowered its base prices.

(57) In the light of the above, the findings set out in the provisional duty Regulation (recitals 80 to 88) are confirmed, i.e. that the low priced subsidised imports from India have, when taken in isolation, caused material injury to the Community industry.

G. COMMUNITY INTEREST

(58) Following the adoption of the Regulation imposing provisional duties, no substantiated comments were received as regards the Community interest analysis set out in recitals 89 to 94 of the provisional duty Regulation.

(59) Consequently, it is concluded that the imposition of measures will lead to a reinstatement of effective competition that will enable the Community industry to regain the lost market share and improve its profitability.

(60) In the absence of a reaction from the users and importers, it was assumed that the impact of any expected price increase would be limited, also taking into account the level of the duty proposed. As regards the upstream industry, it was concluded that a reinstatement of fair trade would lead to an improvement in its competitiveness.

(61) Summarising, it was concluded that the findings set out in recitals 89 to 93 of the provisional duty Regulation can be confirmed. In particular, there are no compelling reasons to suppose that it would be not in the interest of the Community to impose measures.

H. COUNTERVAILING MEASURES

(62) Based on the above conclusions on subsidisation, injury, causal link and Community interest, it was considered what form and level the definitive countervailing measures would have to take in order to remove the trade-distorting effects of injurious subsidies and to restore effective competitive conditions on the Community SSB market.

(63) Accordingly, as explained in recitals 96 to 98 of the provisional duty Regulation a non-injurious level of prices was calculated which would allow the Community industry to cover its cost of production and obtain a reasonable return for sales of the product concerned.

(64) One Indian company argued that the calculation of the non-injurious price level was incorrect since the profit margin for all product types was identical. It should be noted that the non-injurious price level was calculated on the basis of the average sales prices per product type minus the actual weighted average profit margin of the Community industry plus a reasonable profit, as explained above. This approach was deemed to be the most appropriate for the purpose of this investigation.

(65) The comparison of the non-injurious price levels with the export prices of the Indian producers led to the following injury margins, expressed in relation to the free-at-Community-frontier price level:

— Bhansali Bright Bars Pvt Ltd/Bhansali Ferromet Pvt Ltd, Mumbai: 18,4 %

— Chandan Steel Ltd, Umbergaon: 19,0 %

— Facor (Ferro Alloys Corp. Ltd), Nagpur: 16,5 %

— Grand Foundry Ltd, Mumbai: 16,6 %

— Isibars Ltd, Mumbai: 25,5 %

— Mukand Ltd, Mumbai: 25,3 %

— Panchmahal Steel Ltd, Baroda: 17,6 %

— Parekh Bright Bars Pvt Ltd, Thane: 7,5 %

— Raajratna Metal Industries Ltd, Ahmedabad: 19,8 %

— Venus Wire Industries Ltd, Mumbai: 16,1 %

— Viraj Alloys Ltd/Viraj Impoexpo Ltd, Mumbai: 20,2 %

(66) For Sindia Steels Ltd the weighted average of the injury margins of the cooperating Indian companies is applied. This resulted in an injury margin of 22,1 %.

(67) In accordance with Article 15(1) of the basic Regulation, the duty rate should correspond to the subsidy amount, unless the injury margin is lower. This led to the following rates of duty for the cooperating producers:

— Bhansali Bright Bars Pvt Ltd/Bhansali Ferromet Pvt Ltd, Mumbai: 14,4 %

— Chandan Steel Ltd, Umbergaon: 19,0 %

— Facor (Ferro Alloys Corp. Ltd), Nagpur: 16,5 %

— Grand Foundry Ltd, Mumbai: 16,6 %

— Isibars Ltd, Mumbai: 25,5 %

— Mukand Ltd, Mumbai: 19,6 %

— Panchmahal Steel Ltd, Baroda: 0,0 %

— Parekh Bright Bars Pvt Ltd, Thane: 0,0 %

— Raajratna Metal Industries Ltd, Ahmedabad: 19,8 %

— Venus Wire Industries Ltd, Mumbai: 16,1 %

— Viraj Alloys Ltd/Viraj Impoexpo Ltd, Mumbai: 20,2 %

(68) For Sindia Steels Ltd the duty rate should be 22,1 %.

(69) In order to avoid granting a bonus for non-cooperation and to ensure that no circumvention of the countervailing measures takes place, it was considered appropriate to establish the duty rate for the non-cooperating companies at the level of the highest duty rate imposed, i.e. 25,5 % since there was a high level of cooperation from Indian exporting producers.

I. UNDERTAKINGS

(70) At a late stage of the investigation several Indian companies offered undertakings. The companies offered not to avail themselves in the future of the export subsidies found to be countervailable as regards their exports to the Community. According to the companies, the undertaking would have the effect that export prices would rise significantly.

This offer could not be accepted. In the first place these companies would continue to receive countervailable subsidies based on exports to countries other than the Community and concerning imports of raw materials and capital goods used in the production of products other than SSB. Thus, there would appear to be insurmountable difficulties to monitor such an undertaking leaving open the likelihood that circumvention would occur.

Secondly, the undertaking did not provide for any measure of price discipline and thus it is considered that the injurious effects of the subsidised imports would not be removed by the acceptance of such an undertaking.

After expiry of the deadline to submit proposals for undertakings another exporting producer submitted a proposal for an undertaking. This company offered to respect certain minimum prices. This offer was examined and it was found that due to the large variety of the product types concerned and the significant price fluctuations for the product concerned it would be difficult to set prices which would eliminate the injurious effects of subsidised imports. Consequently, the offer for this undertaking could also not be accepted.

J. COLLECTION OF THE PROVISIONAL DUTIES

(71) In view of the magnitude of the countervailable subsidies found for the exporting producers and in light of the seriousness of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional countervailing duty pursuant to Regulation (EC) No 1556/98 be definitively collected to the extent of the amount of definitive duties imposed, unless the provisional duty rates are lower in which case the provisional duty rate should prevail,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is hereby imposed on imports of stainless steel bars falling within CN codes 7222 20 11, 7222 20 21, 7222 20 31 and 7222 20 81 originating in India.

2. Products manufactured by the companies listed below shall be subject to the following rates of duty applicable to the net, free-at-Community-frontier price:

Manufacturer	Rate of duty (%)	Taric additional code
Bhansali Bright Bars Pvt Ltd/Bhansali Ferromet Pvt Ltd, Mumbai	14,4	8226
Chandan Steel Ltd, Umbergaon	19,0	8593
Facor (Ferro Alloys Corp. Ltd), Nagpur	16,5	8400
Grand Foundry Ltd, Mumbai	16,6	8401
Isibars Ltd, Mumbai	25,5	8402
Mukand Ltd, Mumbai	19,6	8403
Panchmahal Steel Ltd, Baroda	0	8404
Parekh Bright Bars Pvt Ltd, Thane	0	8594
Raajratna Metal Industries Ltd, Ahmedabad	19,8	8405
Sindia Steels Ltd, Nashik	22,1	8406
Venus Wire Industries Ltd, Mumbai	16,1	8407
Viraj Alloys Ltd/Viraj Impoexpo Ltd, Mumbai	20,2	8410
All other companies	25,5	8900

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

The amount secured by way of provisional countervailing duty pursuant to Regulation (EC) No 1556/98 shall be definitively collected at the rate of the provisional duty if this is lower than the definitive rate. In all other cases it shall be collected at the duty rate definitively imposed. Amounts secured in excess of the definitive duty rate shall be released.

Article 3

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, 13 November 1998.

For the Council

The President

J. FARNLEITNER

COMMISSION REGULATION (EC) No 2451/98

of 13 November 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 14 November 1998.

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

Done at Brussels, 13 November 1998.

For the Commission
Franz FISCHLER
Member of the Commission

---

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

(ECU/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	204	50,7
	999	50,7
0709 90 70	052	69,8
	204	35,6
	999	52,7
0805 20 10	204	64,6
	999	64,6
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	48,9
	999	48,9
0805 30 10	052	58,5
	528	57,4
	600	84,4
	999	66,8
0806 10 10	052	155,8
	400	264,4
	508	193,8
	999	204,7
0808 10 20, 0808 10 50, 0808 10 90	060	23,7
	064	42,5
	388	21,0
	400	80,2
	404	73,1
	800	143,6
	999	64,0
0808 20 50	052	80,8
	064	60,4
	400	84,0
	720	52,9
	999	69,5

(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 2452/98

of 13 November 1998

fixing the maximum aid for concentrated butter for the 192nd 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 192nd 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 14 November 1998.

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

Done at Brussels, 13 November 1998.

For the Commission

Franz FISCHLER

Member of the Commission

---

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

COMMISSION REGULATION (EC) No 2453/98

of 13 November 1998

fixing the minimum selling prices for butter and the maximum aid for cream, butter and concentrated butter for the 20th 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 Article 6(3) and (6) and Article 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 1982/98 [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 applying for the 20th 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 14 November 1998.

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

Done at Brussels, 13 November 1998.

For the Commission
Franz FISCHLER
Member of the Commission

---

[1] OJ L 148, 28. 6. 1968, p. 13.
[2] OJ L 206, 16. 8. 1996, p. 21.
[3] OJ L 350, 20. 12. 1997, p. 3.
[4] OJ L 256, 18. 9. 1998, p. 9.

ANNEX

to the Commission Regulation of 13 November 1998 fixing the minimum selling prices for butter and the maximum aid for cream, butter and concentrated butter for the 20th 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	—	—	—	—
		Concentrated	—	—	—	—
Processing security		Unaltered	—	—	—	—
		Concentrated	—	—	—	—
Maximum aid	Butter ≥ 82 %		109	105	—	105
	Butter < 82 %		104	100	—	100
	Concentrated butter		134	130	134	130
	Cream		—	—	46	44
Processing security	Butter		120	—	—	—
	Concentrated butter		148	—	148	—
	Cream		—	—	51	—

COMMISSION REGULATION (EC) No 2454/98

of 13 November 1998

fixing the maximum buying-in price and the quantities of beef to be bought in under the 212th 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 2304/98 [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 2404/98 [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, in accordance with Article 14 of that Regulation, only tenders quoting prices not exceeding the maximum buying-in price and not exceeding the average national or regional market price, plus the amount referred to in paragraph 1 of that Article, are to be accepted;

Whereas, once tenders submitted in respect of the 212th 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, it has been decided to fix the maximum buying-price and the quantities which may be accepted into intervention;

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

HAS ADOPTED THIS REGULATION:

Article 1

Under the 212th partial invitation to tender opened pursuant to Regulation (EC) No 1627/89:

(a) or category A, it has been decided not to proceed with the tendering procedure;

(b) for category C:

— the maximum buying-in price shall be ECU 226,10 per 100 kg of carcases or half-carcases of quality R3,

— the maximum quantity of carcases and half-carcases accepted shall be 4 403 tonnes.

Article 2

This Regulation shall enter into force on 16 November 1998.

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

Done at Brussels, 13 November 1998.

For the Commission

Franz FISCHLER

Member of the Commission

---

[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 288, 27. 10. 1998, p. 3.
[5] OJ L 159, 10. 6. 1989, p. 36.
[6] OJ L 298, 7. 11. 1998, p. 12.

COMMISSION REGULATION (EC) No 2455/98

of 13 November 1998

providing for the grant of private storage aid fixed in advance for carcases and half-carcases of lamb in Sweden

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3013/89 of 25 September 1989 on the common organisation of the market in sheepmeat and goatmeat [1], as last amended by Regulation (EC) No 1589/96 [2], and in particular Article 7(1) thereof,

Whereas Commission Regulation (EEC) No 3446/90 of 27 November 1990 laying down detailed rules for granting private storage aid for sheepmeat and goatmeat [3], as last amended by Regulation (EC) No 3533/93 [4], lays down in particular detailed rules where the amount of aid is fixed at a flat rate in advance;

Whereas Commission Regulation (EEC) No 3447/90 of 28 November 1990 on special conditions fot the granting of private storage aid for sheepmeat and goatmeat [5], as last amended by Regulation (EC) No 40/96 [6], lays down in particular the minimum quantities per contract;

Whereas the application of Article 7(1) of Regulation (EEC) No 3013/89 may result in a decision to grant private storage aid; whereas that Article provides for the application of these measures on the basis of the situation of each quotation zone; whereas, in view of the particularly difficult market situation in Sweden, it has been judged opportune to initiate such a procedure;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sheep and Goat Meat,

HAS ADOPTED THIS REGULATION:

Article 1

1. Subject to the provisions of Regulation (EEC) No 3447/90, applications may be submitted in Sweden between 16 November and 11 December 1998 for aid for the private storage of carcases and half-carcases of lamb within the limits of 200 tonnes. Applications submitted on or after the day following that on which the total quantity applied for exceeds 200 tonnes shall not be accepted. Quantities in respect of which applications are lodged on the day the overall limit is exceeded shall be reduced proportionally.

2. The level of aid for the minimum storage period of three months shall be ECU 1 400 per tonne. However, the actual storage period shall be chosen by the storer. This period may extend from a minimum of three months to a maximum of seven months. If the storage period is greater than three months the aid shall be increased on a daily basis by ECU 1,45 per tonne per day.

Article 2

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

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

Done at Brussels, 13 November 1998.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 289, 7. 10. 1989, p. 1.
[2] OJ L 206, 16. 8. 1996, p. 25.
[3] OJ L 333, 30. 11. 1990, p. 39.
[4] OJ L 321, 23. 12. 1993, p. 9.
[5] OJ L 333, 30. 11. 1990, p. 46.
[6] OJ L 10, 13. 1. 1996, p. 6.

COMMISSION REGULATION (EC) No 2456/98

of 13 November 1998

on the issuing of A1 export licences for 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 2190/96 of 14 November 1996 on detailed rules for implementing Council Regulation (EEC) No 2200/96 as regards export refunds on fruit and vegetables [1], as last amended by Regulation (EC) No 1287/98 [2], and in particular Article 2(3) thereof,

Whereas Commission Regulation (EC) No 2379/98 [3] sets the quantities for which A1 export licences, other than those requested in the context of food aid, may be issued;

Whereas Article 2 of Regulation (EC) No 2190/96 sets the conditions under which special measures may be taken by the Commission with a view to avoiding an overrun of the quantities for which A1 licences may be issued;

Whereas the Commission has received information which indicates that those quantities, reduced or increased by the quantities referred to in Article 2(3) of Regulation (EC) No 2190/96, would be exceeded if A1 licences were issued without restriction for apples in response to applications submitted since 9 November 1998 whereas, therefore, a percentage should be fixed for the issuing of licences for quantities applied for on 9 November 1998 and applications for A1 licences submitted later in that application period should be rejected,

HAS ADOPTED THIS REGULATION:

Article 1

A1 export licences for apples for which applications were submitted on 9 November 1998 pursuant to Article 1 of Regulation (EC) No 2379/98 shall be issued for 60,2 % of the quantities applied for.

Applications for A1 export licences submitted after 9 November 1998 and before 8 January 1999 for that product shall be rejected.

Article 2

This Regulation shall enter into force on 14 November 1998.

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

Done at Brussels, 13 November 1998.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 292, 15. 11. 1996, p. 12.
[2] OJ L 178, 23. 6. 1998, p. 11.
[3] OJ L 295, 4. 11. 1998, p. 15.

COMMISSION REGULATION (EC) No 2457/98
of 13 November 1998
fixing the import duties in the cereals sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector [3], as last amended by Regulation (EC) No 2092/97 [4], and in particular Article 2 (1) thereof,

Whereas Article 10 of Regulation (EEC) No 1766/92 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation; whereas, however, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by 55 %, minus the cif import price applicable to the consignment in question; however, that duty may not exceed the rate of duty in the Common Customs Tariff;

Whereas, pursuant to Article 10 (3) of Regulation (EEC) No 1766/92, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market;

Whereas Regulation (EC) No 1249/96 lays down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector;

Whereas the import duties are applicable until new duties are fixed and enter into force; whereas they also remain in force in cases where no quotation is available for the reference exchange referred to in Annex II to Regulation (EC) No 1249/96 during the two weeks preceding the next periodical fixing;

Whereas, in order to allow the import duty system to function normally, the representative market rates recorded during a reference period should be used for calculating the duties;

Whereas application of Regulation (EC) No 1249/96 results in import duties being fixed as set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import duties in the cereals sector referred to in Article 10 (2) of Regulation (EEC) No 1766/92 shall be those fixed in Annex I to this Regulation on the basis of the information given in Annex II.

Article 2

This Regulation shall enter into force on 16 November 1998.

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

Done at Brussels, 13 November 1998.

For the Commission
Franz FISCHLER
Member of the Commission

---

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

ANNEX I

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

CN code	Description	Import duty by land inland waterway or sea from Mediterranean, the Black Sea or Baltic Sea ports (ECU/tonne)	Import duty by air or by sea from other ports (2) (ECU/tonne)
1001 10 00	Durum wheat (1)	40,73	30,73
1001 90 91	Common wheat seed	46,65	36,65
1001 90 99	Common high quality wheat other than for sowing (3)	46,65	36,65
	medium quality	73,89	63,89
	low quality	90,35	80,35
1002 00 00	Rye	99,03	89,03
1003 00 10	Barley, seed	99,03	89,03
1003 00 90	Barley, other (3)	99,03	89,03
1005 10 90	Maize seed other than hybrid	101,39	91,39
1005 90 00	Maize other than seed (3)	101,39	91,39
1007 00 90	Grain sorghum other than hybrids for sowing	99,03	89,03

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

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

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

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

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

ANNEX II

Factors for calculating duties

(period from 30 October 1998 to 12 November 1998)

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

Exchange quotations	Minneapolis	Kansas-City	Chicago	Chicago	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2. 14 %	HRW2. 11,5 %	SRW2	YC3	HAD2	US barley 2
Quotation (ECU/tonne)	114,16	101,15	90,96	73,60	135,29 (1)	77,00 (1)
Gulf premium (ECU/tonne)	—	10,80	4,52	10,84	—	—
Great Lakes premium (ECU/tonne)	15,21	—	—	—	—	—

(1) Fob Duluth.

2. Freight/cost: Gulf of Mexico — Rotterdam: ECU 10,45 per tonne; Great Lakes — Rotterdam: ECU 20,26 per tonne.

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

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 14 July 1998

concerning aid schemes in Germany under which aid could be awarded which is subject to the notification requirement of the multisectoral framework on regional aid for large investment projects

(notified under document number C(1998) 2271)

(Only the German text is authentic)

(Text with EEA relevance)

(98/639/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having given the parties concerned notice, in accordance with the abovementioned Article, to submit their comments,

Whereas:

I. PROCEDURE

(1) By letter No SG(98) D/1975 of 5 March 1998, the Commission proposed to Germany, pursuant to Article 93(1) of the EC Treaty, an appropriate measure concerning a notification requirement contained in a new Community framework for State aid called the new multisectoral framework on regional aid to large investment projects [1] (hereinafter referred to as 'the multisectoral framework').

(2) By the same letter, the Commission informed Germany and the other Member States that the multisectoral framework would come into force on 1 September 1998, with an initial period of validity of three years and that all aided projects covered by the notification requirement which had still not received final approval by the Member States' competent authorities by 1 August 1998, must be notified in accordance therewith.

(3) The Commission also requested Germany and the other Member States to state, within 20 working days from the date of the said letter, whether or not they agreed to the introduction of the multisectoral framework in so far as it related to the notification procedure laid down in Article 93(3) of the EC Treaty.

(4) In reply to the Commission letter of 5 March 1998, Germany, by letter of 31 March 1998, stated that for various reasons it did not agree to the introduction of the multisectoral framework.

(5) By letter dated 28 May 1998 (No SG(98) D/4197), the Commission informed Germany of its decision of 20 May 1998 to initiate the procedure provided for in Article 93(2) of the EC Treaty in respect of all the aid schemes in Germany under which aid could be awarded which was covered by the notification requirement of the multisectoral framework, notably the Programme for the improvement of regional economic structures *(Rahmenplan der Gemeinschaftsaufgabe 'Verbesserung der regionalen Wirtschaftstruktur')* and the Investment aid law *(Investitionszulagengesetz)*.

[1] OJ C 107, 7. 4. 1998, p. 7.

(6) In opening the procedure, the Commission examined the arguments submitted by Germany to justify its refusal to agree to the new notification requirement laid down in the multisectoral framework. The Commission concluded that there were no grounds for accepting Germany's refusal.

(7) By the abovementioned letter, the Commission gave Germany the opportunity to submit its comments within two weeks. In accordance with Article 93(2) of the EC Treaty, the other Member States and other parties concerned were informed by publication of the letter in the *Official Journal of the European Communities*([1]) and were requested to submit their comments.

(8) Germany communicated its comments to the Commission by letter dated 12 June 1998.

(9) No comments were received from the other Member States or from other parties.

II. OBSERVATIONS FROM GERMANY

(10) In their letter of 12 June 1998, the German authorities stated that they had already explained their attitude towards the multisectoral on various occasions in the context of opinions ('*Stellungnahmen*'), exchanges of correspondence and bilateral conversations with the Commission and summarised their position in their communication of 31 March 1998.

(11) The German authorities set out the following four specific points which in their view the Commission had not sufficiently assessed and taken into consideration in its letter of 28 May 1988:

(a) Contrary to the Commission's view that the framework offered a sufficient degree of predictability through the application of three clearly defined criteria, even a potential aid recipient who had knowledge of all relevant facts could not determine how the Commission would assess those facts and decide in individual cases. As the Commission itself mentioned in its letter of 28 May 1998, it has a margin of appreciation in the application of Article 93(3) of the EC Treaty.

(b) With particular regard to the competition factor, it would not be clear to the potential aid recipient how the Commission would assess the real market situation. The Commission had stated that in the assessment it would take account of the relevant sector or sub-sector. That very formal approach ignored the fact that within the relevant sector, different sub-segments can exhibit different dynamics so that — according to the specific attributes of the product — an assessment diverging from that for the sector as a whole could be justified.

(c) While the Commission stated that by means of the capital-labour assessment factor the creation of jobs would be favoured, the durability and competitiveness of those jobs were not put in the foreground to the required extent. That applied especially for wage-cost intensive locations like Germany.

(d) The statements of the Commission made clear that, also with regard to the regional impact factor, legal certainty and predictability would not be sufficiently afforded to the potential aid recipient. As the Commission itself conceded, it might well not be possible at the moment of the award of aid to establish how the individual project would have an impact on direct and indirect job creation. While the Commission had pointed out that this factor would not result in an aid reduction but provide a certain compensation for the impact of the other factors and in this regard special precautions concerning *ex post* monitoring were foreseen, it had to be noted that an *ex post* increase in the aid intensity in the light of the results of the monitoring could no longer influence an investment decision, but would only result in firms benefiting from aid which would have invested anyway. An *ex post* reduction of previously authorised aid would call in question the basis of the investor's economic calculations; this was all the more questionable given that — at least with regard to indirect job creation — the factual requirements did not lie exclusively within the area of influence of the aid recipient.

(12) Germany concluded that the Commission had not been able to remove its concerns regarding the multisectoral framework and that it was therefore still not in a position to agree to its introduction.

III. ASSESSMENT OF GERMANY'S OBSERVATIONS

General

(13) Article 93(1) of the EC Treaty provides that the Commission, in cooperation with Member States, is to keep under constant review all systems of aid existing in those States. It is to propose to the latter any appropriate measures required by the progressive development or by the functioning of the common market.

(14) Over a period of several years, the Commission worked on the formulation of new rules to apply to the control of regional aid to large investment projects. The Commission's intention to consider

([1]) OJ C 171, 5. 6. 1998, p. 4.

the adoption of a horizontal approach to State aid control to such projects was first signalled in its Communication to the Council, the Parliament, the Economic and Social Committee and the Committee of the Regions on an industrial competitiveness policy for the European Union [1]. Subsequently, the Council Resolution of 21 November 1994 on the strengthening of the competitiveness of Community industry [2] explicitly referred to the need for consideration of a horizontal approach.

(15) Periodic discussions on the provisions of a new framework took place between the Commission and Member States. As a result of those discussions, the Commission tabled revised draft rules on the multisectoral framework on the control of regional aid to large investment projects on the occasion of the multilateral meeting of State aid experts of the Member States held in Brussels on 15 January 1997. Following that meeting, at which a large majority of Member States responded positively to the Commission's revised proposal, the Commission consulted Member States on the technical details of the proposal by letter dated 25 February 1997 and had a number of bilateral discussions with Member States, including Germany. The introduction of the multisectoral framework also constituted a specific priority under the Commission's action plan for the single market which the European Council approved at its meeting in Amsterdam on 16 and 17 June 1997.

(16) As the Commission noted at the time of opening the procedure, it made considerable efforts during the course of 1997 to take account of Germany's reservations on the draft text of the framework, despite the fact that Germany failed to reply in writing to the Commission's letter dated 25 February 1997 in which all Member States were invited to comment on specific elements of the text. Several subsequent bilateral discussions between the Commission and the German authorities took place as a result of which the Commission made certain modifications to the draft text. Those bilateral exchanges included a meeting held on 15 July 1997, following which there were exchanges of correspondence (Commission letters dated 28 July 1997 and 15 December 1997 and a letter from the German authorities dated 24 November 1997).

(17) During these bilateral and multilateral discussions, and in recognition of the compromises that most if not all Member States had to make in order to arrive at a consensus, the Commission made clear that the multisectoral framework would be introduced on a trial basis for three years only after which the Commission would carry out a thorough review of the utility and scope of the framework, which would, *inter alia,* consider the question of whether it should be renewed, revised or abolished.

(18) By letter dated 5 March 1998, the Commission proposed to each Member State including Germany, pursuant to Article 93(1) of the EC Treaty, appropriate measures for State aid by way of a prior notification requirement which is laid down in the multisectoral framework.

(19) At no stage during the procedure did Germany contest the right of the Commission to make such a proposal. Indeed, it indicated to the Commission that it supports the objective of avoiding sector-specific rules by a horizontal approach. However, it considers that in a number of respects the provisions of the multisectoral framework are unsatisfactory and that its previously expressed concerns have been insufficiently taken account of by the Commission. It is the refusal of Germany to agree to the notification requirement contained in the multisectoral framework which is the subject of the present procedure.

Examination of the objections put forward by Germany

(20) First, Germany asserts, without raising any new points, that the multisectoral framework affords insufficient predictability for the potential aid recipient. The Commission cannot accept this argument. The Commission considers on the contrary that the multisectoral framework should offer a sufficient degree of predictability and transparency by the application of the three assessment criteria. Since the prospective aid beneficiaries know their sectors and sub-sectors intimately and their relative position within them, the Commission is confident that they should generally be able to predict with reasonable accuracy the likely results of the Commission's application of the competition assessment factor. The same is true of the capital-labour assessment factor, which will require a calculation of the amount of proposed capital divided by the expected number of direct jobs created/safeguarded. As regards the application of the regional impact factor, the Commission will be required to form its assessment on the basis of the data provided by the Member State itself as required by the standard notification form annexed to the multisectoral framework. Since these data will inevitably be based on the input provided by the potential aid recipient, the outcome of the Commission's analysis of this factor should also generally be foreseeable. The question of *ex post* monitoring is dealt with later.

[1] COM(94) 319 final.
[2] OJ C 343, 6. 12. 1994, p. 1.

(21) Furthermore, the Commission takes the view that the multisectoral framework should not impact, as Germany seems to wish, on the margin of appreciation available to the Commission for the application of Article 93(3) of the EC Treaty according to the settled case-law of the Court of Justice of the European Communities, for example in Case C-255/91 (*Matra* v. *Commission*) [1]. No potential aid recipient has legal certainty at the time of notification of proposed aid to the Commission that the aid will be authorised. This principle applies, *inter alia,* to proposed regional investment aid to sectors subject to their own Community frameworks (for example motor vehicles, synthetic fibres, steel). Furthermore, Member States have on occasions had to agree to a reduction in the proposed level of aid as a condition for Commission approval. By establishing, in the multisectoral framework, transparent and quantifiable criteria, the Commission believes however that it is adopting an approach which should result in an enhanced level of predictability.

(22) Secondly, Germany argues that the circumstances of individual cases may require a more flexible approach by the Commission than is permitted by the multisectoral framework with regard to the level of disaggregation of the sector/sub-sector which is used to apply the competition assessment factor.

(23) The Commission does not accept the validity of this argument. The approach proposed by Germany would inevitably run the risk of disagreements about the sub-segment selected by the Commission for its assessment. It could lead to precisely the sort of uncertainty and unpredictability that Germany claims it wishes to avoid. It should not be forgotten that the multisectoral framework already states that the sector/sub-sector will be assessed at the most disaggregated level for which objective Community-wide data are available. With regard to examining whether structural overcapacity exists, it is explicitly stated in footnote 13 that the sector or sub-sector will be established at the lowest available segmentation of the NACE classification.

(24) In addition, paragraph 3.4 of the multisectoral framework states that, in the absence of sufficient data on capacity utilisation, the Commission will first consider whether the investment takes place in a declining market and that, for this purpose, the Commission will compare the evolution of apparent consumption of the product(s) in question with the growth rate of manufacturing industry as a whole in the European Economic Area. Such an analysis would in any event take account of the recent developments in the market for the specific product concerned. Finally, with regard to the Commission's assessment of whether a reduction in the permissible aid level should be made as a result of the existence of a high market share (more than 40 %) for the product concerned, paragraph 3.6 states that there could be exceptions to the general rule, for example where the company creates, through genuine innovation, a new product market.

(25) Thirdly, Germany argues that the capital-labour assessment factor does not take account of the durability and competitiveness of the created jobs, nor of high wage-cost economies such as Germany.

(26) The Commission cannot accept those arguments. The Commission does not consider that it should have a duty under the multisectoral framework to form a view on whether the created jobs are likely to be sustainable in the longer term, which more properly falls within the competence of the authorities of the Member State concerned. In any event, the new regional aid guidelines adopted by the Commission on 16 December 1997 [2] state that regional investment aid linked to the creation of jobs depends on the maintenance of those jobs for a minimum of five years. As regards the competitiveness of the jobs, the Commission also takes the view that this is essentially a matter for the Member States to determine in the context of their regional policy.

(27) In the Commission's view, there are no grounds for supposing that Member States will somehow be given an incentive by the multisectoral framework to award aid to projects which generate more jobs but less competitive jobs than would otherwise be the case. It is not the Commission's intention to penalise the creation of high-tech jobs, but instead to reduce the potential for serious distortion of competition engendered by the award of excessive levels of aid to very large investment projects and the putting at risk of jobs elsewhere in the Community. Firms with a relatively high share of capital in total costs realise a significant reduction of their unit cost through the receipt of aid and could obtain thereby a considerable competitive advantage over non-aided competitors. The higher the capital intensity of the supported investment project, the more distortive the effects of capital grants on competition are likely to be.

(28) At the same time the Commission wishes to maintain the attraction of the more disadvantaged parts of the Community, including the new German *Länder*, by ensuring that projects which create

[1] [1993] ECR I-3203.

[2] OJ C 74, 10. 3. 1998, p. 9.

significant levels of both direct and indirect jobs in the regions concerned receive favourable treatment. This is consistent with the conclusions of the Luxembourg Summit on Jobs held in November 1997.

(29) It should also be underlined that the new rules will not result in a ban on aid in individual cases, but rather in a possible adjustment to the maximum permissible levels of regional aid normally permitted under the relevant aid scheme, in accordance with the specified three assessment criteria. In practice, it is already the case that very large projects carried out in the Community as a whole frequently do not receive aid at the maximum level allowed by the regional aid schemes. Moreover, in view of the notification thresholds, the new multisectoral framework is applicable only to a relatively small number of projects and will impinge on the freedom of Member States to apply regional policy in very few cases.

(30) The Commission also recalls that the regional impact factor is based on the ratio of indirect jobs to direct jobs created as a result of an investment in the assisted regions concerned. Consequently, where few direct jobs are created by a highly capital-intensive investment, the project may nevertheless be entitled to a 'bonus' provided that at least a modest number of additional indirect jobs are also created.

(31) Fourthly, Germany argues that the multisectoral framework does not afford proper legal certainty and predictability with respect to the regional impact factor, that some of the factors are not within the control of the aid recipient and it objects to the *ex post* monitoring provisions. The Commission accepts that it will not necessarily be possible to forecast the precise effects of a project in terms of direct and indirect job creation; nevertheless, it assumes that for the type of large-scale regional investment projects covered by the multisectoral framework the aid recipient will be capable of providing realistic estimates both for jobs directly created by the project and jobs indirectly created (that is jobs created with first-tier suppliers and customers in the assisted region where the company is located or in any adjacent assisted regions (that is, Article 92(3)(a) or (c) regions). It is important in the Commission's view to place more importance on *ex post* monitoring arrangements than has generally been the case in the past in order to ensure respect for Commission decisions. It should also be noted that, since the factors linked to the numbers of jobs created are based on a range of values, there will in practice exist bands within which the actual number of jobs created can vary from that notified and still not require a reduction in the allowable aid level at the *ex post* monitoring stage. Finally, the Commission notes that, contrary to the apparent view of Germany, there is no provision in the multisectoral framework for the authorised amount of aid to be increased in the light of the *ex post* monitoring. On the contrary, the fact that an aided project has been more successful in terms of jobs created than initially projected would merely point to there being no need for more aid.

IV. **CONCLUSION**

(32) For the foregoing reasons, the Commission considers that there is no justification for it to modify the appropriate measure concerning the multisectoral framework.

(33) All the other Member States have unconditionally agreed to the introduction of the notification requirement in the multisectoral framework for a period of three years from 1 September 1998, in conformity with the Commission's proposal. The principle of equality of treatment between the Member States means that the Commission cannot accept the non-applicability of the framework in one Member State.

(34) Accordingly, the Commission concludes that the German aid schemes are incompatible with the common market within the meaning of Article 92(1) of the EC Treaty, since they do not take account of the appropriate measures for State aid which were communicated to Germany by letter SG(98) D/1975 of 5 March 1998.

(35) In view of Germany's refusal to take the appropriate measures, the Commission, having carried out the procedure laid down in Article 93(2) of the EC Treaty, may, pursuant to that provision and on the basis of the considerations set out in Section III, require existing aid schemes to be altered by placing Germany under the obligation to comply with the prior notification requirement laid down in the multisectoral framework,

HAS ADOPTED THIS DECISION:

Article 1

Germany is required to notify to the Commission, in conformity with Article 93(3) of the EC Treaty, for the period from 1 September 1998 to 31 August 2001 any proposed aid measure which meets the criteria defined in paragraph 2 'Notification requirement' of the Community multisectoral framework on regional aid for large investment projects.

Article 2

Germany shall inform the Commission of the measures taken to comply with this Decision within two weeks of the notification thereof.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 14 July 1998.

For the Commission
Franz FISCHLER
Member of the Commission

COMMISSION DECISION

of 13 October 1998

authorising the Member States to permit temporarily the marketing of forest reproductive material not satisfying the requirements of Council Directive 66/404/EEC

(notified under document number C(1998) 3105)

(98/640/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 66/404/EEC of 14 June 1966 on the marketing of forest reproductive material [1], as last amended by the Act of Accession of Austria, Finland and Sweden and in particular Article 15 thereof,

Having regard to the requests submitted by certain Member States,

Whereas production of reproductive material of the species set out in the Annexes is at present insufficient in all Member States with the result that their requirements for reproductive material conforming to the provisions of Directive 66/404/EEC cannot be met;

Whereas third countries are not in a position to supply sufficient reproductive material of the relevant species which can afford the same guarantees as Community reproductive material and which conforms to the provisions of the abovementioned Directive;

Whereas the Member States should therefore be authorised to permit, for a limited period, the marketing of reproductive material of the relevant species which satisfies less stringent requirements to cover the shortage of reproductive material satisfying the requirements of Directive 66/404/EEC;

Whereas, for genetic reasons, the reproductive material must be collected at places of origin within the natural range of the relevant species and the strictest possible guarantees should be given to ensure the identity of the material;

Whereas, furthermore, reproductive material should be marketed only if it is accompanied by a document bearing certain details of the reproductive material in question;

Whereas each of the Member States should furthermore be authorised to permit the marketing in its territory of seed which satisfies less stringent requirements in respect of provenance, or, in the case of reproductive material of *Populus nigra*, in respect of the category, as laid down in Directive 66/404/EEC, if the marketing of such material has been authorised in the other Member States pursuant to this Decision;

Whereas the measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry,

HAS ADOPTED THIS DECISION:

Article 1

1. Member States are authorised to permit the marketing in their territory of seed satisfying less stringent requirements in respect of provenance, as laid down in Directive 66/404/EEC, on the terms set out in Annex I hereto and on condition that the proof specified in Article 2 is furnished with regard to the place of provenance of the seed and the altitude at which it was collected.

2. Member States are authorised to permit the marketing in their territory of plants produced in the Community from the abovementioned seed.

Article 2

1. The proof referred to in Article 1(1) shall be deemed to be furnished where the reproductive material is of the category 'source-identified reproductive material' as defined in the Organisation for Economic Cooperation and Development (OECD) scheme for the control of forest reproductive material moving in international trade, or of another category defined in that scheme.

2. Where the OECD scheme referred to in paragraph 1 is not used at the place of provenance of the reproductive material, other official evidence shall be admissible.

3. Where official evidence cannot be provided, Member States may accept other non-official evidence.

[1] OJ 125, 11. 7. 1966, p. 2326/66.

Article 3

Member States are authorised to permit the marketing in their territory of vegetative reproductive material derived from *Populus nigra* which do not satisfy the requirements in respect of the category, as laid down in Article 4(1) of Directive 66/404/EEC, on the terms set out in Annex II hereto.

Article 4

1. The Member States other than the applicant Member States are also authorised to permit, on the terms set out in the Annexes hereto and for the purposes intended by the applicant Member States, the marketing in their territory of seed or, in the case of *Populus nigra*, vegetative reproductive material referred to in this Decision.

2. For the purpose of the application of paragraph 1, the Member States concerned shall assist each other administratively. The applicant Member States shall be notified by other Member States of their intention to permit the marketing of such reproductive material, before any authorisation may be granted. The applicant Member States may object only if the entire amount set out in this Decision has already been allocated.

Article 5

The authorisation provided for in Article 1(1) and Article 3 in so far as it concerns the first placing of forest reproductive material on the market of the Community, shall expire on 30 November 1999. Such authorisation, in so far as it concerns subsequent placing on the market of the Community, shall expire on 31 December 2001.

Article 6

With regard to the first placing on the market of forest reproductive material, as referred to in Article 5, Member States shall, by 1 January 2000, notify the Commission of the quantities of such material satisfying less stringent requirements which have been approved for marketing in their territory pursuant to this Decision. The Commission shall inform the other Member States thereof.

Article 7

This Decision is addressed to the Member States.

Done at Brussels, 13 October 1998.

For the Commission
Franz FISCHLER
Member of the Commission

LEGEND

1. *Member States*

B	= Kingdom of Belgium
DK	= Kingdom of Denmark
D	= Federal Republic of Germany
EL	= Hellenic Republic
E	= Kingdom of Spain
F	= French Republic
IRL	= Ireland
I	= Italian Republic
L	= Grand Duchy of Luxembourg
NL	= Kingdom of the Netherlands
A	= Republic of Austria
P	= Portuguese Republic
UK	= United Kingdom of Great Britain and Northern Ireland

2. *States or regions of provenance*

CA	= Canada
CA (BC)	= Canada (British Columbia)
CA (QCI)	= Canada (Queen Charlotte Island)
CH	= Switzerland
CN	= China
CZ	= Czech Republic
EC	= European Community
MK	= Former Yugoslav Republic of Macedonia
HR	= Croatia
JP	= Japan
PL	= Poland
RO	= Romania
SI	= Slovenia
US	= United States of America

3. *Other abbreviations*

max. alt.	= maximum altitude
OEP	= or equivalent provenance
ECSA	= from EC selected areas
SIA	= source identified 'A'

ANEXO I — BILAG I — ANHANG I — ΠΑΡΑΡΤΗΜΑ I — ANNEX I — ANNEXE I — ALLEGATO I — BIJLAGE I — ANEXO I — LIITE I — BILAGA I

Estado miembro Medlemsstat Mitgliedstaat Κράτος μέλος Member State État membre Stato membro Lidstaat Estado-membro Jäsenmaa Medlemsstat	**Abies alba**		**Larix leptolepis**		**Pinus strobus**	
	kg	Procedencia Oprindelse Herkunft Προέλευση Provenance Provenance Provenienza Herkomst Proveniência Alue Härkomst	kg	Procedencia Oprindelse Herkunft Προέλευση Provenance Provenance Provenienza Herkomst Proveniência Alue Härkomst	kg	Procedencia Oprindelse Herkunft Προέλευση Provenance Provenance Provenienza Herkomst Proveniência Alue Härkomst
B	5	RO	30	JP	10	CA (Ontario), US
DK	250	RO	15	JP	—	—
D	100	EC (D/OEP), CZ, CH, RO, MK	50	EC (D/OEP), JP	50	US (Appalachians), EC (D/OEP)
EL	—	—	—	—	—	—
E	100	EC (E/OEP)	77	JP, CN	6	US, EC (E/OEP)
F	—	—	30	JP	—	—
IRL	—	—	280	JP (Hokkaido)	—	—
I	—	—	—	—	—	—
L	—	—	—	—	—	—
NL	40	RO	20	JP	25	US, CA
A	350	SI, HR, CZ, PL	5	SI	40	US (Eastern States, Appalachians), CZ, SI
P	—	—	—	—	—	—
UK	—	—	350	JP (Hokkaido, Nagano), EC (UK/OEP)	—	—

Estado miembro Medlemsstat Mitgliedstaat Κράτος μέλος Member State État membre Stato membro Lidstaat Estado-membro Jäsenmaa Medlemsstat	**Picea sitchensis**		**Pseudotsuga taxifolia**	
	kg	Procedencia Oprindelse Herkunft Προέλευση Provenance Provenance Provenienza Herkomst Proveniência Alue Härkomst	kg	Procedencia Oprindelse Herkunft Προέλευση Provenance Provenance Provenienza Herkomst Proveniência Alue Härkomst
B	20	US (Washington)	400	US (Washington, SIA max. alt. 450 m, ECSA)
DK	—	—	45	US (Washington/Darrington)
D	100	CA (QCI, West Coast) US (Washington), EC (D/OEP)	2 000	US (Washington, Oregon) CA (BC), EC (D/OEP)

Estado miembro Medlemsstat Mitgliedstaat Κράτος μέλος Member State État membre Stato membro Lidstaat Estado-membro Jäsenmaa Medlemsstat	**Picea sitchensis**		**Pseudotsuga taxifolia**	
	kg	Procedencia Oprindelse Herkunft Προέλευση Provenance Provenance Provenienza Herkomst Proveniência Alue Härkomst	kg	Procedencia Oprindelse Herkunft Προέλευση Provenance Provenance Provenienza Herkomst Proveniência Alue Härkomst
EL	—	—	—	—
E	76	US	821	US (Oregon, Washington, California)
F	50	US (California, Oregon, Washington)	130	EC (F/OEP) US (Washington, Oregon, California), EC (SIA max. alt. 450 m), Vergers à graines français
IRL	180	US (Washington, North Oregon)	70	US (Washington, Oregon)
I	—	—	60	US (Oregon, California)
L	—	—	10	US (Washington max alt. 610 m)
NL	2	US, CA	—	—
A	4	US, CA	265	US (Washington, Oregon) CA(BC)
P	—	—	50	EC (P Northern region/OEP), US (California)
UK	200	CA (BC), US (Washington, Oregon)	200	US (Washington max. alt. 450 m), CA (BC), EC (UK/OEP)

ANEXO II — BILAG II — ANHANG II — ΠΑΡΑΡΤΗΜΑ II — ANNEX II — ANNEXE II — ALLEGATO II — BIJLAGE II — ANEXO II — LIITE II — BILAGA II

Estado miembro Medlemsstat Mitgliedstaat Κράτος μέλος Member State État membre Stato membro Lidstaat Estado-membro Jäsenmaa Medlemsstat	**Populus nigra** No of plants
D	30 000

COMMISSION DECISION

of 4 November 1998

amending Decision 93/452/EEC authorising the Member States to provide for derogations from certain provisions of Council Directive 77/93/EEC, in respect of plants of *Chamaecyparis* Spach, *Juniperus* L. and *Pinus* L., respectively, originating in Japan

(notified under document number C(1998) 3333)

(98/641/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community [1], as last amended by Commission Directive 98/2/EC [2], and in particular Article 14(1) thereof,

Having regard to the requests made by the Member States,

Whereas, under the provisions of Directive 77/93/EEC, plants of *Chamaecyparis* Spach, *Juniperus* L. and *Pinus* L., other than fruit and seeds, originating in non-European countries, may in principle not be introduced into the Community;

Whereas Commission Decision 93/452/EEC [3], as last amended by Decision 96/711/EC [4], permits derogations for plants of *Chamaecyparis* Spach, *Juniperus* L. and *Pinus* L., respectively, originating in Japan for a given period, provided that certain improved technical conditions are satisfied;

Whereas Commission Decision 93/452/EEC as amended stipulated that the authorisation should apply until 31 December 1998 in the case of *Pinus* and *Chamaecyparis* plants, and until 31 March 1998 in the case of *Juniperus* plants;

Whereas, as a result of information submitted by the Japanese authorities, part of the technical conditions have been amended to allow for certain alternative production conditions of such plants which provide similar assurances for the health of the plants;

Whereas the circumstances justifying the authorisation still obtain;

Whereas the authorisation should therefore be extended for a further limited period;

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

HAS ADOPTED THIS DECISION:

Article 1

Decision 93/452/EEC is hereby amended as follows:

1. in Article 1(2)(f) the third indent is replaced by

   '— be potted, at least during the same period, in pots which are placed either on shelves at least 20 cm above ground or onto concrete flooring, which is well maintained and free from debris.';

2. in Article 1(2)(h), fourth indent, '96/711/EC' is replaced by '98/641/EC';

3. in Article 3 '31 December 1998' is replaced by '31 December 2001';

4. in Article 3 the words 'periods between 1 November 1996 to 31 March 1997 and 1 November 1997 to 31 March 1998' are replaced by 'periods between 1 November 1998 to 31 March 1999, 1 November 1999 to 31 March 2000 and 1 November 2000 to 31 March 2001'.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 4 November 1998.

For the Commission

Franz FISCHLER

Member of the Commission

---

[1] OJ L 26, 31. 1. 1977, p. 20.
[2] OJ L 15, 21. 1. 1998, p. 34.
[3] OJ L 210, 21. 8. 1993, p. 29.
[4] OJ L 326, 17. 12. 1996, p. 66.