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I

(Acts whose publication is obligatory)

DECISION No 888/98/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 30 March 1998

establishing a programme of Community action to ameliorate the indirect taxation systems of the internal market (Fiscalis programme)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100a thereof,

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

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

Acting in accordance with the procedure laid down in Article 189b of the Treaty [3],

(1) Whereas in the internal market, the effective, uniform and efficient application of Community law is essential for the functioning of indirect taxation systems, in particular for the protection of national and Community financial interests through combating tax evasion and tax avoidance, avoiding distortions of competition and reducing burdens on administrations and taxpayers;

(2) Whereas achieving this effective, uniform and efficient application is a matter for the Community in partnership with the Member States; whereas, although the Member States bear the greater responsibility in terms of resources, there is a significant role for the Community to play in providing an infrastructure and the necessary stimulus;

(3) Whereas in order to ensure uniform application of Community law it is essential that officials responsible for indirect taxation have a high common standard of understanding of Community law and its implementation in the Member States; whereas such a standard can be achieved only through effective initial and continuous training provided by the Member States; whereas supplementary Community action is useful to coordinate and foster such training;

(4) Whereas efficient, effective and extensive cooperation among Member States and between them and the Commission is important for the functioning of the indirect taxation systems of the internal market; whereas Community infrastructure for communication and information exchange is indispensable in order to achieve this objective; whereas an impetus from the Community makes it easier to reach a sufficient level of cooperation;

(5) Whereas continuing improvement of administrative procedures is essential for the functioning of the indirect taxation systems of the internal market; whereas, although the primary responsibility for achieving this rests with the Member States, supplementary Community action is needed to coordinate and stimulate such improvement;

(6) Whereas, therefore, in accordance with the principles of subsidiarity and of proportionality set out in Article 3b of the Treaty, the objectives of the measures laid down in this Decision cannot all be sufficiently achieved by the Member States and can therefore be better achieved at Community level; whereas this Decision does not go beyond what is necessary for this purpose;

(7) Whereas the operation of information-exchange systems at Community level in the field of indirect taxation, in particular the system relating to VAT (VIES) referred to in Council Regulation (EEC)

[1] OJ C 177, 11. 6. 1997, p. 8 and OJ C 1, 3. 1. 1998, p. 13.
[2] OJ C 19, 21. 1. 1998, p. 48.
[3] Opinion of the European Parliament of 20 November 1997 (OJ C 371, 8. 12. 1997), Council Common Position of 26 January 1998 (OJ C 62, 26. 2. 1998, p. 38) and Decision of the European Parliament of 18 February 1998 (OJ C 80, 16. 3. 1998). Council Decision of 3 March 1998.

No 218/92 of 27 January 1992 on administrative cooperation in the field of indirect taxation (VAT) [1] has shown the value of information technology in protecting revenue whilst minimising administrative burdens; whereas those systems have proved to be essential tools of cooperation which have also stimulated greater cooperation among Member States;

(8) Whereas communication and information-exchange systems should be set up and their operation ensured in accordance with the changing needs of indirect taxation systems so as to ensure ongoing cooperation;

(9) Whereas the experience gained by the Community from the programme established by Council Decision 93/588/EEC of 29 October 1993 on the adoption of a programme of Community action on the subject of the vocational training of indirect taxation officials (Matthaeus-Tax) [2] and from multilateral control exercises has shown that exchanges, seminars and multilateral control exercises could achieve the objectives of the programme by bringing officials from different national administrations together in work activities; whereas those activities should therefore be continued;

(10) Whereas seminars constitute an ideal framework for the exchange of ideas between officials of national administrations, Commission representatives and, if necessary, other indirect taxation experts; whereas suggestions may emerge from such seminars for improving the legal instruments in force and facilitating cooperation between administrations with a view to enabling national indirect taxation systems to converge;

(11) Whereas the experience gained from the Matthaeus-Tax programme has indicated that the coordinated development and implementation of a common training programme such as the one established by Commission Decision 95/279/EC of 12 July 1995 laying down certain provisions for implementing Council Decision 93/588/EEC on the adoption of a programme of Community action on the subject of the vocational training of indirect taxation officials [3] could achieve the objectives of this programme, in particular in achieving a higher common standard of understanding of Community law; whereas training programmes should be developed further in areas to be defined by the Commission and the Member States; whereas the Member States should therefore ensure that all their officials receive the initial training and regular continuous training envisaged by the common training programmes;

(12) Whereas a sufficient standard of linguistic competence on the part of indirect taxation officials has proved to be essential to facilitate cooperation; whereas Member States should therefore provide the necessary language training for their officials;

(13) Whereas the programme should be open to the participation of the associated countries of central and eastern Europe; whereas the programme should also be open to the participation of Cyprus;

(14) Whereas the financing of the programme should be shared between the Community and Member States, and the Community contribution should appear in the general budget of the European Communities (Part two, section III, Commission);

(15) Whereas this Decision lays down, for the entire duration of the programme, a financial framework constituting the principal point of reference, within the meaning of point 1 of the Declaration by the European Parliament, the Council and the Commission of 6 March 1995 on the incorporation of financial provisions into legislative acts [4], for the budgetary authority during the annual budgetary procedure,

HAVE ADOPTED THIS DECISION:

Article 1

Fiscalis programme

A multiannual Community action programme (Fiscalis) hereinafter referred to as 'the programme', is hereby established for the period 1 January 1998 to 31 December 2002 to ameliorate the functioning of the indirect taxation systems of the internal market. It shall comprise the areas of action referred to in Articles 4, 5 and 6.

Article 2

Definitions

For the purposes of this Decision:

(a) 'indirect taxation' means those indirect taxes which come within the scope of Community legislation;

[1] OJ L 24, 1. 2. 1992, p. 1.
[2] OJ L 280, 13. 11. 1993, p. 27.
[3] OJ L 172, 22. 7. 1995, p. 24.
[4] OJ C 102, 4. 4. 1996, p. 4.

(b) 'administration' means the public authorities in Member States responsible for indirect taxation;

(c) 'official' means an official of an administration responsible for the application of Community or national law, regulations or procedures relating to indirect taxation;

(d) 'exchange' means a working visit organised under the programme in the Community interest of an official from an administration in another Member State;

(e) 'multilateral controls' means collaboration of at least three administrations to integrate and coordinate their controls of taxable persons having indirect tax obligations in the Member States concerned, within the Community legal framework for cooperation;

(f) 'the Community legal framework for cooperation' means the body of Community legislation which provides for mutual assistance and administrative cooperation between Member States on indirect taxation.

Article 3

Objectives

The objectives of the programme shall be to reinforce, through Community action, the efforts of Member States:

(a) to enable officials to achieve a high common standard of understanding of Community law, in particular in the field of indirect taxation, and of its implementation in Member States ;

(b) to secure efficient, effective and extensive cooperation among Member States and between them and the Commission;

(c) to ensure the continuing improvement of administrative procedures to take account of the needs of administrations and taxpayers through the development and dissemination of good administrative practices.

Article 4

Communication and information-exchange systems, manuals and guides

1. The Commission and Member States shall ensure that such existing communication and information-exchange systems, manuals and guides as they consider necessary are operational. They shall establish and keep operational such new communication and information-exchange systems, manuals and guides as they consider necessary.

2. The Community components of the communication and information-exchange systems shall be the hardware, software and network connections, which must be common to all Member States so as to ensure the interconnection and interoperability of the systems, whether they be installed at the premises of the Commission (or a designated subcontractor) or at premises of Member States (or a designated subcontractor).

3. The non-Community components of the communication and information-exchange systems shall comprise the national databases forming a part of these systems, the network connections between the Community and non-Community components and such software and hardware as each Member State shall deem appropriate for the full operation of those systems throughout its administration.

Article 5

Exchanges, seminars and multilateral controls

1. The Commission and Member States shall organize exchanges of officials. The exchanges may vary in length, depending on the case, but may not exceed six months. Each exchange shall be targeted on a particular work activity and shall be sufficiently prepared and evaluated afterwards by the officials and administrations concerned.

The Member States shall take the necessary steps to enable exchange officials to play an effective part in the host administration's activities and to this end such officials shall be authorised to carry out the tasks relating to the duties entrusted to them by the host administration in accordance with its legal system.

During the exchange, the civil liability of the exchange official in the performance of his duties shall be treated in the same way as that of officials of the host administration. Exchange officials shall be bound by the same rules of professional secrecy as national officials.

2. The Commission and the Member States shall organise seminars to be attended by officials from the administrations, Commission representatives and, if necessary, other indirect taxation experts.

3. The Commission and the Member States may, within the Committee referred to in Article 11, choose, for experimental purposes, from among the multilateral controls organised by the Member States within the Community legal framework for cooperation those whose costs are to be borne by the Community in accordance with Article 8. The participating Member States shall send reports and evaluations concerning such controls to the Commission and to the Member States.

Article 6

Common training initiative

1. In order to encourage structured cooperation between national training bodies and officials responsible for training in indirect taxation in administrations, Member States shall, in cooperation with the Commission:

(a) develop existing training programmes and, where necessary, devise new programmes to provide a common core of training for officials so as to enable them to acquire the necessary common professional skills and knowledge;

(b) where appropriate, open the training courses in indirect taxation provided by each Member State for its own officials to officials from all Member States;

(c) develop the necessary common tools for indirect taxation training, including linguistic training tools.

2. Member States shall ensure that their officials receive the initial and continuous training necessary to acquire the common professional skills and knowledge in accordance with the common training programmes and the linguistic training necessary for those officials to attain a sufficient standard of linguistic competence. In accordance with Article 12(2), they shall inform the Commission of the content and amount of training that they provide for their officials.

Article 7

Participation of the associated countries

The programme shall be open to the participation of the associated countries of central and eastern Europe in accordance with the conditions laid down in the Eurupe Agreements and the Additional Protocols relating to their participation in Community programmes and insofar as Community law on indirect taxation so permits. The programme shall also be open to the participation of Cyprus insofar as Community law on indirect taxation so permits.

Article 8

Expenditure

1. The expenditure necessary for implementation of the programme shall be divided between the Community and Member States in accordance with paragraphs 2 and 3.

2. The Community shall bear the following:

(a) the travel and subsistence expenses of officials participating in another Member State in the activities provided for in Article 5, the travel and subsistence expenses of the other indirect taxation experts participating in the seminars provided for in Article 5(2), and likewise the costs relating to the organisation of the seminars;

(b) the cost of the development of the indirect taxation training tools provided for under Article 6(1)(c) and the manuals and guides provided for under Article 4(1);

(c) the cost of the development, purchase, installation and maintenance of the Community components of the communication and information-exchange systems provided for in Article 4(2) and the cost of the day-to-day operation of the Community components installed at the premises of the Commission (or a designated subcontractor);

(d) the cost of studies to be carried out, if necessary, by third parties on the impact of the programme, while guaranteeing the confidentiality of the data.

3. Member States shall bear the following:

(a) the costs relating to the initial and continuing training of their officials and to the linguistic training of their officials as provided for in Article 6. Member States shall bear the costs relating to the participation of their officials in any extra activities organised pursuant to Article 5, over and above those borne by the Community;

(b) the costs relating to the establishment and functioning of the non-Community components of the communication and information-exchange systems provided for in Article 4(3) and the cost of the day-to-day operation of the Community components of those systems installed at their premises (or those of a designated subcontractor).

Article 9

Financial framework

The financial framework for the implementation of the programme for the period 1 January 1998 to 31 December 2002 is hereby set at ECU 40 million. The annual appropriations shall be authorised by the budgetary authority within the limits of the financial perspective.

Article 10

Implementation

The measures necessary for carrying out this programme shall be adopted by the Commission in accordance with the procedure laid down in Article 11. The implementing measures shall not affect Community provisions governing collection and control and administrative cooperation and mutual assistance in the field of indirect taxation.

Article 11

Committee

1. The Commission shall be assisted by the Standing Committee on Administrative Cooperation in the field of Indirect Taxation established by Article 10 of Regulation (EEC) No 218/92.

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

3. (a) The Commission shall adopt measures which shall apply immediately.

(b) However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith. In that event:

— the Commission shall defer application of the measures which it has decided for a period of three months from the date of communication,

— the Council, acting by a qualified majority, may take a different decision within the time limit referred to in the first indent.

4. In addition to the measures referred to in Article 10, the Committee shall consider matters raised by its Chairman, either on his own initiative or at the request of the representative of a Member State, concerning the application of this Decision.

Article 12

Evaluation

1. The programme shall be subject to continuous evaluation, carried out jointly by the Commission and Member States. The evaluation shall be effected on the basis of the reports referred to in paragraphs 2 and 3.

2. Member States shall forward to the Commission:

(a) by 30 June 2000 at the latest, an interim report and

(b) by 31 December 2002 at the latest, a final report on the implementation and the impact of the programme.

3. The Commission shall submit to the European Parliament and to the Council:

(a) by 30 June 2001 at the latest a communication, drawn up on the basis of the Member States' interim reports, on the desirability of continuing the programme, accompanied, if necessary, by a suitable proposal;

(b) by 30 June 2003 at the latest, a final report on the implementation and impact of the programme.

The reports shall also be forwarded to the Economic and Social Committee and to the Committee of the Regions for information.

Article 13

Entry into force

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

This Decision shall apply from 1 January 1998.

Article 14

Addressees

This Decision is addressed to the Member States.

Done at Brussels, 30 March 1998

For the European Parliament	*For the Council*
The President	*The President*
J.M. GIL-ROBLES	Lord SIMON of HIGHBURY

DECISION No 889/98/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 7 April 1998

amending Council Decision 92/481/EEC on the adoption of an action plan for the exchange between Member State administrations of national officials who are engaged in the implementation of Community legislation required to achieve the internal market (Karolus programme)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100a thereof,

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

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

Acting in accordance with the procedure laid down in Article 189b of the Treaty [3],

Whereas the Karolus programme, introduced by Decision 92/481/EEC [4], expired on 31 December 1997;

Whereas the usefulness of the programme has not been sufficiently proven in terms of strengthening cooperation between the Member States by exchanging experience gained in the implementation of Community legislation required to complete the internal market, particularly because of the high number of priority measures;

Whereas, accordingly, the programme should be extended for two years whilst ensuring the participation of officials from as many Member States as possible, pending the implementation of a new multiannual programme;

Whereas the programme should be opened up to participation by the associated countries of Central and Eastern Europe (CEECs), in accordance with the terms laid down in the Europe Agreements and in the Additional Protocols annexed to the Association Agreements regarding participation in Community programmes;

Whereas the programme should be opened up to participation by the EFTA States which are members of the European Economic Area (EEA) and by Cyprus, the latter on the basis of additional appropriations, subject to the same rules as those applying to the EFTA States which are EEA members, in accordance with procedures to be agreed with Cyprus, the arrangements for this participation to be agreed between the parties concerned at the appropriate time;

Whereas the European Parliament, the Council and the Commission made a joint declaration on 6 March 1995 on the incorporation of financial provisions into legislative acts [5];

Whereas this Decision establishes a financial framework for the period 1998-1999 additional to the appropriations committed during the period 1992-1997; whereas the aggregate amount for the two periods constitutes the principal point of reference within the meaning of point 1 of the said declaration of 6 March 1995 for the budgetary authority during the annual budgetary procedure;

Whereas an agreement on a modus vivendi between the European Parliament, the Council and the Commission concerning the implementing measures of acts adopted in accordance with the procedure laid down in Article 189b of the Treaty [6] was concluded on 20 December 1994,

HAVE ADOPTED THIS DECISION:

Article 1

Decision 92/481/EEC is hereby amended as follows:

1. Article 11 shall be replaced by the following:

'Article 11

1. The programme shall last seven years and its implementation shall start with the 1993 budget year.

2. The appropriations committed for the period 1993-1997 shall amount to ECU 7,7 million. The financial framework for implementation of the programme during the extension period 1998-1999 shall be ECU 4,5 million. The aggregate amount of ECU 12,2 million shall correspond to an overall figure of 1 340 participations. The annual appropriations shall be authorised by the budgetary authority within the limits of the financial perspective and in accordance with the criteria of sound financial management referred to in Article 2 of the Financial Regulation.';

[1] OJ C 274, 10. 9. 1997, p. 9 and OJ C 1, 3. 1. 1998, p. 18.
[2] Opinion delivered on 10 December 1997. (OJ C 73 of 9. 3. 1998, p. 49).
[3] Opinion of the European Parliament of 18 November 1997 (OJ C 371, 8. 12. 1997), Common Position of the Council of 26 January 1998 (OJ C 62, 26. 2. 1998, p. 60), and Decision of the European Parliament of 10 March 1998 (OJ C 104, 6. 4. 1998), Council Decision of 23 March 1998.
[4] OJ L 286, 1. 10. 1992, p. 65.
[5] OJ C 102, 4. 4. 1996, p. 4.
[6] OJ C 102, 4. 4. 1996, p. 1.

2. The following Article shall be inserted:

'Article 11a

The programme shall be open to participation by the associated countries of Central and Eastern Europe (CEECs), in accordance with the terms laid down in the Europe Agreements and in the Additional Protocols annexed to the Association Agreements regarding participation in Community programmes.

The programme shall be open to participation by EFTA States which are European Economic Area (EEA) members and by Cyprus, the latter on the basis of additional appropriations, subject to the same rules as those applying to EFTA States which are EEA members, in accordance with procedures to be agreed with Cyprus.

The arrangements for this participation shall be agreed between the parties concerned at the appropriate time.'

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 7 April 1998.

For the European Parliament	*For the Council*
The President	*The President*
J.M. GIL-ROBLES	D. BLUNKETT

COMMISSION REGULATION (EC) No 890/98

of 27 April 1998

establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables [1], as last amended by Regulation (EC) No 2375/96 [2], and in particular Article 4 (1) thereof,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy [3], as last amended by Regulation (EC) No 150/95 [4], and in particular Article 3 (3) thereof,

Whereas Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto;

Whereas, in compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 28 April 1998.

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

Done at Brussels, 27 April 1998.

For the Commission
Franz FISCHLER
Member of the Commission

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[1] OJ L 337, 24. 12. 1994, p. 66.
[2] OJ L 325, 14. 12. 1996, p. 5.
[3] OJ L 387, 31. 12. 1992, p. 1.
[4] OJ L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 27 April 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	212	115,9
	624	188,3
	999	152,1
0709 90 70	052	74,3
	999	74,3
0805 10 10, 0805 10 30, 0805 10 50	052	56,8
	204	36,6
	212	55,5
	400	58,2
	600	60,4
	624	43,2
	999	51,8
0805 30 10	600	67,7
	999	67,7
0808 10 20, 0808 10 50, 0808 10 90	060	45,0
	388	88,1
	400	94,9
	404	96,8
	508	72,8
	512	83,2
	524	79,3
	528	76,6
	616	97,8
	720	146,0
	804	108,5
	999	89,9
0808 20 50	388	74,6
	512	63,7
	528	81,3
	999	73,2

(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 891/98

of 27 April 1998

determining the extent to which applications lodged in April 1998 for licences for certain eggs and poultrymeat products under the regime provided for by the Interim Agreements concluded by the Community with the Republic of Poland, the Republic of Hungary, the Czech Republic, the Slovak Republic, Romania and Bulgaria can be accepted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1899/97 [1] setting rules of application in the poultrymeat and egg sectors for the arrangements covered by Council Regulation (EC) No 3066/95 and repealing Regulations (EEC) No 2699/93 and (EC) No 1559/94, and in particular Article 4(5) thereof,

Whereas the applications for import licences lodged for the second quarter of 1998 are, in the case of some products, for quantities less than or equal to the quantities available and can therefore be met in full, but in the case of other products the said applications are for quantities greater than the quantities available and must therefore be reduced by a fixed percentage to ensure a fair distribution,

HAS ADOPTED THIS REGULATION:

Article 1

Applications for import licences for the period 1 April to 30 June 1998 submitted under Regulation (EC) No 1899/97 shall be met as referred to in the Annex.

Article 2

This Regulation shall enter into force on 28 April 1998.

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

Done at Brussels, 27 April 1998.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 267, 30. 9. 1997, p. 67.

ANNEX

Group No	Percentage of acceptance of import licences submitted for the period 1 April to 30 June 1998
1	3,28
2	4,02
4	100,00
7	2,16
8	9,26
9	3,03
10	100,00
11	—
44	10,31
45	100,00
12	100,00
14	—
15	3,67
16	100,00
17	—
18	—
19	—
21	—
23	—
24	—
25	—
26	—
27	—
28	—
30	—
32	—
33	—
34	—
35	—
36	—
37	28,57
38	100,00
39	—
40	—
43	—

COMMISSION REGULATION (EC) No 892/98

of 27 April 1998

determining the extent to which applications lodged in April 1998 for import licences for certain poultrymeat products under the regime provided for in Council Regulation (EC) No 774/94 opening and providing for the administration of certain Community tariff quotas for poultrymeat and certain other agricultural products can be accepted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1431/94 of 22 June 1994, laying down detailed rules for the application in the poultrymeat sector of the import arrangements provided for in Council Regulation (EC) No 774/94 opening and providing for the administration of certain Community tariff quotas for poultrymeat and certain other agricultural products [1], as last amended by Regulation (EC) No 1514/97 [2], and in particular Article 4 (5) thereof,

Whereas the applications for import licences lodged for the period 1 April to 30 June 1998 are greater than the quantities available and must therefore be reduced by a fixed percentage to ensure a fair distribution,

HAS ADOPTED THIS REGULATION:

Article 1

Applications for import licences for the period 1 April to 30 June 1998 submitted under Regulation (EC) No 1431/94 shall be met as referred to in the Annex.

Article 2

This Regulation shall enter into force on 28 April 1998.

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

Done at Brussels, 27 April 1998.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 156, 23. 6. 1994, p. 9.
[2] OJ L 204, 31. 7. 1997, p. 16.

ANNEX

Group No	Percentage of acceptance of import certificate submitted for the period 1 April to 30 June 1998
1	2,35
2	2,36
3	2,57
4	100,00
5	4,24

COMMISSION REGULATION (EC) No 893/98

of 27 April 1998

determining the extent to which applications lodged in April 1998 for import licences for certain poultrymeat sector products pursuant to Regulation (EC) No 2497/96 can be accepted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 2497/96 of 18 December 1996 laying down rules for the application in the poultrymeat sector of the system provided for by the Association Agreement and the Interim Agreement between the European Community and the State of Israel [1], as amended by Regulation (EC) No 1514/97 [2], and in particular Article 4 (5) thereof,

Whereas the applications for import licences lodged for the second quarter of 1998 are for quantities less than the quantities available and can therefore be met in full;

Whereas the surplus to be added to the quantity available for the following period should be determined,

HAS ADOPTED THIS REGULATION:

Article 1

1. Applications for import licences for the period 1 April to 30 June 1998 submitted pursuant to Regulation (EC) No 2497/96 shall be met as referred to in Annex I.

2. During the first 10 days of the period 1 July to 30 September 1998 applications may be lodged pursuant to Regulation (EC) No 2497/96 for import licences for the total quantities as referred to in Annex II.

Article 2

This Regulation shall enter into force on 28 April 1998.

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

Done at Brussels, 27 April 1998.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 338, 28. 12. 1996, p. 48.
[2] OJ L 204, 31. 7. 1997, p. 16.

ANNEX I

Group No	Percentage of acceptance of import licences submitted for the period 1 April to 30 June 1998
I1	100,00

ANNEX II

(tonnes)

Group No	Available quantities
I1	903,00

COMMISSION REGULATION (EC) No 894/98

of 27 April 1998

determining the extent to which applications lodged in April 1998 for import licences for certain poultrymeat sector products pursuant to Regulation (EC) No 509/97 can be accepted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 509/97 of 20 March 1997 laying down procedures for applying in the poultrymeat sector the Interim Agreement on trade and accompanying measures between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and the Republic of Slovenia, of the other part [1], as amended by Regulation (EC) No 1514/97 [2], and in particular Article 4 (5) thereof,

Whereas the applications for import licences lodged for the second quarter of 1998 are for quantities less than the quantities available and can therefore be met in full;

Whereas the surplus to be added to the quantity available for the following period should be determined,

HAS ADOPTED THIS REGULATION:

Article 1

1. Applications for import licences for the period 1 April to 30 June 1998 submitted pursuant to Regulation (EC) No 509/97 shall be met as referred to in Annex I.

2. During the first 10 days of the period 1 July to 30 September 1998 applications may be lodged pursuant to Regulation (EC) No 509/97 for import licences for the total quantities as referred to in Annex II.

Article 2

This Regulation shall enter into force on 28 April 1998.

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

Done at Brussels, 27 April 1998.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 80, 21. 3. 1997, p. 3.
[2] OJ L 204, 31. 7. 1997, p. 16.

ANNEX I

Group No	Percentage of acceptance of import licences submitted for the period 1 April to 30 June 1998
80	—
90	90,91
100	100,00

ANNEX II

(tonnes)

Group No	Available quantities
80	990,00
90	275,00
100	662,40

COMMISSION REGULATION (EC) No 895/98

of 27 April 1998

determining the extent to which applications lodged in April 1998 for import licences for certain egg sector products and poultrymeat pursuant to Regulations (EC) No 1474/95 and (EC) No 1251/96 can be accepted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1474/95 [1] opening and providing for the administration of the tariff quotas in the egg sector and for egg albumin, as last amended by Regulation (EC) No 1514/97 [2], and in particular Article 5 (5) thereof,

Having regard to Commission Regulation (EC) No 1251/96 of 28 June 1996 opening and providing for the administration of tariff quotas in the poultrymeat sector and albumin [3], as last amended by Regulation (EC) No 1514/97 and in particular Article 5 (5) thereof,

Whereas the applications for import licences lodged for the second quarter of 1998 are, in the case of certain products, for quantities less than or equal to the quantities available and can therefore be met in full, but in the case of other products the said applications are for quantities greater than the quantities available and must therefore be reduced by a fixed percentage to ensure a fair distribution,

HAS ADOPTED THIS REGULATION:

Article 1

Applications for import licences for the period 1 April to 30 June 1998 submitted pursuant to Regulations (EC) No 1474/95 and (EC) No 1251/96 shall be met as referred to in the Annex.

Article 2

This Regulation shall enter into force on 28 April 1998.

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

Done at Brussels, 27 April 1998.

For the Commission
Franz FISCHLER
Member of the Commission

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[1] OJ L 145, 29. 6. 1995, p. 19.
[2] OJ L 204, 31. 7. 1997, p. 16.
[3] OJ L 161, 29. 6. 1996, p. 136.

ANNEX

Group No	Percentage of acceptance of import licences submitted for the period 1 April to 30 June 1998
E1	100,00
E2	100,00
E3	100,00
P1	100,00
P2	5,95
P3	4,35
P4	16,13

COMMISSION REGULATION (EC) No 896/98

of 27 April 1998

amending Regulation (EEC) No 1627/89 on the buying in of beef by invitation to tender

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 organization of the market in beef and veal [1], as last amended by Regulation (EC) No 2634/97 [2], and in particular Article 6 (7) thereof,

Whereas Commission Regulation (EEC) No 1627/89 of 9 June 1989 on the buying in of beef by invitation to tender [3], as last amended by Regulation (EC) No 72/98 [4], opened buying in by invitation to tender in certain Member States or regions of a Member State for certain quality groups;

Whereas the application of Article 6 (2), (3) and (4) of Regulation (EEC) No 805/68 and the need to limit intervention to the buying in of the quantities necessary to ensure reasonable support for the market result, on the basis of the prices of which the Commission is aware, in an amendment, in accordance with the Annex hereto, to the list of Member States or regions of a Member State where buying in is open by invitation to tender, and the list of the quality groups which may be bought in;

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

The Annex to Regulation (EEC) No 1627/89 is hereby replaced by the Annex hereto.

Article 2

This Regulation shall enter into force on 4 May 1998.

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

Done at Brussels, 27 April 1998.

For the Commission
Franz FISCHLER
Member of the Commission

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[1] OJ L 148, 28. 6. 1968, p. 24.
[2] OJ L 356, 31. 12. 1997, p. 13.
[3] OJ L 159, 10. 6. 1989, p. 36.
[4] OJ L 6, 10. 1. 1998, p. 24.

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

Estados miembros o regiones de Estados miembros y grupos de calidades previstos en el apartado 1 del artículo 1 del Reglamento (CEE) nº 1627/89

Medlemsstater eller regioner og kvalitetsgrupper, jf. artikel 1, stk. 1, i forordning (EØF) nr. 1627/89

Mitgliedstaaten oder Gebiete eines Mitgliedstaats sowie die in Artikel 1 Absatz 1 der Verordnung (EWG) Nr. 1627/89 genannten Qualitätsgruppen

Κράτη μέλη ή περιοχές κρατών μελών και ομάδες ποιότητος που αναφέρονται στο άρθρο 1 παράγραφος 1 του κανονισμού (ΕΟΚ) αριθ. 1627/89

Member States or regions of a Member State and quality groups referred to in Article 1 (1) of Regulation (EEC) No 1627/89

États membres ou régions d'États membres et groupes de qualités visés à l'article 1er paragraphe 1 du règlement (CEE) nº 1627/89

Stati membri o regioni di Stati membri e gruppi di qualità di cui all'articolo 1, paragrafo 1 del regolamento (CEE) n. 1627/89

In artikel 1, lid 1, van Verordening (EEG) nr. 1627/89 bedoelde lidstaten of gebieden van een lidstaat en kwaliteitsgroepen

Estados-membros ou regiões de Estados-membros e grupos de qualidades referidos no nº 1 do artigo 1º do Regulamento (CEE) nº 1627/89

Jäsenvaltiot tai alueet ja asetuksen (ETY) N:o 1627/89 1 artiklan 1 kohdan tarkoittamat laaturyhmät

Medlemsstater eller regioner och kvalitetsgrupper som avses i artikel 1.1 i förordning (EEG) nr 1627/89

Estados miembros o regiones de Estados miembros	Categoría A			Categoría C		
Medlemsstat eller region	Kategori A			Kategori C		
Mitgliedstaaten oder Gebiete eines Mitgliedstaats	Kategorie A			Kategorie C		
Κράτος μέλος ή περιοχές κράτους μέλους	Κατηγορία Α			Κατηγορία Γ		
Member States or regions of a Member State	Category A			Category C		
États membres ou régions d'États membres	Catégorie A			Catégorie C		
Stati membri o regioni di Stati membri	Categoria A			Categoria C		
Lidstaat of gebied van een lidstaat	Categorie A			Categorie C		
Estados-membros ou regiões de Estados-membros	Categoria A			Categoria C		
Jäsenvaltiot tai alueet	Luokka A			Luokka C		
Medlemsstater eller regioner	Kategori A			Kategori C		
	U	R	O	U	R	O
België/Belgique		×				
España		×				
France						×
Ireland				×	×	×
Suomi			×			
Great Britain					×	
Northern Ireland				×	×	×

COMMISSION REGULATION (EC) No 897/98

of 27 April 1998

amending Regulation (EC) No 1466/95 laying down special detailed rules of application for export refunds on milk and milk products

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 17(14) thereof,

Whereas Commission Regulation (EC) No 1466/95 [3], as last amended by Regulation (EC) No 705/98 [4], lays down special detailed rules of application for export refunds on milk and milk products; whereas, with a view to ensuring sound management of the system of export refunds and to reducing the likelihood of applications being submitted for speculative ends and risks of disturbance of the system as regards certain milk products, the term of validity of export licences as fixed in Article 4 of that Regulation must be curtailed;

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

Article 4 of Regulation (EC) No 1466/95 is hereby replaced by the following:

'Article 4

Export licences shall be valid from the day of issue, within the meaning of Article 21(1) of Regulation (EEC) No 3719/88, until:

(a) the end of the fourth month following issue in the case of products falling within CN code 0402 10;

(b) the end of the fourth month following issue in the case of products falling within CN code 0405;

(c) the end of the second month following issue in the case of products falling within CN code 0406;

(d) the end of the third month following issue in the case of the other products referred to in Article 1 of Regulation (EEC) No 804/68;

(e) the date by which the obligations arising under invitations to tender pursuant to Article 6 must be fulfilled and by the end of the eighth month following issue of the full licence referred to in Article 6(3) at the latest.'

Article 2

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

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

Done at Brussels, 27 April 1998.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 148, 28. 6. 1968, p. 13.
[2] OJ L 206, 16. 8. 1996, p. 21.
[3] OJ L 144, 28. 6. 1995, p. 22.
[4] OJ L 98, 31. 3. 1998, p. 6.

COMMISSION REGULATION (EC) No 898/98

of 27 April 1998

amending the import duties in the cereals sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

Whereas the import duties in the cereals sector are fixed by Commission Regulation (EC) No 798/98 [5], as amended by Regulation (EC) No 806/98 [6];

Whereas Article 2 (1) of Regulation (EC) No 1249/96 provides that if during the period of application, the average import duty calculated differs by ECU 5 per tonne from the duty fixed, a corresponding adjustment is to be made; whereas such a difference has arisen; whereas it is therefore necessary to adjust the import duties fixed in Regulation (EC) No 798/98,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EC) No 798/98 are hereby replaced by Annexes I and II to this Regulation.

Article 2

This Regulation shall enter into force on 28 April 1998.

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

Done at Brussels, 27 April 1998.

For the Commission
Franz FISCHLER
Member of the Commission

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[1] OJ L 181, 1. 7. 1992, p. 21.
[2] OJ L 126, 24. 5. 1996, p. 37.
[3] OJ L 161, 29. 6. 1996, p. 125.
[4] OJ L 292, 25. 10. 1997, p. 10.
[5] OJ L 114, 16. 4. 1998, p. 25.
[6] OJ L 115, 17. 4. 1998, p. 20.

ANNEX I

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

CN code	Description	Import duty by land inland waterway or sea from Mediterranean, the Black Sea or Baltic Sea ports (ECU/tonne)	Import duty by air or by sea from other ports (2) (ECU/tonne)
1001 10 00	Durum wheat (1)	0,00	0,00
1001 90 91	Common wheat seed	45,13	35,13
1001 90 99	Common high quality wheat other than for sowing (3)	45,13	35,13
	medium quality	68,65	58,65
	low quality	85,88	75,88
1002 00 00	Rye	95,82	85,82
1003 00 10	Barley, seed	95,82	85,82
1003 00 90	Barley, other (3)	95,82	85,82
1005 10 90	Maize seed other than hybrid	91,95	81,95
1005 90 00	Maize other than seed (3)	91,95	81,95
1007 00 90	Grain sorghum other than hybrids for sowing	95,82	85,82

(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 15 April 1998 to 24 April 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)	125,62	110,88	100,16	91,45	199,29 (1)	87,51 (1)
Gulf premium (ECU/tonne)	—	12,70	6,40	8,83	—	—
Great Lakes premium (ECU/tonne)	21,48	—	—	—	—	—

(1) Fob Duluth.

2. Freight/cost: Gulf of Mexico — Rotterdam: ECU 11,60 per tonne; Great Lakes — Rotterdam: ECU 20,70 per tonne.

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

COMMISSION DIRECTIVE 98/22/EC

of 15 April 1998

laying down the minimum conditions for carrying out plant health checks in the Community, at inspection posts other than those at the place of destination, of plants, plant products or other objects coming from third countries

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 the penultimate subparagraph of Article 12(6) thereof,

Whereas, if arrangements for the plant health checks of plants, plant products or other objects listed in part B of Annex V to Directive 77/93/EEC coming from third countries are to be operated efficiently, harmonised minimum conditions should be laid down for carrying out these checks at inspection posts other than those at the place of destination;

Whereas the minimum conditions laid down for carrying out such plant health checks must take account of technical requirements applicable to the responsible official bodies as referred to in Article 2(1)(g) of Directive 77/93/EEC in charge of the said inspection posts as well as of provisions applicable to facilities, tools and equipment enabling the said responsible official bodies to carry out the required plant health checks;

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

HAS ADOPTED THIS DIRECTIVE:

Article 1

Member States shall ensure that the plant health checks referred to in Article 12(6), fourth subparagraph of Directive 77/93/EEC, of plants, plant products or other objects listed in Annex V, part B of the said Directive and coming from third countries, and carried out at inspection posts other than those at the place of destination, satisfy at least the minimum conditions laid down in the Annex to this Directive.

Article 2

1. Member States shall bring into force the laws, regulations or administrative provisions necessary to comply with this Directive on 1 October 1998. They shall immediately inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference at the time of their official publication. The procedure for such a reference shall be adopted by Member States.

2. Member States shall immediately communicate to the Commission all provisions of national law which they adopt in the field covered by this Directive. The Commission shall inform the other Member States thereof.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 15 April 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.

ANNEX

Minimum conditions for carrying out plant health checks in the Community, at inspection posts other than those at the place of destination, of plants, plant products or other objects coming from third countries

1. The responsible official bodies, as referred to in Article 2(1)(g) of Directive 77/93/EEC in charge of the inspection posts referred to in Article 1 of this Directive, shall:

   — have authority to carry out their duties,

   — have technical competence, especially in the detection and diagnosis of harmful organisms,

   — have expertise in identification of harmful organisms, or access to such expertise,

   — have access to appropriate administrative, inspection and testing facilities, tools and equipment, as specified in paragraph 3,

   — have access to facilities for proper storage and quarantine of consignments and, when necessary, for destruction (or other suitable treatment), of all or part of the intercepted consignment,

   — have available:

      (a) written, up-to-date national inspection guidelines based on the domestic legislation of the Member State, as established within the framework of Community legislation,

      (b) an up-to-date set of Community guidelines for the experts and for national inspectors, referred to in Article 19a(6) of Directive 77/93/EEC,

      (c) up-to-date Community plant health legislation,

      (d) an up-to-date list including addresses and telephone numbers of specialised laboratories which have been officially approved for carrying out tests for determining the presence of harmful organisms or for the identification of harmful organisms. A suitable procedure should be put in place to ensure the integrity and security of the sample(s) when moved to the laboratory and during the testing process,

      (e) up-to-date information on consignments of plants, plant products or other objects coming from third countries which have undergone:

         — official interception,

         — official tests in specialised laboratories together with their results,

         provided at least that this information is relevant to the plant health checks for the place at which they are carried out,

   — adapt the established programme of plant health checks as quickly as possible in such a way as to meet actual needs, in the light of new plant health risks or any changes in the quantity/volume of the plants, plant products or other objects offered for introduction at the inspection posts referred to in Article 1.

2. The public servants and qualified agents as referred to in Article 2(1)(i), second subparagraph of Directive 77/93/EEC actually in charge of carrying out the inspections at the inspection posts referred to in Article 1 of this Directive shall have:

   — technical competence, especially in the detection of harmful organisms,

   — expertise in identification of harmful organisms, or access to such expertise,

   as part of their qualifications required under the said Article 2(1)(i) second subparagraph, and shall have directly available the information referred to in paragraph 1, sixth indent.

3. The facilities, tools and equipment as referred to in paragraph 1 shall have at least:

   (a) in respect of administrative facilites:

      — a rapid communication system with:

         — the authority referred to in Article 1(6) of Directive 77/93/EEC,

         — the specialised laboratories referred to in paragraph 1,

         — the customs authorities,

         — the Commission,

         — other Member States,

      — a document duplication system;

(b) in respect of inspection facilities:

— suitable areas for inspection, as appropriate,

— adequate lighting,

— inspection table(s),

— equipment suitable for:

  — visual checks,

  — disinfecting the premises and equipment used for plant health checks,

  — the preparation of samples for possible further tests in the specialised laboratories referred to in paragraph 1;

(c) in respect of facilities for the sampling of consignments:

— appropriate material for the individual identification and packaging of each sample,

— adequate packaging material for sending samples to the specialised laboratories referred to in paragraph 1,

— seals,

— official stamps,

— adequate lighting.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 21 April 1998

authorising the Kingdom of Denmark to apply or to continue to apply reductions in, or exemptions from, excise duties on certain mineral oils used for specific purposes, in accordance with the procedure provided for in Article 8(4) of Directive 92/81/EEC

(98/274/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils [1], and in particular Article 8(4) thereof,

Having regard to the proposal from the Commission,

Whereas, under Article 8(4) of Directive 92/81/EEC, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce exemptions from, or reductions in, excise duties on mineral oils on grounds of specific policy considerations;

Whereas the Danish authorities have notified the Commission that they wish to apply to petrol, from 1 January 1998 at the earliest, differential rates of excise duty according to its benzene content; whereas the procedure provided for in Article 8(4) should apply to such a scheme;

Whereas the other Member States have been informed thereof;

Whereas the Commission and all the Member States accept that the application of differential rates is justified on environmental policy grounds and that it will not give rise to distortions of competition or hinder the operation of the internal market;

Whereas the Commission regularly reviews reductions and exemptions to check that they are compatible with the operation of the internal market or with Community policy on protection of the environment;

Whereas Denmark has requested authorisation to apply these differential rates from 1 January 1998 at the earliest; whereas the Council is to review their application on the basis of a report from the Commission non later than 31 December 1999, when the authorisation granted by this Decision expires,

HAS ADOPTED THIS DECISION:

Article 1

In accordance with Article 8(4) of Directive 92/81/EEC, Denmark is authorised until 31 December 1999 to apply differential rates of excise duty on petrol to reflect different environmental categories provided that these differential rates are in accordance with the obligations laid down in Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils [2], and in particular the minimum rates of excise duty provided for in Articles 3 and 4 thereof.

[1] OJ L 316, 31. 10. 1992, p. 12. Directive as last amended by Directive 94/74/EC (OJ L 365, 31. 12. 1994, p. 46).

[2] OJ L 316, 31. 10. 1992, p. 19. Directive as amended by Directive 94/74/EC (OJ L 365, 31. 12. 1994, p. 46).

Article 2

This Decision is addressed to the Kingdom of Denmark.

Done at Luxembourg, 21 April 1998.

For the Council
The President
G. BROWN

COUNCIL DECISION

of 21 April 1998

authorising the Kingdom of the Netherlands to apply to certain mineral oils when used for specific purposes reductions in or exemptions from excise duty, in accordance with the procedure provided for in Article 8(4) of Directive 92/81/EEC

(98/275/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils [1], and in particular Article 8 (4) thereof,

Having regard to the proposal from the Commission,

Whereas, pursuant to Article 8(4) of Directive 92/81/EEC, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce, for certain special policy reasons, exemptions from or reductions in the excise duty charged on mineral oils;

Whereas the Netherlands authorities have informed the Commission that they wish to charge different rates of excise duty on LPG used as fuel for buses intended for public transport; whereas this entails a difference in rates for which the procedure provided for in Article 8(4) must be applied;

Whereas the other Member States have been informed thereof;

Whereas it is accepted by the Commission and by all Member States that this difference is justified by environmental considerations and does not give rise to distortions of competition or interfere with the proper functioning of the internal market;

Whereas the reduction will be regularly reviewed by the Commission in order to ensure that it is compatible with the proper functioning of the internal market and with Community policy on environmental protection;

Whereas the Dutch authorities have asked for authorisation to apply this reduction; whereas the Council is to review this difference in rates, on the basis of a report from the Commission, prior to 31 December 1999, the date on which this authorisation expires,

HAS ADOPTED THIS DECISION:

Article 1

In accordance with Article 8(4) of Directive 92/81/EEC and notwithstanding the obligations laid down in Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils [2], the Kingdom of the Netherlands is hereby authorised to apply different rates of excise duty on LPG used as motor fuel in public transport vehicles until 31 December 1999.

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

Done at Luxembourg, 21 April 1998.

For the Council

The President

G. BROWN

[1] OJ L 316, 31. 10. 1992, p. 12. Directive as last amended by Directive 94/74/EC (OJ L 365, 31. 12. 1994, p. 46).

[2] OJ L 316, 31. 10. 1992, p. 19. Directive as last amended by Directive 94/74/EC (OJ L 365, 31. 12. 1994, p. 46).

COMMISSION

COMMISSION DECISION

of 18 November 1997

concerning counter-guarantees given by the German Federal State of Sachsen-Anhalt to cover guarantees of the Bürgschaftsbank Sachsen-Anhalt GmbH in favour of companies in difficulty

(Only the German text is authentic)

(Text with EEA relevance)

(98/276/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Articles 92 and 93 thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 61 thereof,

Having given notice to the other Member States and the parties concerned to submit their comments, in accordance with Article 93(2) of the Treaty,

Whereas:

I

On 9 October 1996 the Commission decided to initiate the procedure pursuant to Article 93(2) of the EC Treaty with regard to an aid programme of the German Federal State Sachsen-Anhalt together with the Bürgschaftsbank Sachsen-Anhalt GmbH (hereinafter referred to as 'the guarantee bank').

The guarantee bank set up a special guarantee scheme for firms in difficulty ('Sonderbürgschaftsprogramm Liquiditätssicherung') under which firms established in Sachsen-Anhalt that are experiencing liquidity problems owing to external factors beyond their control which jeopardise their continued operation may receive guarantees covering up to 90 % of loans, which they would not receive from private banks otherwise. The programme started in December 1994 and was running for applications submitted until the end of 1995. The *Land* Sachsen-Anhalt took over a global counter-guarantee initially limited to an amount of DEM 100 million. The amount was reduced to DEM 16 million in April 1996, that is, after the end of the period allowed for applications. The *Land* is represented in the authorising committee (Bewilligungsausschuß) of the guarantee bank. Decisions to grant guarantees covered by the counter-guarantee of the *Land* could not be taken without the assent of the representatives of the *Land* Government.

The aid programme, which, in breach of Article 93(3) of the EC Treaty, was not notified, was in force for applications submitted during the years 1994 and 1995 (the period for the submission of guarantee applications).

The Commission had doubts whether the aid programme might be considered compatible with the common market, because it aims to help companies in difficulties to continue their businesses without adhering to Community guidelines on State aid for rescue and restructuring (hereinafter: 'the Guidelines') [1].

Germany was informed of the decision to initiate the procedure by letter dated 22 October 1996. It was requested to submit its comments. The other Member States and interested parties were informed and invited to submit comments through the publication of the letter in the *Official Journal of the European Communities* [2].

Germany submitted its comments by letter dated 18 December 1996. No comments were received from any other party.

[1] OJ C 368, 23. 12. 1994, p. 12.
[2] OJ C 35, 4. 2. 1997, p. 10.

II

The shareholders of the counter-guarantee bank, a private limited company, are five regional trade associations, five regional chambers of industry, commerce and craft (Industrie, Handels- und Handwerkskammern), II banks and three insurance companies. Its equity amounts to DEM 16 146 000.

According to the provisions of the Sonderbürgschaftsprogramm Liquiditätssicherung described in Section I, companies that have encountered liquidity problems due to external factors that reasonable management would have foreseen may seek deficiency guarantees from the guarantee bank, covering up to 90 % of total bank credits, which they would not otherwise have received owing to lack of sufficient own securities. Every applicant has to submit a plan to consolidate its financial situation and thereby demonstrate that the guarantee would help to settle the undertaking's economic circumstances.

The guarantees are limited to a maximum period of three years and a maximum amount of DEM 2 million per beneficiary. The guarantees are, according to the wording of the award provisions, only to be granted for enterprises established in Saxony-Anhalt and are generally designed to promote companies with up to 250 employees and a yearly turnover of up to DEM 40 million. It is, however, not expressly excluded that guarantees may be granted in favour of larger companies or companies in sectors to which special rules on State aid apply. The cover takes the form of fixed-interest loans at a rate 1 % per annum below the norm for comparable loans. The guarantee bank charges a one-off handling fee of 2 %, and a yearly premium of 1 % of the amount guaranteed.

One of the preconditions for *Land* Sachsen-Anhalt's assumption of a counter-guarantee as described in Section I is that the guarantees in question shall only apply to small and medium-sized companies (a term that does not refer to the Community definition of SMEs), or to persons in the liberal professions (who do not hold sufficient securities, according to banking practice, to obtain the necessary financing.

The risk was therefore spread as follows:

Lender (credit institution)	10 %
Guarantee bank	9 %
Land Sachsen-Anhalt	81 %

The *Land* is represented within the authorising committee (Bewilligungsausschuß) of the Bürgschaftsbank. Decisions to grant guarantees covered by the counter-guarantee of the *Land* cannot be taken without the assent of the representatives of the *Land* Government.

The guarantee bank granted deficiency guarantees backed by the counter-guarantee of the *Land* Sachsen-Anhalt for altogether 39 companies, to a value of between DEM 18 000 and DEM 1,8 million. The number of employees in the recipient companies ranged between 2 and 174. The last guarantee was approved in April 1996. Only DEM 15,645 million of the initial total counter-guarantee provision of DEM 100 million was actually taken up, with the result that the ceiling was lowered to DEM 16 million in April 1996.

III

Germany admitted that the aid intensity of the possible cases of implementation of the guarantee programme to secure liquidity would be below the ceiling set by the *de minimis* rule. It further informed the Commission that, when applying the scheme, the authorising committee had used the definition of small and medium-sized enterprises as set out by the Commission in its Recommendation of 3 April 1996. Germany also argued that the beneficiary companies were not 'in difficulty' in the sense contemplated by the Guidelines: they were merely experiencing liquidity problems due to outstanding claims or belated payments by customers. The limited equity capital of the companies concerned, a situation which Germany regards as typical of East German enterprises, and attributable to the division of Germany before 1990, has compounded the financial problems. The programme was not meant to contribute to the restructuring of beneficiaries so as to restore their viability, for which purpose a restructuring plan would have been needed, but rather to assist in the financial consolidation of basically viable companies.

As regards the proviso that only enterprises established in Sachsen-Anhalt should benefit from the scheme, Germany informed the Commission that the authorising committee had also chosen two companies established in Lower Saxony and North Rhine-Westphalia which only had branches in Sachsen-Anhalt.

As to the need to restrict the amount of aid to the strict minimum necessary to achieve the aim of the aid, the German authorities referred to the general budgetary law of Sachsen-Anhalt, obliging every public administration to attain best results at lowest costs in any financial transaction of the public authorities.

IV

The guarantees granted by the guarantee bank under its Sonderbürgerschaftsprogramm Liquiditässicherung constitute State aid within the meaning of Articles 92(1) of the EC Treaty and 61(1) of the EEA Agreement. This is so because the guarantees were 90 % covered by the counter-guarantee of Sachsen-Anhalt and had been approved in collaboration with State officials. No guarantees covered by the counter-guarantee could be granted without the assent of the *Land*.

The risk of the guarantee bank is limited to 9 % of the secured loan. This risk was covered by the 1 % annual premium calculated on the basis of the full amount of the guarantee. Consequently, the bank received a premium of 10 % of its own risk. The bank granting the loan charged the normal annual interest rate for secured loans less 1 % per annum, to cover its risk of 10 % of the total loan. Thus the banks involved received a high remuneration, compared to market interest rates for operating loans, for the risk they undertook, and this may be considered sufficient to cover the outstanding risk of insufficiently secured loans to companies with liquidity problems. The State contribution through the counter-guarantee was not recompensed by any premium from the beneficiary, the company receiving the secured operating loan. Therefore, the aid element inherent in this aid measure is to be set at 81 % of the loan granted to the company, namely the amount covered by the public counter-guarantee.

The aid scheme cannot be considered compatible with the common market under Article 92(3)(c) of the EC Treaty, read in conjunction with the Guidelines, since the conditions governing awards:

— do not explicitly exclude from the scheme firms operating in sectors for which specific State aid rules apply (point 2.2 of the Guidelines) or contain information allowing the Commission to find that they are consistent with the special rules applicable in sectors currently subject to special Community rules on State aid,

— do not explicitly exclude large firms from the applications of the scheme nor require prior notification,

— do not provide for rules on combining the aid with other aid for the same purpose,

— do not prohibit or exclude the renewal of the guarantees or their extension,

— do not limit the aid to such period as is needed to devise a necessary and workable restructuring plan,

— require only the presentation of a financial consolidation plan rather than a restructuring plan (point 3.2 of the Guidelines),

— do not explicitly restrict the amount of the aid to what is strictly necessary for the restructuring or rescue of the firm in question.

It has consequently to be concluded that the provisions of the aid scheme do not meet the key criteria of rescue and restructuring aid as outlined by the Guidelines.

The German authorities argued that the companies which were envisaged when the scheme was drafted were not really those in difficulty but merely those having liquidity problems while remaining basically viable. The programme was established to help firms facing the particular circumstances of eastern Germany, namely the difficulties of recovering monies from customers and a low-equity provision, insufficient to bridge the resultant liquidity shortfall.

This line of argument is not convincing. Companies that do not have sufficient equity to cover the typical risks of their clients' failing to pay their debts and insufficient means to cover the risk through credit insurance should be considered to be in difficulty when liquidity problems arise that endanger their own existence. Aid schemes designed to tackle such difficulties are to be appraised in the light of the Community Guidelines on State aid for rescue and restructuring.

The fact that such problems arise more frequently in eastern Germany than in other more developed parts of the Union is not a result of the division of Germany until 1990 but arises from the generally low financial performance in this area which is to be observed in other disadvantaged regions of the Union as well. Accordingly, the scheme cannot be considered compatible with the common market under Article 92(2)(c) of the EC Treaty.

The aid cannot be considered compatible with the common market under Article 92(3)(a) of the EC Treaty either. The principal aim of the scheme in question is to help firms in financial difficulty located in Sachsen-Anhalt. The mere fact that the application of such aid programme is limited to an assisted area has no bearing on the need to observe the principles laid down in the Guidelines. The Guidelines expressly state in point 3.2.3:

'Thus, the criteria listed in paragraph 3.2.2 are equally applicable to assited areas, even when the needs of regional development are considered'.

Furthermore, the scheme formally excluded companies that are not based in Sachsen-Anhalt, thus creating a discrimination contrary to Articles 52 et seq. of the EC Treaty. It does not matter whether the programme was in spite of this rule used in two particular cases in favour of west-German companies, because the programme and its implementation according to own terms is in question, and not individual cases. The same holds true for the limitation to small and medium-sized enterprises and firms in sectors in which specific aid rules apply.

Since the aid programme in question does not serve to attain any of the other goals set out in Article 92(2) and (3) of the EC Treaty, it has to be concluded that it cannot be considered compatible with the common market.

The programme was illegal because it was introduced in breach of Article 93(3) of the EC Treaty. The explanation of the German Government that it assumed the cases of application of the programme to fall under the *de minimis* rule is unacceptable, because the planned award amounting to a maximum of DEM 2 million per beneficiary over a three-year period, exceeds the *de minimis* thresholds.

Any State aid granted unlawfully is, in principle, to be recovered from the recipient so as to restore the economic situation that would have prevailed without the illegal aid. Repayment is to be made in accordance with the procedures and provisions of German law, with interest calculated on the rate used as reference rate in the assessment of regional aid schemes, and running from the date on which the aid was granted.

Germany should therefore recover the aid granted pursuant to the Sonderbürgerschaftsprogramm Liquiditätssicherung. Germany should inform the Commission of the implementation of this Decision within two months of its being notified. As part of the report of the implementation of this Decision, Germany should name the cases in which the *de minimis* rule is used.

Germany is called on to notify other individual cases in which it considers any renewal of the aid to be justifiable under the Treaty. The Commission will state its position in accordance with the normal procedures,

HAS ADOPTED THIS DECISION:

Article 1

The aid programme Sonderbürgschaftsprogramm Liquiditätssicherung is illegal for having been introduced in breach of Article 93(3). The programme is incompatible with the common market.

Article 2

Germany shall recover all aid granted pursuant to the aid programme. Repayment shall be made in accordance with the procedures and provisions of German law, plus interest payable at the usual reference rate used in the assessment of regional aid schemes, and running from the date on which the aid was granted.

Article 3

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

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 18 November 1997.

For the Commission
Karel VAN MIERT
Member of the Commission

COMMISSION DECISION

of 16 April 1998

under the provisions of Council Regulation (EC) No 3286/94 of 22 December 1994 concerning the failure of the United States of America to repeal its Antidumping Act of 1916

(98/277/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) On 10 January 1997 the Commission received a complaint pursuant to Article 4 of Regulation (EC) No 3286/94 (hereafter the 'Regulation'). The complaint was lodged by Eurofer, the European Confederation of Iron and Steel Industries, on behalf of its members.

(2) The complainant alleged that the so-called US Antidumping Act of 1916 [3] (hereafter the '1916 Act') is inconsistent with several provisions of the Agreement establishing the World Trade Organisation (hereafter 'WTO Agreement') and its annexes and that the United States' failure to repeal this legislation is causing adverse trade effects to its member companies and threatening further adverse trade effects. On that basis the complainant asked the Commission to take the necessary actions to convince the Untied States to repeal the 1916 Act.

(3) The complaint contained sufficient *prima facie* evidence to justify the initiation of a Community examination procedure pursuant to Article 8 of the Regulation. Consequently, an examination procedure was initiated on 25 February 1997 [4].

(4) Following the initiation of the Community examination procedure the Commission conducted an in-depth legal and factual investigation. Based on the findings of this investigation the Commission reached the conclusions which are indicated below.

B. FINDINGS REGARDING THE EXISTENCE OF AN OBSTACLE TO TRADE

(5) The US Antidumping Act of 1916 is still in force and is applicable to the import and internal sale of any foreign product irrespective of its origin, including products originating in countries which are WTO members. The 1916 Act exists in the US statute books in parallel with the Tariff Act of 1930 which includes the US implementing legislation of multilateral antidumping provisions.

(6) The 1916 Act prohibits both the importation of goods and their sale in the US market when the price is lower than the one in the country of origin or in other foreign countries where the goods are exported. The wording of the Act is as follows: 'It shall be unlawful for any person importing or assisting in importing any articles from any foreign country into the United States, commonly and systematically to import, sell or cause to be imported or sold such articles within the United States at a price substantially less than the actual market value or wholesale price of such articles, at the time of exportation to the United States, in the principal markets of the country of their production, or of other foreign countries to which they are commonly exported after adding to such market value or wholesale price, freight, duty, and other charges and expenses necessarily incident to the importation and sale thereof in the United States: provided, that such act or acts be done with the intent of destroying or injuring an industry in the United States, or of preventing the establishment of an industry in the United States, or of restraining or monopolising any part of trade and commerce in such articles in the United States.' Any violation of the law leads to the granting of treble damages, upon application of an injured party, as well as to the imposition of criminal sanctions (fines and/or imprisonment) on the responsible persons.

[1] OJ L 349, 31. 12. 1994, p. 71.
[2] OJ L 41, 23. 2. 1995, p. 3.
[3] 'Act of September 8, 1996, 39 Stat. 756'. Title VIII of that Act is codified at United States Code 71-74.
[4] OJ C 58, 25. 2. 1997, p. 14.

(7) The practice regulated by the 1916 Act corresponds to that described in Article VI of the General Agreement on Tariffs and Trade (hereafter 'GATT 1994') and in the Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (hereafter 'WTO Antidumping Agreement').

(8) Several aspects of the US Antidumping Act of 1916 cannot be reconciled with multilateral trade rules.

(9) With relation to Article VI of GATT 1994 and the WTO Antidumping Agreement the Commission considers that there exist in particular infringements related, but not limited, to the following provisions:

— Article V(1)(a) and (b) of GATT 1994 and Articles 2.1 and 2.2 of the WTO Antidumping Agreement insofar as they set the actual price in the exporting country as the first and privileged criterion for the calculation of the normal value whereas the criteria mentioned in the 1916 Act are fully interchangeable,

— Article VI(1) of GATT 1994 and Article 2(1) of the WTO Antidumping Agreement insofar as they require the introduction of products into the commerce of another country as a prerequisite for dumping to take place whereas under the 1916 Act actual sales on the US market are not necessary and a simple quotation from a foreign company is considered to be sufficient,

— Article VI(2) of GATT 1994 specifying that antidumping duties are the only possible remedy to dumping whereas the 1916 Act is having recourse to treble damages and fines and/or imprisonment,

— Article I of the WTO Antidumping Agreement requiring the carrying-out of an investigation (which has to respect a set of procedural rules) prior to the imposition of any duty whereas under the 1916 Act measures are applied immediately with no investigation taking place,

— Article VI of GATT 1994 and Article 3 of the WTO Antidumping Agreement insofar as they specifically define and qualify the concept of 'material injury' whereas the 1916 Act merely refers to an unqualified injury criterion,

— Article VI of GATT 1994 and Article 4 of the WTO Antidumping Agreement insofar as they impose standing requirements with relation to the complaining domestic industry whereas an action under the 1916 Act can be brought by any private party.

(10) The continuing effect of the 1916 Act, even following the implementation of the results of the Uruguay Round in domestic US law, through the Uruguay Round Agreement Act, and following the entry into force of the WTO Agreement and its annexes is violating Article XVI(4) of the WTO Agreement whereby 'Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements'.

(11) The violations mentioned above read in conjunction with Article XVI(4) of the WTO Agreement as well as the Community's potential export interest in respect of the product at stake confer *locus standi* to the European Community.

(12) In addition, the 1916 Act, insofar as it leads to applying stricter disciplines to the sale of imported products at low prices than for the sale of domestic products, could also be challenged on the basis of other WTO provisions such as Article III:4 of GATT 1994.

(13) The simultaneous existence and applicability of the 1916 Act and of the US Tariff Act of 1930 containing the conventional US Antidumping legislation confers a supplementary protection to the US industry which goes beyond the degree of protection authorised by WTO rules.

(14) Under these circumstances the Commission considers that the complainant's allegations are well-founded and that the United States' failure to repeal its Antidumping Act of 1916 constitutes an obstacle to trade within the meaning of Article 2(1) of the Regulation, that is 'a practice adopted or maintained by a third country in respect of which international trade rules establish a right of action'.

(15) The Commission nonetheless considers that reference to the above legal bases does not rule out recourse to any other pertinent provision of the WTO Agreement and of the Agreements annexed to it, which could be of use in procedures before the WTO.

C. FINDINGS REGARDING ADVERSE TRADE EFFECTS

(16) Eurofer mentioned in its complaint the fact that a Court proceedings initiated in the United States, under the 1916 Act, by a local steel producer is pending against the US affiliate company of one of its member companies which imported allegedly dumped products from countries other than the Member States of the European Community.

(17) The Court action currently pending in the United States, which is still at a very early stage of the procedure, has already resulted in important legal costs for the defendant company and is disrupting this company's distribution activities in the United States. Such costs will inevitably increase throughout the procedure.

(18) Should the defendant company be found liable under the 1916 Act, then it would have to pay damages which would impair its entire viability. At present, the damages claimed amount to USD 90 000 000 and the plaintiff US company has still the option to increase its claim by adding the amount of imports which occurred after the filing of the case. Further to the legal costs, the pending Court action is therefore causing another actual and direct adverse trade effect impeding the present business of the defendant company.

(19) There are substantiated indications that further Court actions under the 1916 Act could be brought against several steel importers, including at the occasion of imports of EC products. This would render distribution of Community products in the US very difficult.

(20) In addition, the 1916 Act is not limited to steel products. US producers of any product can therefore decide to resort to it with potentially unlimited impact on the economy of the Community.

(21) Under these circumstances the Commission considers that the complainant's allegations are well-founded and that the United States' failure to repeal its Antidumping Act of 1916 is causing adverse trade effects within the meaning of Article 2(4) of the Regulation.

D. COMMUNITY INTEREST

(22) Ensuring that WTO partners fully comply with their obligations is of the utmost importance for the Community which has committed itself to the same obligations.

(23) More particularly the continuing effect of the 1916 Act raises the issue of one of the most important horizontal disciplines introduced by the WTO namely the members' obligation to bring their legislation into conformity with their multilateral commitments.

(24) The very broad scope of the 1916 Act and its clearly protectionist nature, which results in granting to the domestic US industry a degree of protection going beyond that authorised by WTO rules, further justify a Community action with a view to avoiding the risk that other US industrial sectors decide to take advantage of the existence of the 1916 Act, which could put at risk the export interests of the Community industry at large.

E. CONCLUSIONS AND MEASURES TO BE TAKEN

(25) The investigation has established that no remedy other than the repeal of the 1916 Act appears possible in order to eliminate the actual and potential adverse trade effects caused by its continuing effect.

(26) The WTO Agreement and its annexes were implemented in the US through the adoption of the Uruguay Round Agreement Act (URAA) of 1994. This latter statute, which constitues the exclusive instrument through which the WTO Agreement is given effect in the United States, does not refer to the 1916 Act. In addition, the URAA specifically provides that US law prevails over WTO provisions. There is therefore no means, including private litigation, by which the US can ensure the respect of its WTO commitments relating to dumping where the 1916 Act is conflicting with them.

(27) In these circumstances, it appears that the interests of the Community call for initiation of WTO dispute settlement proceedings.

HAS DECIDED:

Article 1

1. The continued existence of the Antidumping Act of 1916 of the United States of America [1] appears to be inconsistent with the obligations of that country under the Marrakesh Agreement Establishing the World Trade Organisation and constitutes an 'obstacle to trade' within the meaning of Article 2 of Regulation (EC) No 3286/94.

2. The Community will commence action against the United States of America under the Understanding on the Rules and Procedures for the Settlement of Disputes and other relevant WTO provisions with a view to securing removal of the obstacle to trade.

[1] 'Act of September 8, 1996, 39 Stat. 756'. Title VIII of that Act is codified at United States Code 71-74.

Article 2

This Decision shall apply from the date of its publication in the Official Journal of the European Communities.

Done at Brussels, 16 April 1998.

For the Commission
Leon BRITTAN
Vice-President