

Official Journal

of the European Communities

ISSN 0378-6978

L 304

Volume 43

5 December 2000

English edition

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⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

**COMMISSION REGULATION (EC) No 2657/2000
of 4 December 2000
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,

Whereas:

- (1) 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.

- (2) 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 5 December 2000.

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

Done at Brussels, 4 December 2000.

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.

ANNEX

to the Commission Regulation of 4 December 2000 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	97,1
	204	100,3
	999	98,7
0707 00 05	624	195,0
	999	195,0
0709 90 70	052	91,5
	999	91,5
0805 10 10, 0805 10 30, 0805 10 50	204	49,7
	388	36,5
	999	43,1
0805 20 10	204	76,9
	999	76,9
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	65,4
	999	65,4
0805 30 10	052	73,6
	600	73,5
	999	73,5
0808 10 20, 0808 10 50, 0808 10 90	400	82,6
	404	93,4
	999	88,0
0808 20 50	052	73,6
	064	58,6
	400	85,5
	720	129,7
	999	86,8

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2543/1999 (OJ L 307, 2.12.1999, p. 46). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 2658/2000
of 29 November 2000
on the application of Article 81(3) of the Treaty to categories of specialisation agreements
(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2821/71 of 20 December 1971 on the application of Article 85(3) of the Treaty to categories of agreements, decisions and concerted practices ⁽¹⁾, as last amended by the Act of Accession of Austria, Finland and Sweden, and in particular Article 1(1)(c) thereof,

Having published a draft of this Regulation ⁽²⁾,

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

- (1) Regulation (EEC) No 2821/71 empowers the Commission to apply Article 81(3) (formerly Article 85(3)) of the Treaty by regulation to certain categories of agreements, decisions and concerted practices falling within the scope of Article 81(1) which have as their object specialisation, including agreements necessary for achieving it.
- (2) Pursuant to Regulation (EEC) No 2821/71, in particular, the Commission has adopted Regulation (EEC) No 417/85 of 19 December 1984 on the application of Article 85(3) of the Treaty to categories of specialisation agreements ⁽³⁾, as last amended by Regulation (EC) No 2236/97 ⁽⁴⁾. Regulation (EEC) No 417/85 expires on 31 December 2000.
- (3) A new regulation should meet the two requirements of ensuring effective protection of competition and providing adequate legal security for undertakings. The pursuit of these objectives should take account of the need to simplify administrative supervision and the legislative framework to as great an extent as possible. Below a certain level of market power it can, for the application of Article 81(3), in general be presumed that the positive effects of specialisation agreements will outweigh any negative effects on competition.
- (4) Regulation (EEC) No 2821/71 requires the exempting regulation of the Commission to define the categories of agreements, decisions and concerted practices to which

it applies, to specify the restrictions or clauses which may, or may not, appear in the agreements, decisions and concerted practices, and to specify the clauses which must be contained in the agreements, decisions and concerted practices or the other conditions which must be satisfied.

- (5) It is appropriate to move away from the approach of listing exempted clauses and to place greater emphasis on defining the categories of agreements which are exempted up to a certain level of market power and on specifying the restrictions or clauses which are not to be contained in such agreements. This is consistent with an economics-based approach which assesses the impact of agreements on the relevant market.
- (6) For the application of Article 81(3) by regulation, it is not necessary to define those agreements which are capable of falling within Article 81(1). In the individual assessment of agreements under Article 81(1), account has to be taken of several factors, and in particular the market structure on the relevant market.
- (7) The benefit of the block exemption should be limited to those agreements for which it can be assumed with sufficient certainty that they satisfy the conditions of Article 81(3).
- (8) Agreements on specialisation in production generally contribute to improving the production or distribution of goods, because the undertakings concerned can concentrate on the manufacture of certain products and thus operate more efficiently and supply the products more cheaply. Agreements on specialisation in the provision of services can also be said to generally give rise to similar improvements. It is likely that, given effective competition, consumers will receive a fair share of the resulting benefit.
- (9) Such advantages can arise equally from agreements whereby one participant gives up the manufacture of certain products or provision of certain services in favour of another participant ('unilateral specialisation'), from agreements whereby each participant gives up the manufacture of certain products or provision of certain services in favour of another participant ('reciprocal specialisation') and from agreements whereby the participants undertake to jointly manufacture certain products or provide certain services ('joint production').

⁽¹⁾ OJ L 285, 29.12.1971, p. 46.

⁽²⁾ OJ C 118, 27.4.2000, p. 3.

⁽³⁾ OJ L 53, 22.2.1985, p. 1.

⁽⁴⁾ OJ L 306, 11.11.1997, p. 12.

- (10) As unilateral specialisation agreements between non-competitors may benefit from the block exemption provided by Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices ⁽¹⁾, the application of the present Regulation to unilateral specialisation agreements should be limited to agreements between competitors.
- (11) All other agreements entered into between undertakings relating to the conditions under which they specialise in the production of goods and/or services should fall within the scope of this Regulation. The block exemption should also apply to provisions contained in specialisation agreements which do not constitute the primary object of such agreements, but are directly related to and necessary for their implementation, and to certain related purchasing and marketing arrangements.
- (12) To ensure that the benefits of specialisation will materialise without one party leaving the market downstream of production, unilateral and reciprocal specialisation agreements should only be covered by this Regulation where they provide for supply and purchase obligations. These obligations may, but do not have to, be of an exclusive nature.
- (13) It can be presumed that, where the participating undertakings' share of the relevant market does not exceed 20 %, specialisation agreements as defined in this Regulation will, as a general rule, give rise to economic benefits in the form of economies of scale or scope or better production technologies, while allowing consumers a fair share of the resulting benefits.
- (14) This Regulation should not exempt agreements containing restrictions which are not indispensable to attain the positive effects mentioned above. In principle certain severe anti-competitive restraints relating to the fixing of prices charged to third parties, limitation of output or sales, and allocation of markets or customers should be excluded from the benefit of the block exemption established by this Regulation irrespective of the market share of the undertakings concerned.
- (15) The market share limitation, the non-exemption of certain agreements and the conditions provided for in this Regulation normally ensure that the agreements to which the block exemption applies do not enable the participating undertakings to eliminate competition in respect of a substantial part of the products or services in question.
- (16) In particular cases in which the agreements falling under this Regulation nevertheless have effects incompatible with Article 81(3) of the Treaty, the Commission may withdraw the benefit of the block exemption.
- (17) In order to facilitate the conclusion of specialisation agreements, which can have a bearing on the structure of the participating undertakings, the period of validity of this Regulation should be fixed at 10 years.
- (18) This Regulation is without prejudice to the application of Article 82 of the Treaty.
- (19) In accordance with the principle of the primacy of Community law, no measure taken pursuant to national laws on competition should prejudice the uniform application throughout the common market of the Community competition rules or the full effect of any measures adopted in implementation of those rules, including this Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

Exemption

1. Pursuant to Article 81(3) of the Treaty and subject to the provisions of this Regulation, it is hereby declared that Article 81(1) shall not apply to the following agreements entered into between two or more undertakings (hereinafter referred to as 'the parties') which relate to the conditions under which those undertakings specialise in the production of products (hereinafter referred to as 'specialisation agreements'):

- (a) unilateral specialisation agreements, by virtue of which one party agrees to cease production of certain products or to refrain from producing those products and to purchase them from a competing undertaking, while the competing undertaking agrees to produce and supply those products; or
- (b) reciprocal specialisation agreements, by virtue of which two or more parties on a reciprocal basis agree to cease or refrain from producing certain but different products and to purchase these products from the other parties, who agree to supply them; or
- (c) joint production agreements, by virtue of which two or more parties agree to produce certain products jointly.

This exemption shall apply to the extent that such specialisation agreements contain restrictions of competition falling within the scope of Article 81(1) of the Treaty.

2. The exemption provided for in paragraph 1 shall also apply to provisions contained in specialisation agreements, which do not constitute the primary object of such agreements, but are directly related to and necessary for their implementation, such as those concerning the assignment or use of intellectual property rights.

⁽¹⁾ OJ L 336, 29.12.1999, p. 21.

The first subparagraph does, however, not apply to provisions which have the same object as the restrictions of competition enumerated in Article 5(1).

Article 2

Definitions

For the purposes of this Regulation:

1. 'Agreement' means an agreement, a decision of an association of undertakings or a concerted practice.
2. 'Participating undertakings' means undertakings party to the agreement and their respective connected undertakings.
3. 'Connected undertakings' means:
 - (a) undertakings in which a party to the agreement, directly or indirectly:
 - (i) has the power to exercise more than half the voting rights, or
 - (ii) has the power to appoint more than half the members of the supervisory board, board of management or bodies legally representing the undertaking, or
 - (iii) has the right to manage the undertaking's affairs;
 - (b) undertakings which directly or indirectly have, over a party to the agreement, the rights or powers listed in (a);
 - (c) undertakings in which an undertaking referred to in (b) has, directly or indirectly, the rights or powers listed in (a);
 - (d) undertakings in which a party to the agreement together with one or more of the undertakings referred to in (a), (b) or (c), or in which two or more of the latter undertakings, jointly have the rights or powers listed in (a);
 - (e) undertakings in which the rights or the powers listed in (a) are jointly held by:
 - (i) parties to the agreement or their respective connected undertakings referred to in (a) to (d), or
 - (ii) one or more of the parties to the agreement or one or more of their connected undertakings referred to in (a) to (d) and one or more third parties.
4. 'Product' means a good and/or a service, including both intermediary goods and/or services and final goods and/or services, with the exception of distribution and rental services.
5. 'Production' means the manufacture of goods or the provision of services and includes production by way of subcontracting.
6. 'Relevant market' means the relevant product and geographic market(s) to which the products, which are the subject matter of a specialisation agreement, belong.
7. 'Competing undertaking' means an undertaking that is active on the relevant market (an actual competitor) or an undertaking that would, on realistic grounds, undertake the necessary additional investments or other necessary

switching costs so that it could enter the relevant market in response to a small and permanent increase in relative prices (a potential competitor).

8. 'Exclusive supply obligation' means an obligation not to supply a competing undertaking other than a party to the agreement with the product to which the specialisation agreement relates.
9. 'Exclusive purchase obligation' means an obligation to purchase the product to which the specialisation agreement relates only from the party which agrees to supply it.

Article 3

Purchasing and marketing arrangements

The exemption provided for in Article 1 shall also apply where:

- (a) the parties accept an exclusive purchase and/or exclusive supply obligation in the context of a unilateral or reciprocal specialisation agreement or a joint production agreement, or
- (b) the parties do not sell the products which are the object of the specialisation agreement independently but provide for joint distribution or agree to appoint a third party distributor on an exclusive or non-exclusive basis in the context of a joint production agreement provided that the third party is not a competing undertaking.

Article 4

Market share threshold

The exemption provided for in Article 1 shall apply on condition that the combined market share of the participating undertakings does not exceed 20 % of the relevant market.

Article 5

Agreements not covered by the exemption

1. The exemption provided for in Article 1 shall not apply to agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object:
 - (a) the fixing of prices when selling the products to third parties;
 - (b) the limitation of output or sales; or
 - (c) the allocation of markets or customers.
2. Paragraph 1 shall not apply to:
 - (a) provisions on the agreed amount of products in the context of unilateral or reciprocal specialisation agreements or the setting of the capacity and production volume of a production joint venture in the context of a joint production agreement;

- (b) the setting of sales targets and the fixing of prices that a production joint venture charges to its immediate customers in the context of point (b) of Article 3.

Article 6

Application of the market share threshold

1. For the purposes of applying the market share threshold provided for in Article 4 the following rules shall apply:
 - (a) the market share shall be calculated on the basis of the market sales value; if market sales value data are not available, estimates based on other reliable market information, including market sales volumes, may be used to establish the market share of the undertaking concerned;
 - (b) the market share shall be calculated on the basis of data relating to the preceding calendar year;
 - (c) the market share held by the undertakings referred to in point 3(e) of Article 2 shall be apportioned equally to each undertaking having the rights or the powers listed in point 3(a) of Article 2.
2. If the market share referred to in Article 4 is initially not more than 20 % but subsequently rises above this level without exceeding 25 %, the exemption provided for in Article 1 shall continue to apply for a period of two consecutive calendar years following the year in which the 20 % threshold was first exceeded.
3. If the market share referred to in Article 4 is initially not more than 20 % but subsequently rises above 25 %, the exemption provided for in Article 1 shall continue to apply for one calendar year following the year in which the level of 25 % was first exceeded.
4. The benefit of paragraphs 2 and 3 may not be combined so as to exceed a period of two calendar years.

Article 7

Withdrawal

The Commission may withdraw the benefit of this Regulation, pursuant to Article 7 of Regulation (EEC) No 2821/71, where, either on its own initiative or at the request of a Member State or of a natural or legal person claiming a legitimate interest, it finds in a particular case that an agreement to which the exemption provided for in Article 1 applies nevertheless has effects which are incompatible with the conditions laid down in Article 81(3) of the Treaty, and in particular where:

- (a) the agreement is not yielding significant results in terms of rationalisation or consumers are not receiving a fair share of the resulting benefit, or
- (b) the products which are the subject of the specialisation are not subject in the common market or a substantial part thereof to effective competition from identical products or products considered by users to be equivalent in view of their characteristics, price and intended use.

Article 8

Transitional period

The prohibition laid down in Article 81(1) of the Treaty shall not apply during the period from 1 January 2001 to 30 June 2002 in respect of agreements already in force on 31 December 2000 which do not satisfy the conditions for exemption provided for in this Regulation but which satisfy the conditions for exemption provided for in Regulation (EEC) No 417/85.

Article 9

Period of validity

This Regulation shall enter into force on 1 January 2001. It shall expire on 31 December 2010.

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

Done at Brussels, 29 November 2000.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION REGULATION (EC) No 2659/2000
of 29 November 2000
on the application of Article 81(3) of the Treaty to categories of research and development agreements
(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2821/71 of 20 December 1971 on application of Article 85(3) of the Treaty to categories of agreements, decisions and concerted practices ⁽¹⁾, as last amended by the Act of Accession of Austria, Finland and Sweden, and in particular Article 1(1)(b) thereof,

Having published a draft of this Regulation ⁽²⁾,

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

- (1) Regulation (EEC) No 2821/71 empowers the Commission to apply Article 81(3) (formerly Article 85(3)) of the Treaty by regulation to certain categories of agreements, decisions and concerted practices falling within the scope of Article 81(1) which have as their object the research and development of products or processes up to the stage of industrial application, and exploitation of the results, including provisions regarding intellectual property rights.
- (2) Article 163(2) of the Treaty calls upon the Community to encourage undertakings, including small and medium-sized undertakings, in their research and technological development activities of high quality, and to support their efforts to cooperate with one another. Pursuant to Council Decision 1999/65/EC of 22 December 1998 concerning the rules for the participation of undertakings, research centres and universities and for the dissemination of research results for the implementation of the fifth framework programme of the European Community (1998-2002) ⁽³⁾ and Commission Regulation (EC) No 996/1999 ⁽⁴⁾ on the implementation of Decision 1999/65/EC, indirect research and technological development (RTD) actions supported under the fifth framework programme of the Community are required to be carried out cooperatively.

- (3) Agreements on the joint execution of research work or the joint development of the results of the research, up to but not including the stage of industrial application, generally do not fall within the scope of Article 81(1) of the Treaty. In certain circumstances, however, such as where the parties agree not to carry out other research and development in the same field, thereby forgoing the opportunity of gaining competitive advantages over the other parties, such agreements may fall within Article 81(1) and should therefore be included within the scope of this Regulation.
- (4) Pursuant to Regulation (EEC) No 2821/71, the Commission has, in particular, adopted Regulation (EEC) No 418/85 of 19 December 1984 on the application of Article 85(3) of the Treaty to categories of research and development agreements ⁽⁵⁾, as last amended by Regulation (EC) No 2236/97 ⁽⁶⁾. Regulation (EEC) No 418/85 expires on 31 December 2000.
- (5) A new regulation should meet the two requirements of ensuring effective protection of competition and providing adequate legal security for undertakings. The pursuit of these objectives should take account of the need to simplify administrative supervision and the legislative framework to as great an extent possible. Below a certain level of market power it can, for the application of Article 81(3), in general be presumed that the positive effects of research and development agreements will outweigh any negative effects on competition.
- (6) Regulation (EEC) No 2821/71 requires the exempting regulation of the Commission to define the categories of agreements, decisions and concerted practices to which it applies, to specify the restrictions or clauses which may, or may not, appear in the agreements, decisions and concerted practices, and to specify the clauses which must be contained in the agreements, decisions and concerted practices or the other conditions which must be satisfied.
- (7) It is appropriate to move away from the approach of listing exempted clauses and to place greater emphasis on defining the categories of agreements which are exempted up to a certain level of market power and on specifying the restrictions or clauses which are not to be

⁽¹⁾ OJ L 285, 29.12.1971, p. 46.

⁽²⁾ OJ C 118, 27.4.2000, p. 3.

⁽³⁾ OJ L 26, 1.2.1999, p. 46.

⁽⁴⁾ OJ L 122, 12.5.1999, p. 9.

⁽⁵⁾ OJ L 53, 22.2.1985, p. 5.

⁽⁶⁾ OJ L 306, 11.11.1997, p. 12.

contained in such agreements. This is consistent with an economics based approach which assesses the impact of agreements on the relevant market.

- (8) For the application of Article 81(3) by regulation, it is not necessary to define those agreements which are capable of falling within Article 81(1). In the individual assessment of agreements under Article 81(1), account has to be taken of several factors, and in particular the market structure on the relevant market.
- (9) The benefit of the block exemption should be limited to those agreements for which it can be assumed with sufficient certainty that they satisfy the conditions of Article 81(3).
- (10) Cooperation in research and development and in the exploitation of the results generally promotes technical and economic progress by increasing the dissemination of know-how between the parties and avoiding duplication of research and development work, by stimulating new advances through the exchange of complementary know-how, and by rationalising the manufacture of the products or application of the processes arising out of the research and development.
- (11) The joint exploitation of results can be considered as the natural consequence of joint research and development. It can take different forms such as manufacture, the exploitation of intellectual property rights that substantially contribute to technical or economic progress, or the marketing of new products.
- (12) Consumers can generally be expected to benefit from the increased volume and effectiveness of research and development through the introduction of new or improved products or services or the reduction of prices brought about by new or improved processes.
- (13) In order to attain the benefits and objectives of joint research and development the benefit of this Regulation should also apply to provisions contained in research and development agreements which do not constitute the primary object of such agreements, but are directly related to and necessary for their implementation.
- (14) In order to justify the exemption, the joint exploitation should relate to products or processes for which the use of the results of the research and development is decisive, and each of the parties is given the opportunity of exploiting any results that interest it. However, where academic bodies, research institutes or undertakings which supply research and development as a commercial service without normally being active in the exploitation of results participate in research and development, they may agree to use the results of research and development solely for the purpose of further research. Similarly, non-competitors may agree to limit their right to exploitation to one or more technical fields of application to facilitate cooperation between parties with complementary skills.
- (15) The exemption granted under this Regulation should be limited to research and development agreements which do not afford the undertakings the possibility of eliminating competition in respect of a substantial part of the products or services in question. It is necessary to exclude from the block exemption agreements between competitors whose combined share of the market for products or services capable of being improved or replaced by the results of the research and development exceeds a certain level at the time the agreement is entered into.
- (16) In order to guarantee the maintenance of effective competition during joint exploitation of the results, provision should be made for the block exemption to cease to apply if the parties' combined share of the market for the products arising out of the joint research and development becomes too great. The exemption should continue to apply, irrespective of the parties' market shares, for a certain period after the commencement of joint exploitation, so as to await stabilisation of their market shares, particularly after the introduction of an entirely new product, and to guarantee a minimum period of return on the investments involved.
- (17) This Regulation should not exempt agreements containing restrictions which are not indispensable to attain the positive effects mentioned above. In principle certain severe anti-competitive restraints such as limitations on the freedom of parties to carry out research and development in a field unconnected to the agreement, the fixing of prices charged to third parties, limitations on output or sales, allocation of markets or customers, and limitations on effecting passive sales for the contract products in territories reserved for other parties should be excluded from the benefit of the block exemption established by this Regulation irrespective of the market share of the undertakings concerned.
- (18) The market share limitation, the non-exemption of certain agreements, and the conditions provided for in this Regulation normally ensure that the agreements to which the block exemption applies do not enable the participating undertakings to eliminate competition in respect of a substantial part of the products or services in question.
- (19) In particular cases in which the agreements falling under this Regulation nevertheless have effects incompatible with Article 81(3) of the Treaty, the Commission may withdraw the benefit of the block exemption.

- (20) Agreements between undertakings which are not competing manufacturers of products capable of being improved or replaced by the results of the research and development will only eliminate effective competition in research and development in exceptional circumstances. It is therefore appropriate to enable such agreements to benefit from the block exemption irrespective of market share and to address such exceptional cases by way of withdrawal of its benefit.
- (21) As research and development agreements are often of a long-term nature, especially where the cooperation extends to the exploitation of the results, the period of validity of this Regulation should be fixed at 10 years.
- (22) This Regulation is without prejudice to the application of Article 82 of the Treaty.
- (23) In accordance with the principle of the primacy of Community law, no measure taken pursuant to national laws on competition should prejudice the uniform application throughout the common market of the Community competition rules or the full effect of any measures adopted in implementation of those rules, including this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Exemption

1. Pursuant to Article 81(3) of the Treaty and subject to the provisions of this Regulation, it is hereby declared that Article 81(1) shall not apply to agreements entered into between two or more undertakings (hereinafter referred to as 'the parties') which relate to the conditions under which those undertakings pursue:

- (a) joint research and development of products or processes and joint exploitation of the results of that research and development;
- (b) joint exploitation of the results of research and development of products or processes jointly carried out pursuant to a prior agreement between the same parties; or
- (c) joint research and development of products or processes excluding joint exploitation of the results.

This exemption shall apply to the extent that such agreements (hereinafter referred to as 'research and development agreements') contain restrictions of competition falling within the scope of Article 81(1).

2. The exemption provided for in paragraph 1 shall also apply to provisions contained in research and development agreements which do not constitute the primary object of such agreements, but are directly related to and necessary for their implementation, such as an obligation not to carry out, independently or together with third parties, research and develop-

ment in the field to which the agreement relates or in a closely connected field during the execution of the agreement.

The first subparagraph does, however, not apply to provisions which have the same object as the restrictions of competition enumerated in Article 5(1).

Article 2

Definitions

For the purposes of this Regulation:

1. 'agreement' means an agreement, a decision of an association of undertakings or a concerted practice;
2. 'participating undertakings' means undertakings party to the research and development agreement and their respective connected undertakings;
3. 'connected undertakings' means:
 - (a) undertakings in which a party to the research and development agreement, directly or indirectly:
 - (i) has the power to exercise more than half the voting rights,
 - (ii) has the power to appoint more than half the members of the supervisory board, board of management or bodies legally representing the undertaking, or
 - (iii) has the right to manage the undertaking's affairs;
 - (b) undertakings which directly or indirectly have, over a party to the research and development agreement, the rights or powers listed in (a);
 - (c) undertakings in which an undertaking referred to in (b) has, directly or indirectly, the rights or powers listed in (a);
 - (d) undertakings in which a party to the research and development agreement together with one or more of the undertakings referred to in (a), (b) or (c), or in which two or more of the latter undertakings, jointly have the rights or powers listed in (a);
 - (e) undertakings in which the rights or the powers listed in (a) are jointly held by:
 - (i) parties to the research and development agreement or their respective connected undertakings referred to in (a) to (d), or
 - (ii) one or more of the parties to the research and development agreement or one or more of their connected undertakings referred to in (a) to (d) and one or more third parties;
4. 'research and development' means the acquisition of know-how relating to products or processes and the carrying out of theoretical analysis, systematic study or experimentation, including experimental production, technical testing of products or processes, the establishment of the necessary facilities and the obtaining of intellectual property rights for the results;

5. 'product' means a good and/or a service, including both intermediary goods and/or services and final goods and/or services;
6. 'contract process' means a technology or process arising out of the joint research and development;
7. 'contract product' means a product arising out of the joint research and development or manufactured or provided applying the contract processes;
8. 'exploitation of the results' means the production or distribution of the contract products or the application of the contract processes or the assignment or licensing of intellectual property rights or the communication of know-how required for such manufacture or application;
9. 'intellectual property rights' includes industrial property rights, copyright and neighbouring rights;
10. 'know-how' means a package of non-patented practical information, resulting from experience and testing, which is secret, substantial and identified: in this context, 'secret' means that the know-how is not generally known or easily accessible; 'substantial' means that the know-how includes information which is indispensable for the manufacture of the contract products or the application of the contract processes; 'identified' means that the know-how is described in a sufficiently comprehensive manner so as to make it possible to verify that it fulfils the criteria of secrecy and substantiality;
11. research and development, or exploitation of the results, are carried out 'jointly' where the work involved is:
 - (a) carried out by a joint team, organisation or undertaking,
 - (b) jointly entrusted to a third party, or
 - (c) allocated between the parties by way of specialisation in research, development, production or distribution;
12. 'competing undertaking' means an undertaking that is supplying a product capable of being improved or replaced by the contract product (an actual competitor) or an undertaking that would, on realistic grounds, undertake the necessary additional investments or other necessary switching costs so that it could supply such a product in response to a small and permanent increase in relative prices (a potential competitor);
13. 'relevant market for the contract products' means the relevant product and geographic market(s) to which the contract products belong.

Article 3

Conditions for exemption

1. The exemption provided for in Article 1 shall apply subject to the conditions set out in paragraphs 2 to 5.
2. All the parties must have access to the results of the joint research and development for the purposes of further research or exploitation. However, research institutes, academic bodies,

or undertakings which supply research and development as a commercial service without normally being active in the exploitation of results may agree to confine their use of the results for the purposes of further research.

3. Without prejudice to paragraph 2, where the research and development agreement provides only for joint research and development, each party must be free independently to exploit the results of the joint research and development and any pre-existing know-how necessary for the purposes of such exploitation. Such right to exploitation may be limited to one or more technical fields of application, where the parties are not competing undertakings at the time the research and development agreement is entered into.

4. Any joint exploitation must relate to results which are protected by intellectual property rights or constitute know-how, which substantially contribute to technical or economic progress and the results must be decisive for the manufacture of the contract products or the application of the contract processes.

5. Undertakings charged with manufacture by way of specialisation in production must be required to fulfil orders for supplies from all the parties, except where the research and development agreement also provides for joint distribution.

Article 4

Market share threshold and duration of exemption

1. Where the participating undertakings are not competing undertakings, the exemption provided for in Article 1 shall apply for the duration of the research and development. Where the results are jointly exploited, the exemption shall continue to apply for seven years from the time the contract products are first put on the market within the common market.

2. Where two or more of the participating undertakings are competing undertakings, the exemption provided for in Article 1 shall apply for the period referred to in paragraph 1 only if, at the time the research and development agreement is entered into, the combined market share of the participating undertakings does not exceed 25 % of the relevant market for the products capable of being improved or replaced by the contract products.

3. After the end of the period referred to in paragraph 1, the exemption shall continue to apply as long as the combined market share of the participating undertakings does not exceed 25 % of the relevant market for the contract products.

Article 5

Agreements not covered by the exemption

1. The exemption provided for in Article 1 shall not apply to research and development agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object:

- (a) the restriction of the freedom of the participating undertakings to carry out research and development independently or in cooperation with third parties in a field unconnected with that to which the research and development relates or, after its completion, in the field to which it relates or in a connected field;
- (b) the prohibition to challenge after completion of the research and development the validity of intellectual property rights which the parties hold in the common market and which are relevant to the research and development or, after the expiry of the research and development agreement, the validity of intellectual property rights which the parties hold in the common market and which protect the results of the research and development, without prejudice to the possibility to provide for termination of the research and development agreement in the event of one of the parties challenging the validity of such intellectual property rights;
- (c) the limitation of output or sales;
- (d) the fixing of prices when selling the contract product to third parties;
- (e) the restriction of the customers that the participating undertakings may serve, after the end of seven years from the time the contract products are first put on the market within the common market;
- (f) the prohibition to make passive sales of the contract products in territories reserved for other parties;
- (g) the prohibition to put the contract products on the market or to pursue an active sales policy for them in territories within the common market that are reserved for other parties after the end of seven years from the time the contract products are first put on the market within the common market;
- (h) the requirement not to grant licences to third parties to manufacture the contract products or to apply the contract processes where the exploitation by at least one of the parties of the results of the joint research and development is not provided for or does not take place;
- (i) the requirement to refuse to meet demand from users or resellers in their respective territories who would market the contract products in other territories within the common market; or
- (j) the requirement to make it difficult for users or resellers to obtain the contract products from other resellers within the common market, and in particular to exercise intellectual property rights or take measures so as to prevent users or resellers from obtaining, or from putting on the market within the common market, products which have been lawfully put on the market within the Community by another party or with its consent.

2. Paragraph 1 shall not apply to:

- (a) the setting of production targets where the exploitation of the results includes the joint production of the contract products;
- (b) the setting of sales targets and the fixing of prices charged to immediate customers where the exploitation of the results includes the joint distribution of the contract products.

Article 6

Application of the market share threshold

1. For the purposes of applying the market share threshold provided for in Article 4 the following rules shall apply:

- (a) the market share shall be calculated on the basis of the market sales value; if market sales value data are not available, estimates based on other reliable market information, including market sales volumes, may be used to establish the market share of the undertaking concerned;
- (b) the market share shall be calculated on the basis of data relating to the preceding calendar year;
- (c) the market share held by the undertakings referred to in point 3(e) of Article 2 shall be apportioned equally to each undertaking having the rights or the powers listed in point 3(a) of Article 2.

2. If the market share referred to in Article 4(3) is initially not more than 25 % but subsequently rises above this level without exceeding 30 %, the exemption provided for in Article 1 shall continue to apply for a period of two consecutive calendar years following the year in which the 25 % threshold was first exceeded.

3. If the market share referred to in Article 4(3) is initially not more than 25 % but subsequently rises above 30 %, the exemption provided for in Article 1 shall continue to apply for one calendar year following the year in which the level of 30 % was first exceeded.

4. The benefit of paragraphs 2 and 3 may not be combined so as to exceed a period of two calendar years.

Article 7

Withdrawal

The Commission may withdraw the benefit of this Regulation, pursuant to Article 7 of Regulation (EEC) No 2821/71, where, either on its own initiative or at the request of a Member State or of a natural or legal person claiming a legitimate interest, it finds in a particular case that a research and development

agreement to which the exemption provided for in Article 1 applies nevertheless has effects which are incompatible with the conditions laid down in Article 81(3) of the Treaty, and in particular where:

- (a) the existence of the research and development agreement substantially restricts the scope for third parties to carry out research and development in the relevant field because of the limited research capacity available elsewhere;
- (b) because of the particular structure of supply, the existence of the research and development agreement substantially restricts the access of third parties to the market for the contract products;
- (c) without any objectively valid reason, the parties do not exploit the results of the joint research and development;
- (d) the contract products are not subject in the whole or a substantial part of the common market to effective competition from identical products or products considered by users as equivalent in view of their characteristics, price and intended use;

- (e) the existence of the research and development agreement would eliminate effective competition in research and development on a particular market.

Article 8

Transitional period

The prohibition laid down in Article 81(1) of the Treaty shall not apply during the period from 1 January 2001 to 30 June 2002 in respect of agreements already in force on 31 December 2000 which do not satisfy the conditions for exemption provided for in this Regulation but which satisfy the conditions for exemption provided for in Regulation (EEC) No 418/85.

Article 9

Period of validity

This Regulation shall enter into force on 1 January 2001.

It shall expire on 31 December 2010.

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

Done at Brussels, 29 November 2000.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION REGULATION (EC) No 2660/2000
of 4 December 2000
amending representative prices and additional duties for the import of certain products in the
sugar sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector ⁽¹⁾, as amended by Commission Regulation (EC) No 1527/2000 ⁽²⁾,

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

Whereas:

- (1) The amounts of the representative prices and additional duties applicable to the import of white sugar, raw sugar and certain syrups are fixed by Commission Regulation

(EC) No 1411/2000 ⁽⁵⁾, as last amended by Regulation (EC) No 2572/2000 ⁽⁶⁾.

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 5 December 2000.

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

Done at Brussels, 4 December 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 252, 25.9.1999, p. 1.

⁽²⁾ OJ L 175, 14.7.2000, p. 59.

⁽³⁾ OJ L 141, 24.6.1995, p. 16.

⁽⁴⁾ OJ L 85, 20.3.1998, p. 5.

⁽⁵⁾ OJ L 161, 1.7.2000, p. 22.

⁽⁶⁾ OJ L 297, 24.11.2000, p. 6.

ANNEX

to the Commission Regulation of 4 December 2000 amending representative prices and the amounts of additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 99

(EUR)

CN code	Amount of representative prices per 100 kg net of product concerned	Amount of additional duty per 100 kg net of product concerned
1701 11 10 ⁽¹⁾	27,91	2,91
1701 11 90 ⁽¹⁾	27,91	7,58
1701 12 10 ⁽¹⁾	27,91	2,78
1701 12 90 ⁽¹⁾	27,91	7,15
1701 91 00 ⁽²⁾	27,99	11,24
1701 99 10 ⁽²⁾	27,99	6,72
1701 99 90 ⁽²⁾	27,99	6,72
1702 90 99 ⁽³⁾	0,28	0,37

⁽¹⁾ For the standard quality as defined in Article 1 of amended Council Regulation (EEC) No 431/68 (OJ L 89, 10.4.1968, p. 3).

⁽²⁾ For the standard quality as defined in Article 1 of Council Regulation (EEC) No 793/72 (OJ L 94, 21.4.1972, p. 1).

⁽³⁾ By 1 % sucrose content.

II

(Acts whose publication is not obligatory)

COUNCIL

**COUNCIL DECISION
of 30 November 2000
appointing a French member of the Economic and Social Committee**

(2000/756/EC, Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 258 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 166 thereof,

Having regard to the Council Decision of 15 September 1998 appointing the members of the Economic and Social Committee for the period from 21 September 1998 to 20 September 2002 ⁽¹⁾,

Whereas a member's seat on that Committee has fallen vacant following the resignation of Mr Joël DECAILLON, of which the Council was informed on 10 May 2000;

Having regard to the nominations submitted by the French Government,

Having obtained the opinion of the Commission of the European Communities,

HAS DECIDED AS FOLLOWS:

Sole Article

Ms An LE NOUAIL is hereby appointed a member of the Economic and Social Committee in place of Mr Joël DECAILLON for the remainder of his term of office, which runs until 20 September 2002.

Done at Brussels, 30 November 2000.

For the Council

The President

M. DEMESSINE

⁽¹⁾ OJ L 257, 19.9.1998, p. 37.

COUNCIL DECISION
of 30 November 2000
appointing a Netherlands member of the Economic and Social Committee

(2000/757/EC, Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 258 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 166 thereof,

Having regard to the Council Decision of 15 September 1998 appointing the members of the Economic and Social Committee for the period from 21 September 1998 to 20 September 2002 ⁽¹⁾,

Whereas a member's seat on that Committee has fallen vacant following the resignation of Mr Kommer DE KNEGT, of which the Council was informed on 10 October 2000;

Having regard to the nominations submitted by the Netherlands Government,

Having obtained the opinion of the Commission of the European Communities,

HAS DECIDED AS FOLLOWS:

Sole Article

Mr H. KRUL is hereby appointed a member of the Economic and Social Committee in place of Mr Kommer DE KNEGT for the remainder of the latter's term of office, which runs until 20 September 2002.

Done at Brussels, 30 November 2000.

For the Council

The President

M. DEMESSINE

⁽¹⁾ OJ L 257, 19.9.1998, p. 37.

COMMISSION

COMMISSION DECISION

of 1 December 2000

repealing Decision 2000/486/EC concerning certain protection measures with regard to foot-and-mouth disease in Greece

(notified under document number C(2000) 3626)

(Text with EEA relevance)

(2000/758/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market ⁽¹⁾, as last amended by Directive 92/118/EEC ⁽²⁾, and in particular Article 10 thereof,

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market ⁽³⁾, as last amended by Directive 92/118/EEC, and in particular Article 9 thereof,

Whereas:

- (1) Due to outbreaks of foot-and-mouth disease in Greece, Commission Decision 2000/486/EC of 31 July 2000 concerning protection measures with regard to foot-and-mouth disease in Greece ⁽⁴⁾, as last amended by Decision 2000/643/EC ⁽⁵⁾, was adopted to reinforce the control measures taken by Greece.
- (2) The Greek veterinary services informed the Commission that no new outbreak of foot-and-mouth disease was reported in Greece since 13 September 2000 and that the results of a serological survey carried out so far demonstrate that foot-and-mouth disease has been eradicated from Xanthi and Evros, and had never spread into Rodopi.

- (3) In the light of the disease evolution it appears appropriate to repeal Decision 2000/486/EC.

- (4) The measures provided for in this Decision are in accordance with the opinion of the Standing Veterinary Committee,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2000/486/EC is hereby repealed.

Article 2

Member States shall amend the measures, which they apply to trade so as to bring them into compliance with this Decision. They shall immediately inform the Commission thereof.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 1 December 2000.

For the Commission

David BYRNE

Member of the Commission

⁽¹⁾ OJ L 224, 18.8.1990, p. 29.

⁽²⁾ OJ L 62, 15.3.1993, p. 49.

⁽³⁾ OJ L 395, 30.12.1989, p. 13.

⁽⁴⁾ OJ L 195, 1.8.2000, p. 59.

⁽⁵⁾ OJ L 271, 24.10.2000, p. 36.

COMMISSION DECISION

of 1 December 2000

repealing Decision 1999/253/EC on protective measures with regard to certain fishery products from or originating in Kenya and Tanzania and amending the health certification for fishery products originating or proceeding from Kenya

(notified under document number C(2000) 3653)

(Text with EEA relevance)

(2000/759/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries ⁽¹⁾, and in particular Article 22(6) thereof,

Whereas:

- (1) Following some cases involving fish poisoning on Lake Victoria suspected to be caused by the presence of pesticides in the water of the Lake Victoria and by fishery malpractice, the Commission adopted Decision 1999/253/EC ⁽²⁾. This Decision foresees that following the receipt of information on the evolution of the situation and the guarantees provided by the Competent Authorities of Kenya and Tanzania the Decision may be reviewed.
- (2) On the basis of the results of an inspection visit and the guarantees provided by the official authorities in Tanzania, Decision 1999/253/EC was amended to permit the resumption of the imports of the fishery products caught in Lake Victoria and originating from this country.
- (3) On the basis of the results of an inspection visit and the guarantees provided by the official authorities in Kenya, it is now proposed to repeal Decision 1999/253/EC.
- (4) It is necessary to subject all the fishery products caught in Lake Victoria to appropriated checking intended to ensure that they are healthy, such checks must be capable of detecting, in particular, the presence of pesticides. Therefore, it is necessary to align the certification requirements for Kenya to those already applicable to Uganda and Tanzania, and thus to add a specific mention of the appropriate check in the health certificate accompanying the fishery products imported from Kenya and established in Commission Decision 95/328/EC ⁽³⁾.

- (5) The measures provided for in this Decision are in accordance with the opinion of the Standing Veterinary Committee,

HAS ADOPTED THIS DECISION:

Article 1

Decision 1999/253/EC is repealed.

Article 2

Point IV of the health certificate laid down in the Annex to Decision 95/328/EEC and accompanying the consignments of fishery products from or originating in Kenya and caught in the Lake Victoria, must be completed by the following:

‘— The official inspector hereby certifies that the fishery products specified above were produced under a system of monitoring checks as laid down in chapter V, point II.3.B of the Annex to Directive 91/493/EEC, and the results of these checks are satisfactory.’

Article 3

Member States shall modify the measures they apply to trade to bring them into line with this Decision. They shall immediately inform the Commission thereof.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 1 December 2000.

For the Commission

David BYRNE

Member of the Commission

⁽¹⁾ OJ L 24, 30.1.1998, p. 9.

⁽²⁾ OJ L 98, 13.4.1999, p. 15.

⁽³⁾ OJ L 191, 12.8.1995, p. 32.

CORRIGENDA**Corrigendum to Directive 94/9/EC of the European Parliament and of the Council of 23 March 1994 on the approximation of the laws of the Member States concerning equipment and protective systems intended for use in potentially explosive atmospheres**

(Official Journal of the European Communities L 100 of 19 April 1994)

(This corrigendum cancels and replaces the corrigendum published in the *Official Journal of the European Communities* L 21 of 26 January 2000, page 42, with regard to the following items.)

On page 3, Article 1(3), 'Equipment groups and categories', first paragraph, second line:

for: '... in underground parts of mines, and to those parts of ...',

read: '... in underground parts of mines, and in those parts of ...';

on page 5, Article 7(1), first line:

for: 'Whee a Member State ascertains ...',

read: 'When a Member State ascertains ...';

on page 23, Annex V 4.1, second line:

for: '... or equipment tests shall be carried out ...',

read: '... or equivalent tests shall be carried out ...'.
