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## Legislation

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<sup>(1)</sup> Text with EEA relevance

## I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 152/2002****of 21 January 2002****concerning the export of certain ECSC and EC steel products from the Former Yugoslav Republic of Macedonia to the European Community (double-checking system) and repealing Regulation (EC) No 190/98**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) An Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the Former Yugoslav Republic of Macedonia, of the other part<sup>(1)</sup>, (hereinafter referred to as the 'Interim Agreement') entered into force on 1 June 2001.
- (2) The Parties agreed in Protocol 2 to the Interim Agreement on steel products, to establish, immediately upon the entry into force of the said Agreement, a double-checking system, without quantitative limits, for the import into the Community of steel products originating in the Former Yugoslav Republic of Macedonia.
- (3) Council Regulation (EC) No 190/98 of 19 January 1998 concerning the export of certain ECSC and EC steel products from the Former Yugoslav Republic of Macedonia to the Community (double-checking system)<sup>(2)</sup> should be repealed and replaced by a new Regulation,

subject to the presentation of a surveillance document issued by the authorities in the Community.

2. The classification of the products covered by this Regulation is based on the tariff and statistical nomenclature of the Community (hereinafter called the 'Combined Nomenclature', or in abbreviated form 'CN'). The origin of the products covered by this Regulation shall be determined in accordance with the rules in force in the Community.

3. From the date of entry into force of the Interim Agreement and until further notice, imports into the Community of steel products originating in the Former Yugoslav Republic of Macedonia as listed in Annex I shall also be subject to the issue of an export document by the competent authorities of the exporting country. The importer shall present the original of the export document not later than 31 March of the year following that in which the goods covered by the document were shipped.

4. Shipment shall be considered to have taken place on the date of loading on to the exporting means of transport.

5. The export document shall conform to the model shown in Annex II. It shall be valid for exports throughout the customs territory of the Community.

*Article 2*

HAS ADOPTED THIS REGULATION:

*Article 1*

1. From the date of entry into force of the Interim Agreement and until further notice, in accordance with Protocol 2 to the Interim Agreement on steel products, imports into the Community of certain iron and steel products covered by the ECSC and EC Treaties originating in the Former Yugoslav Republic of Macedonia, as listed in Annex I hereto, shall be

1. The surveillance document referred to in Article 1(1) shall be issued automatically by the competent authority in the Member States, without charge, for any quantities requested, within five working days of presentation of an application by any Community importer, wherever established in the Community. This application shall be deemed to have been received by the competent national authority no later than three working days after submission, unless it is proven otherwise.

2. A surveillance document issued by one of the competent national authorities listed in Annex III shall be valid throughout the Community.

<sup>(1)</sup> OJ L 124, 4.5.2001, p. 2.

<sup>(2)</sup> OJ L 20, 27.1.1998, p. 1.

3. The surveillance document shall be made out on a form corresponding to the model set out in Annex IV. The importer's application shall include the following:

- (a) the name and full address of the applicant (including telephone and telefax numbers, and possible identification number used by the competent national authorities) and VAT registration number, if subject to VAT;
- (b) if applicable, the name and full address of the declarant or representative of the applicant (including telephone and telefax numbers);
- (c) the full name and address of the exporter;
- (d) the exact description of the goods, including:
  - their trade name,
  - the CN code,
  - the country of origin,
  - the country of consignment;
- (e) the net weight expressed in kg, or a quantity expressed in another unit of measure, as required, for each Combined Nomenclature heading;
- (f) the cif value of the goods in euro at the Community frontier by Combined Nomenclature heading;
- (g) whether the products concerned are seconds or of standard quality;
- (h) the proposed period and place of customs clearance;
- (i) whether the application is a repeat of a previous application concerning the same contract;
- (j) the following declaration, dated and signed by the applicant and bearing his name in capital letters:

'I, the undersigned, certify that the information provided in this application is accurate and given in good faith, and that I am established in the Community.'

The importer shall also submit a copy of the contract of sale or purchase, the pro forma invoice and/or, in cases where the goods are not directly purchased in the country of production, a certificate of production issued by the producing steel mill.

4. Surveillance documents may be used only for such time as arrangements for liberalisation of imports remain in force in respect of the transactions concerned. Without prejudice to possible changes in the import regulations in force or decisions taken in the framework of an agreement or the management of a quota:

- the period of validity of the surveillance document is hereby fixed at four months,
- unused or partly used surveillance documents may be renewed for an equal period.

#### Article 3

1. If the unit price at which the transaction is effected exceeds that indicated in the surveillance document by less than 5 % or if the total value or quantity of the products presented for import exceeds the value or quantity given in the import document by less than 5 %, this shall not preclude the release for free circulation of the products in question.

2. Applications for surveillance documents and the documents themselves shall be confidential. They shall be restricted to the competent authorities and the applicant.

#### Article 4

1. Within the first ten days of each month, the Member States shall communicate to the Commission:

- (a) details of the quantities and values (calculated in euro) for which surveillance documents were issued during the preceding month;
- (b) details of imports during the month preceding the month referred to in subparagraph (a).

The information provided by Member States shall be broken down by product, CN code and country. It shall be communicated electronically in the form agreed for this purpose.

2. The Member States shall notify any anomalies or cases of fraud which they discover and, where relevant, the basis on which they have refused to grant a surveillance document.

#### Article 5

The notification provided for in this Regulation shall be given to the Commission of the European Communities (DG Trade E/2 and DG Enterprise E/2).

#### Article 6

Regulation (EC) No 190/98 is hereby repealed.

#### Article 7

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

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

Done at Brussels, 21 January 2002.

*For the Council*

*The President*

M. ARIAS CAÑETE

\_\_\_\_\_

## ANNEX I

**Former Yugoslav Republic of Macedonia**  
**List of products subject to double-checking**

Complete CN heading 7208  
Complete CN heading 7209  
Complete CN heading 7210  
Complete CN heading 7211  
Complete CN heading 7212

---

## ANNEX II

1. <b>Exporter</b> (name, full address, country)	<b>ORIGINAL</b>		2. <b>No</b>	
	3. <b>Year</b>		4. <b>Product group</b>	
5. <b>Consignee</b> (name, full address, country)	<b>EXPORT DOCUMENT</b> (ECSC and EC steel products)			
	6. <b>Country of origin</b>		7. <b>Country of destination</b>	
8. <b>Place and date of shipment — means of transport</b>	9. <b>Supplementary details</b>			
10. <b>Description of goods — manufacturer</b>		11. <b>CN code</b>	12. <b>Quantity</b> <sup>(1)</sup>	13. <b>Fob value</b> <sup>(2)</sup>
14. <b>CERTIFICATION BY THE COMPETENT AUTHORITY</b>				
15. <b>Competent authority</b> (name, full address, country)		At ..... on .....  <div style="display: flex; justify-content: space-between;"> <span>(Signature)</span> <span>(Stamp)</span> </div>		

<sup>(1)</sup> Show net weight (kg) and also quantity in the unit prescribed where other than net weight.  
<sup>(2)</sup> In the currency of the sale contract.





(<sup>1</sup>) Show net weight (kg) and also quantity in the unit prescribed where other than net weight.  
(<sup>2</sup>) In the currency of the sale contract.

1. <b>Exporter</b> (name, full address, country)	<b>COPY</b>		2. <b>No</b>	
	3. <b>Year</b>		4. <b>Product group</b>	
	<b>EXPORT DOCUMENT</b>  (ECSC and EC steel products)			
6. <b>Country of origin</b>				
5. <b>Consignee</b> (name, full address, country)	9. <b>Supplementary details</b>			
8. <b>Place and date of shipment — means of transport</b>				
10. <b>Description of goods — manufacturer</b>	11. <b>CN code</b>	12. <b>Quantity</b> ( <sup>1</sup> )	13. <b>Fob value</b> ( <sup>2</sup> )	
14. <b>CERTIFICATION BY THE COMPETENT AUTHORITY</b>				
15. <b>Competent authority</b> (name, full address, country)	At ..... on .....			
	(Signature)		(Stamp)	

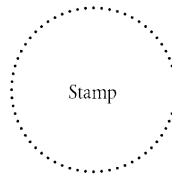


**EXPORT DOCUMENT**  
**(Steel products)**

1. Exporter (name, full address, country)
2. No
3. Year
4. Product group
5. Consignee (name, full address, country)
6. Country of origin
7. Country of destination
8. Place and date of shipment — Means of transport
9. Supplementary details
10. Description of goods — Manufacturer
11. CN code
12. Quantity <sup>(1)</sup>
13. FOB value <sup>(2)</sup>
14. CERTIFICATION BY THE COMPETENT AUTHORITY
15. Competent authority (name, full address, country)

At ..... , on .....

.....  
(Signature)



\_\_\_\_\_

\_\_\_\_\_  
<sup>(1)</sup> Show net weight (kg) and also quantity in the unit laid down where other than net weight.  
<sup>(2)</sup> In the currency of the sale contract.

## ANNEX III

LISTA DE LAS AUTORIDADES NACIONALES COMPETENTES  
LISTE OVER KOMPETENTE NATIONALE MYNDIGHEDER  
LISTE DER ZUSTÄNDIGEN BEHÖRDEN DER MITGLIEDSTAATEN  
ΔΙΕΥΘΥΝΣΕΙΣ ΤΩΝ ΑΡΧΩΝ ΕΚΔΟΣΗΣ ΑΔΕΙΩΝ ΤΩΝ ΚΡΑΤΩΝ ΜΕΛΩΝ  
LIST OF THE COMPETENT NATIONAL AUTHORITIES  
LISTE DES AUTORITÉS NATIONALES COMPÉTENTES  
ELENCO DELLE COMPETENTI AUTORITÀ NAZIONALI  
LIJST VAN BEVOEGDE NATIONALE INSTANTIES  
LISTA DAS AUTORIDADES NACIONAIS COMPETENTES  
LUETTELO TOIMIVALTAISISTA KANSALLISISTA VIRANOMAISISTA  
LISTA ÖVER KOMPETENTA NATIONELLA MYNDIGHETER

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Administration des relations économiques  
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Bestuur van de Economische Betrekkingen  
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## DEUTSCHLAND

Bundesamt für Wirtschaft und Ausfuhrkontrolle  
Frankfurter Straße, 29-35  
D-65760 Eschborn 1  
Fax + 49-61 96 90 88 00

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Fax: + 34-1-563 18 23/349 38 31

## FRANCE

Service des industries manufacturières  
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12, rue Villiot — Bâtiment LE BERVIL  
F-75572 Paris cedex 12  
Fax + 33-1-53 44 91 93

## IRELAND

Licensing Unit  
Department of Enterprise, Trade and Employment  
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Dublin 2  
Ireland  
Fax: 353-1-631 28 26

## ITALIA

Ministero del Commercio con l'Estero  
Direzione generale per la politica commerciale e per la gestione del  
regime degli scambi  
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I-00144 Roma  
Fax + 39-06-59 93 22 35/59 93 26 36

## LUXEMBOURG

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Office des licences  
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L-2011 Luxembourg  
Téléfax + 352-46 61 38

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Nederland  
Fax: 31-50 526 06 98

## ÖSTERREICH

Bundesministerium für wirtschaftliche Angelegenheiten  
Aussenwirtschaftsadministration  
Landstrasser Hauptstraße 55-57  
A-1030 Wien  
Fax 43-1-715 83 47

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Ministério da Economia  
Direcção-Geral das Relações Económicas Internacionais  
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P-1000 Lisboa  
Fax: 351-1-793 22 10

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Telekopio/fax: + 358 9 614 28 52

## SVERIGE

Kommerskollegium  
Box 6803  
S-11386 Stockholm  
Fax 46-8-30 67 59

## UNITED KINGDOM

Department of Trade and Industry  
Import Licensing Branch  
Queensway House — West Precinct  
Billingham, Cleveland  
TS23 2NF  
United Kingdom  
Fax: 44-1642-533 557

**EUROPEAN COMMUNITY**

## SURVEILLANCE DOCUMENT

1	1. <b>Consignee</b> (name, full address, country, VAT No)	2. <b>Issue No</b>	
		3. <b>Proposed place and date of import</b>	
		4. <b>Authority responsible for issue</b> (name, address and telephone No)	
	5. <b>Declarant/representative as applicable</b> (name and full address)	6. <b>Country of origin</b> (and geonomenclature code)	
		7. <b>Country of consignment</b> (and geonomenclature code)	
		8. <b>Last day of validity</b>	
1	9. <b>Description of goods</b>	10. <b>CN code and category</b>	
		11. <b>Quantity in kg (net mass) or in additional units</b>	
		12. <b>Value in euro, cif at Community frontier</b>	
13. <b>Additional remarks</b>			
14. <b>Competent authority's endorsement</b>  Date: .....  Signature: ..... Stamp: .....			

<b>15. ATTRIBUTIONS</b> Indicate the quantity available in part 1 of column 17 and the quantity attributed in part 2 thereof.			
<b>16. Net quantity</b> (net mass or other unit of measure stating the unit)		<b>19. Customs document</b> (form and No) or extract No and date of attribution	<b>20. Name, Member State, stamp and signature of the attributing authority</b>
<b>17. In figures</b>	<b>18. In words for the quantity attributed</b>		
1			
2			
1			
2			
1			
2			
1			
2			
1			
2			
1			
2			
1			
2			
1			
2			

2	1. <b>Consignee</b> (name, full address, country, VAT No)	2. <b>Issue No</b>
		3. <b>Proposed place and date of import</b>
		4. <b>Authority responsible for issue</b> (name, address and telephone No)
	5. <b>Declarant/representative as applicable</b> (name and full address)	6. <b>Country of origin</b> (and geonomenclature code)
		7. <b>Country of consignment</b> (and geonomenclature code)
		8. <b>Last day of validity</b>
2	9. <b>Description of goods</b>	10. <b>CN code and category</b>
		11. <b>Quantity in kg (net mass) or in additional units</b>
		12. <b>Value in euro, cif at Community frontier</b>
13. <b>Additional remarks</b>		
14. <b>Competent authority's endorsement</b>  Date: .....  Signature: ..... Stamp: .....		

<b>15. ATTRIBUTIONS</b> Indicate the quantity available in part 1 of column 17 and the quantity attributed in part 2 thereof.			
<b>16. Net quantity</b> (net mass or other unit of measure stating the unit)		<b>19. Customs document</b> (form and No) or extract No and date of attribution	<b>20. Name, Member State, stamp and signature of the attributing authority</b>
<b>17. In figures</b>	<b>18. In words for the quantity attributed</b>		
1			
2			
1			
2			
1			
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2			



EUROPEAN COMMUNITY/SURVEILLANCE DOCUMENT

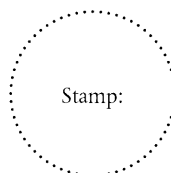
**1 Holder's copy**

**2 Copy for the issuing authority**

1. Consignee (name, full address, country, VAT number)
2. Issue number
3. Proposed place and date of import
4. Authority responsible for issue (name, address and telephone No)
5. Declarant/representative as applicable (name and full address)
6. Country of origin (and geonomenclature code)
7. Country of consignment (and geonomenclature code)
8. Last day of validity
9. Description of goods
10. CN code and category
11. Quantity in kilograms (net mass) or in additional units
12. Value in euro, cif at Community frontier
13. Additional remarks
14. Competent authority's endorsement

Date: .....

.....  
Signature



**15. ATTRIBUTIONS**

Indicate the quantity available in part 1 of column 17 and the quantity attributed in part 2 thereof

16. Net quantity (net mass or other unit of measure stating the unit)
17. In figures
18. In words for the quantity attributed
19. Customs document (form and number) or extract No and date of attribution
20. Name, Member State, stamp and signature of the attributing authority

Extension pages ot be attached hereto.

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**COUNCIL REGULATION (EC) No 153/2002****of 21 January 2002****on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Former Yugoslav Republic of Macedonia, of the other part, and for applying the Interim Agreement between the European Community and the Former Yugoslav Republic of Macedonia**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) The Council is in the process of concluding a Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Former Yugoslav Republic of Macedonia, of the other part, which was signed in Luxembourg on 9 April 2001 (hereinafter referred to as 'the Stabilisation and Association Agreement').
- (2) Meanwhile on 9 April 2001 the Council has concluded an Interim Agreement between the European Community and the Former Yugoslav Republic of Macedonia <sup>(1)</sup> which provides for the early entry into force of the trade and trade-related provisions of the Stabilisation and Association Agreement (hereinafter referred to as the 'Interim Agreement').
- (3) It is necessary to lay down the procedures for the application of certain provisions of these Agreements.
- (4) The Stabilisation and Association Agreement and the Interim Agreement stipulate that certain products originating in the Former Yugoslav Republic of Macedonia may be imported into the Community, within the limits of tariff quotas, at a reduced customs duty. It is therefore necessary to lay down provisions for the calculation of the reduced rates of customs duties.
- (5) The Stabilisation and Association Agreement and the Interim Agreement already specify the products eligible for those tariff measures, the relevant volumes (and increases thereof), the applicable duties, periods of application and any eligibility criteria.
- (6) Council or Commission Decisions amending the Combined Nomenclature and TARIC codes do not entail any substantive changes.
- (7) In the interest of simplicity and of timely publication of Regulations implementing Community tariff quotas, provision should be made for the Commission, assisted

by the Committee provided for in Article 42 of Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal <sup>(2)</sup>, to adopt the Regulations opening up and providing for the administration of the tariff quotas for 'baby beef' products.

- (8) Provision should be made for the Commission, assisted by the Committee set up by Article 248a of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code <sup>(3)</sup>, to adopt the Regulations opening and providing for the administration of tariff quotas which might be granted as a result of negotiations on further tariff concessions pursuant to Article 29 of the Stabilisation and Association Agreement and of Article 16 of the Interim Agreement.
- (9) Duties should be totally suspended where preferential treatment results in *ad valorem* duties of 1 % or less, or in specific duties of EUR 1 or less.
- (10) This Regulation should be applied retroactively and will continue to apply upon the entry into force of the Stabilisation and Association Agreement.
- (11) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(4)</sup>,

HAS ADOPTED THIS REGULATION:

*Article 1***Subject matter**

The Council hereby sets down certain procedures for the adoption of detailed rules for the implementation of certain provisions of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Former Yugoslav Republic of Macedonia, of the other part (hereinafter referred to as the 'Stabilisation and Association Agreement'), and the Interim Agreement between the European Community and the Former Yugoslav Republic of Macedonia (hereinafter referred to as the 'Interim Agreement').

<sup>(2)</sup> OJ L 160, 26.6.1999, p. 21.

<sup>(3)</sup> OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 2700/2000 (OJ L 311, 12.12.2000, p. 17).

<sup>(4)</sup> OJ L 184, 17.7.1999, p. 23.

<sup>(1)</sup> OJ L 124, 4.5.2001, p. 1.

*Article 2***Concessions on baby-beef**

Detailed rules for the implementation of Article 14(2) of the Interim Agreement, and thereafter Article 27(2) of the Stabilisation and Association Agreement, concerning the tariff quota for 'baby-beef' products shall be adopted by the Commission in accordance with the procedure referred to in Article 3 of this Regulation.

*Article 3***Applicable procedure**

1. The Commission shall be assisted by the Committee provided for in Article 42 of Regulation (EC) No 1254/1999.
2. Where reference is made to this Article, Articles 4 and 7 of Decision 1999/468/EC shall apply.  
The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at one month.
3. The Committee shall adopt its rules of procedure.

*Article 4***Further concessions**

If additional concessions for fishery products are granted within tariff quotas, pursuant to Article 29 of the Stabilisation and Association Agreement and of Article 16 of the Interim Agreement, detailed rules for the implementation of these tariff quotas shall be adopted by the Commission in accordance with the procedure set out in Article 5 of this Regulation.

*Article 5***Applicable procedure**

1. The Commission shall be assisted by the Customs Code Committee set up by Article 248a of Regulation (EEC) No 2913/92.

2. Where reference is made to this Article, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

*Article 6***Tariff reductions**

1. Subject to paragraph 2, rates of preferential duty shall be rounded down to the first decimal place.
2. Where the result of calculating the rate of preferential duty in application of paragraph 1 is one of the following, the preferential rate shall be considered a full exemption:
  - (a) 1 % or less in the case of *ad valorem* duties, or
  - (b) EUR 1 or less per individual amount in the case of specific duties.

*Article 7***Technical adaptations**

Amendments and technical adaptations to the detailed rules on implementation adopted pursuant to this Regulation, which are necessary following changes to the Combined Nomenclature codes and to the TARIC subdivisions or arising from the conclusion of new agreements, protocols, exchanges of letters or other acts between the Community and the Former Yugoslav Republic of Macedonia, shall be adopted in accordance with the procedures set out in Article 3 and Article 5.

*Article 8***Entry into force and application**

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

It shall apply from 1 June 2001.

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

Done at Brussels, 21 January 2002.

*For the Council*

*The President*

M. ARIAS CAÑETE

**COUNCIL REGULATION (EC) No 154/2002****of 21 January 2002****amending Regulation (EEC) No 2358/71 on the common organisation of the market in seeds and fixing the aid granted in the seeds sector for the 2002/2003 and 2003/2004 marketing years**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,Having regard to the opinion of the European Parliament <sup>(2)</sup>,Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas:

(1) Article 3(2) of Regulation (EEC) No 2358/71 <sup>(4)</sup> provides that the amount of aid must be fixed taking into account *inter alia* the need to ensure a balance between the volume of production required in the Community and the amount that can be marketed. Since the 1994/1995 harvest, the production and export of seeds has increased constantly; moreover, stocks of seeds in the Community have reached a level likely to affect the balance of the market in seeds.

(2) It is therefore justified to introduce a mechanism to stabilise the production of seeds other than rice seeds, for which such a mechanism is already in place. The stabiliser mechanism for seeds other than rice seeds should set a maximum quantity eligible for aid determined on the basis of a representative average quantity harvested during a recent reference period and also a margin to take account of the cyclic fluctuations that are characteristic of seed production. It is also necessary to create the conditions that will allow the development or preservation of viable small production sectors by guaranteeing a minimum quantity for Member States where there is little or no seed production.

(3) The Annex to Regulation (EEC) No 2358/71 refers to the varieties of *Lolium perenne* L. of high persistence, late or medium late, new and other varieties and varieties of low persistence, medium late, medium early or early. Since the prices for those varieties on the external markets no longer justify that distinction, the distinction between three different groups of varieties of *Lolium*

*perenne* L. should therefore be abolished and a single rate of aid fixed.

(4) Given the situation on and the outlook for the Community market, producers are not assured of a fair return from seeds listed in the Annex to Regulation (EEC) No 2358/71 which will be marketed in the 2002/2003 and 2003/2004 marketing years. Production aid should be granted for those seeds.

(5) Article 3(2) of Regulation (EEC) No 2358/71 provides that when the aid is fixed, account should be taken, on the one hand, of the need to ensure balance between production in the Community and the outlets for such production and, on the other hand, of the prices for such products on the external markets.

(6) The application of these criteria results in fixing the aid applicable for the 2002/2003 and 2003/2004 marketing years at the levels set out in the Annex.

(7) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(5)</sup>,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EEC) No 2358/71 is hereby amended as follows:

1. Article 3(4a) shall be replaced by the following:

'4a. The maximum quantity of seed on which the aid is payable in the Community shall be fixed in accordance with the procedure referred to in paragraph 5. That quantity shall be apportioned among the producer Member States.

The maximum quantity of seed other than rice seed on which the aid is payable shall be equal to the sum of the quantities relating to each Member State which are established on the basis of the capped average of the harvested quantities taken into account for the 1996/1997 to 2000/2001 marketing years, plus 5 %.

<sup>(1)</sup> OJ C 213 E, 31.7.2001, p. 249.

<sup>(2)</sup> Opinion delivered on 11 December 2001 (not yet published in the Official Journal).

<sup>(3)</sup> OJ C 311, 7.11.2001, p. 30.

<sup>(4)</sup> OJ L 246, 5.11.1971, p. 1. Regulation as last amended by Regulation (EC) No 2371/2000 (OJ L 275, 23.10.2000, p. 1).

<sup>(5)</sup> OJ L 184, 17.7.1999, p. 23.

Where the quantity established for a Member State pursuant to the second subparagraph does not exceed 800 tonnes, an additional quantity of 300 tonnes shall be granted to that Member State.

If, for seed other than rice seed, the sum total of the quantities for which aid is applied for in producer Member States exceeds the maximum quantity set for the Community, the aid shall be reduced for the following marketing year in each Member State concerned in proportion to the overrun of its national quantity taking into account the quantities not used by Member States. In this case the Commission shall set the reduction percentages applicable for each producer Member State.'

2. Article 10 shall be deleted.

3. Article 11 shall be replaced by the following:

*'Article 11*

1. The Commission shall be assisted by a Management Committee for Seeds (hereinafter referred to as "the Committee").

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at one month.

3. The Committee shall adopt its rules of procedure.'

*Article 2*

For the 2002/2003 and 2003/2004 marketing years, the aid granted in the seeds sector as provided for in Article 3 of Regulation (EEC) No 2358/71 shall be as set out in the Annex hereto.

*Article 3*

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

It shall apply from 1 July 2002.

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

Done at Brussels, 21 January 2002.

*For the Council*

*The President*

M. ARIAS CAÑETE

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## ANNEX

## 2002/2003 AND 2003/2004 MARKETING YEARS

## Aid applicable in the Community

(EUR/100 kg)

CN code	Description	Amount of the aid	
		2002/2003	2003/2004
	1. CERES		
1001 90 10	<i>Triticum spelta</i> L.	14,37	14,37
1006 10 10	<i>Oryza sativa</i> L.		
	— Long-grain varieties the grains of which are of a length exceeding 6,0 millimetres and of a length/width ratio of greater than or equal to 3	17,27	17,27
	— Other varieties the grains of which are of a length exceeding, not exceeding or equal to 6,0 millimetres and of a length/width ratio of less than 3	14,85	14,85
	2. OLEAGINEAE		
ex 1204 00 10	<i>Linum usitatissimum</i> L. (fibre flax)	28,38	28,38
ex 1204 00 10	<i>Linum usitatissimum</i> L. (linseed)	22,46	22,46
ex 1207 99 10	<i>Cannabis sativa</i> L. (varieties with a THC content not exceeding 0,2 %)	20,53	20,53
	3. GRAMINEAE		
ex 1209 29 10	<i>Agrostis canina</i> L.	75,95	75,95
ex 1209 29 10	<i>Agrostis gigantea</i> Roth.	75,95	75,95
ex 1209 29 10	<i>Agrostis stolonifera</i> L.	75,95	75,95
ex 1209 29 10	<i>Agrostis capillaris</i> L.	75,95	75,95
ex 1209 29 80	<i>Arrhenatherum elatius</i> (L.) P. Beauv. ex J.S. and K.B. Presl.	67,14	67,14
ex 1209 29 10	<i>Dactylis glomerata</i> L.	52,77	52,77
ex 1209 23 80	<i>Festuca arundinacea</i> Schreb.	58,93	58,93
ex 1209 23 80	<i>Festuca ovina</i> L.	43,59	43,59
1209 23 11	<i>Festuca pratensis</i> Huds.	43,59	43,59
1209 23 15	<i>Festuca rubra</i> L.	36,83	36,83
ex 1209 29 80	<i>Festulolium</i>	32,36	32,36
1209 25 10	<i>Lolium multiflorum</i> Lam.	21,13	21,13
1209 25 90	<i>Lolium perenne</i> L.	30,99	30,99
ex 1209 29 80	<i>Lolium x boucheanum</i> Kunth	21,13	21,13
ex 1209 29 80	<i>Phleum Bertolinii</i> (DC)	50,96	50,96
1209 26 00	<i>Phleum pratense</i> L.	83,56	83,56
ex 1209 29 80	<i>Poa nemoralis</i> L.	38,88	38,88
1209 24 00	<i>Poa pratensis</i> L.	38,52	38,52
ex 1209 29 10	<i>Poa palustris</i> and <i>Poa trivialis</i> L.	38,88	38,88
	4. LEGUMINOSAE		
ex 1209 29 80	<i>Hedysarum coronarium</i> L.	36,47	36,47
ex 1209 29 80	<i>Medicago lupulina</i> L.	31,88	31,88
ex 1209 21 00	<i>Medicago sativa</i> L. (ecotypes)	22,10	22,10
ex 1209 21 00	<i>Medicago sativa</i> L. (varieties)	36,59	36,59

CN code	Description	(EUR/100 kg)	
		Amount of the aid	
		2002/2003	2003/2004
ex 1209 29 80	<i>Onobrichis viciifolia</i> Scop.	20,04	20,04
ex 0713 10 10	<i>Pisum sativum</i> L. (partim) (field peas)	0	0
ex 1209 22 80	<i>Trifolium alexandrinum</i> L.	45,76	45,76
ex 1209 22 80	<i>Trifolium hybridum</i> L.	45,89	45,89
ex 1209 22 80	<i>Trifolium incarnatum</i> L.	45,76	45,76
1209 22 10	<i>Trifolium pratense</i> L.	53,49	53,49
ex 1209 22 80	<i>Trifolium repens</i> L.	75,11	75,11
ex 1209 22 80	<i>Trifolium repens</i> L. var. <i>Giganteum</i>	70,76	70,76
ex 1209 22 80	<i>Trifolium resupinatum</i> L.	45,76	45,76
ex 0713 50 10	<i>Vicia faba</i> L. (partim) (field beans)	0	0
ex 1209 29 10	<i>Vicia sativa</i> L.	30,67	30,67
ex 1209 29 10	<i>Vicia villosa</i> Roth.	24,03	24,03

**COMMISSION REGULATION (EC) No 155/2002**  
**of 28 January 2002**  
**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 <sup>(1)</sup>, as last amended by Regulation (EC) No 1498/98 <sup>(2)</sup>, 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 29 January 2002.

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

Done at Brussels, 28 January 2002.

*For the Commission*  
Franz FISCHLER  
*Member of the Commission*

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<sup>(1)</sup> OJ L 337, 24.12.1994, p. 66.

<sup>(2)</sup> OJ L 198, 15.7.1998, p. 4.



## ANNEX

to the Commission Regulation of 28 January 2002 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code <sup>(1)</sup>	Standard import value
0702 00 00	052	129,1
	204	77,3
	212	121,5
	999	109,3
0707 00 05	052	175,8
	628	205,3
	999	190,6
0709 90 70	052	183,3
	204	198,8
	999	191,1
0805 10 10, 0805 10 30, 0805 10 50	052	58,2
	204	57,9
	212	48,1
	220	50,2
	388	23,9
	508	21,1
	624	41,6
	999	43,0
0805 20 10	204	93,7
	999	93,7
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	62,9
	204	86,2
	464	120,2
	600	97,2
	624	73,5
	999	88,0
	052	56,2
0805 50 10	600	47,8
	999	52,0
0808 10 20, 0808 10 50, 0808 10 90	039	106,7
	052	51,3
	060	34,8
	400	74,8
	404	87,3
	720	118,5
	999	78,9
0808 20 50	388	147,1
	400	86,1
	720	99,9
	999	111,0

<sup>(1)</sup> Country nomenclature as fixed by Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6). Code '999' stands for 'of other origin'.

**COMMISSION REGULATION (EC) No 156/2002****of 28 January 2002****amending Regulation (EC) No 174/1999 laying down special detailed rules for the application of Council Regulation (EEC) No 804/68 as regards export licences and export refunds in the case of milk and milk products**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products <sup>(1)</sup>, as last amended by Regulation (EC) No 1670/2000 <sup>(2)</sup>, and in particular Article 31(14) thereof,

Whereas:

- (1) Article 15 of Commission Regulation (EC) No 174/1999 of 26 January 1999 laying down special detailed rules for the application of Council Regulation (EEC) No 804/68 as regards export licenses and export refunds in the case of milk and milk products <sup>(3)</sup>, as last amended by Regulation (EC) No 2298/2001 <sup>(4)</sup>, differentiates the award of refunds for cheese exports by their destination. Under the bilateral Agreement on Trade in Agricultural Products between the European Community and the Swiss Confederation, signed in Luxembourg on 21 June 1999, refunds for cheese exported to Switzerland will be abolished with effect from the date of entry into force of the Agreement, which is currently being ratified. Article 17 of the Agreement provides for its entry into force on the first day of the second month following the final notification of the deposit of the instruments of ratification or approval of all the agreements referred to in that Article. In order to ensure compliance with the provisions of the Agreement in this regard, Commission Regulation (EC) No 2594/2001 <sup>(5)</sup>, which derogates from Regulation (EC) No 174/1999, shortens the period of validity of the licences concerned so that, when the Agreement enters into force, licences issued with advance fixing of the refund with Switzerland as their destination will no longer be valid. However, as Switzerland falls within the 'other destinations' zone and forms a customs union with Liechtenstein, under Article 15(1)

of the above Regulation a licence issued for a destination other than Switzerland could conceivably be used for exports to Switzerland or for exports to Liechtenstein with a view to their placement on the Swiss market. To prevent this risk of diversion, two specific zones should be created, one for Switzerland and one for Liechtenstein.

- (2) 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 15(3) of Regulation (EC) No 174/1999 is replaced by the following:

'3. The zones referred to in paragraph 1 shall be as follows:

- Zone I: destination codes 055, 060, 070 and 091 to 096 (inclusive),
- Zone II: destination codes 072 to 083 (inclusive),
- Zone III: destination code 400,
- Zone IV: destination code 037,
- Zone V: destination code 039,
- Zone VI: all other destination codes.'

*Article 2*

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

It shall apply to licences applied for on or after its date of entry into force.

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

Done at Brussels, 28 January 2002.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 160, 26.6.1999, p. 48.

<sup>(2)</sup> OJ L 193, 29.7.2000, p. 10.

<sup>(3)</sup> OJ L 20, 27.1.1999, p. 8.

<sup>(4)</sup> OJ L 308, 27.11.2001, p. 16.

<sup>(5)</sup> OJ L 345, 29.12.2001, p. 32.

**COMMISSION REGULATION (EC) No 157/2002****of 28 January 2002****derogating from Regulation (EC) No 2316/1999 laying down detailed rules for the application of Council Regulation (EC) No 1251/1999 with regard to set-aside as a result of the adverse weather conditions in some Community regions**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1251/1999 of 17 May 1999 establishing a support system for producers of certain arable crops <sup>(1)</sup>, as last amended by Regulation (EC) No 1038/2001 <sup>(2)</sup>, and in particular Article 9 thereof,

Whereas:

- (1) Eligibility for the area aid under the general scheme referred to in Article 2(3) of Regulation (EC) No 1251/1999 is subject to an obligation to set land aside.
- (2) The detailed rules of application fixed by Commission Regulation (EC) No 2316/1999 <sup>(3)</sup>, as last amended by Regulation (EC) No 1393/2001 <sup>(4)</sup>, stipulate that the set aside period must begin no later than 15 January and that no agricultural production is authorised on the land set aside.
- (3) As a result of adverse weather conditions while sowing during spring 2001 the producers in various regions of some Member States cannot harvest their sugar and fodder beet before 15 January 2002, on lands to be set aside in the 2002/03 marketing year. Under the circumstances, and as an exceptional measure, where growers so request they should be authorised to harvest their crops no later than 28 February 2002 without this affecting recognition of the lands in question as properly

set aside, provided that they prove that the applicable conditions have been complied with.

- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

*Article 1*

Where a producer, upon application to the competent authority of the Member State concerned, can prove that:

- harvesting could not take place before 15 January 2002 as a result of adverse weather conditions or delayed sowing,
- harvesting of sugar and fodder beet where done, was done no later than 28 February 2002,
- all the other conditions applying to set-aside land have been complied with,

the lands in questions shall be considered, notwithstanding Article 19(2) and (3) of Regulation (EC) No 2316/1999, as properly set-aside for the 2002/03 marketing year.

*Article 2*

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

It shall apply from 15 January 2002.

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

Done at Brussels, 28 January 2002.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 160, 26.6.1999, p. 1.

<sup>(2)</sup> OJ L 145, 31.5.2001, p. 16.

<sup>(3)</sup> OJ L 280, 30.10.1999, p. 43.

<sup>(4)</sup> OJ L 187, 10.7.2001, p. 29.

**COMMISSION REGULATION (EC) No 158/2002****of 28 January 2002****amending Regulation (EC) No 21/2002 establishing the supply balances and Community aid for the outmost regions under Council Regulations (EC) No 1452/2001, (EC) No 1453/2001 and (EC) No 1454/2001**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1453/2001 of 28 June 2001 introducing specific measures for certain agricultural products for the Azores and Madeira and repealing Regulation (EEC) No 1600/92 (Poseima) <sup>(1)</sup>, and in particular Article 3(6) thereof,

Having regard to Council Regulation (EC) No 1454/2001 of 28 June 2001 introducing specific measures for certain agricultural products for the Canary Islands and repealing Regulation (EEC) No 1601/92 (Poseican) <sup>(2)</sup>, and in particular Article 3(6) thereof,

Whereas:

- (1) Commission Regulation (EC) No 21/2002 <sup>(3)</sup> fixes in particular the aids for supplying the outermost regions in milk products.

- (2) Commission Regulation (EC) No 123/2002 of 24 January 2002 fixing the export refunds on milk and milk products <sup>(4)</sup> fixes the refunds for those products. To take account of these amendments, the Annexes to Regulation (EC) No 21/2002 should be amended.

- (3) 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*

Regulation (EC) No 21/2002 is amended as follows:

1. Part 9 of Annex II is replaced by Annex I to this Regulation.
2. Part 9 of Annex III is replaced by Annex II to this Regulation.

*Article 2*

This Regulation shall enter into force on 29 January 2002.

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

Done at Brussels, 28 January 2002.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 198, 21.7.2001, p. 26.

<sup>(2)</sup> OJ L 198, 21.7.2001, p. 45.

<sup>(3)</sup> OJ L 8, 11.1.2002, p. 15.

<sup>(4)</sup> OJ L 23, 25.1.2002, p. 5.

## ANNEX I — MADEIRA

ANNEX II — **Part 9***Milk and milk products*

Forecast supply balance and Community aid for the supply of Community products

Forecast supply balance for the marketing period from 1 January to 31 December

Description	CN code	Quantity (in tonnes)
Milk and cream, not concentrated nor containing added sugar or other sweetening matter	0401	12 000
Skimmed-milk powder	ex 0402	500
Whole-milk powder	ex 0402	500
Butter and other fats and oils derived from milk; dairy spreads	0405 00	1 000
Cheese	0406	1 500

## Community aid for the supply of Community products

(in EUR/100 kg weight, unless otherwise specified)

Description	Product code	Notes	Aid amounts
Milk and cream, not concentrated nor containing added sugar or other sweetening matter:			
- of a fat content, by weight, not exceeding 1 %:			
- - in immediate packings of a net content not exceeding two litres	0401 10 10 9000		2,048
- - other	0401 10 90 9000		2,048
- of a fat content, by weight, exceeding 1 % but not exceeding 6 %:			
- - 3% or less:			
- - - in immediate packings of a net content not exceeding two litres			
- - - of a fat content, by weight, not exceeding 1,5 %	0401 20 11 9100		2,048
- - - of a fat content by weight, exceeding 1,5 %	0401 20 11 9500		3,165
- - - other:			
- - - of a fat content, by weight, not exceeding 1,5 %	0401 20 19 9100		2,048
- - - of a fat content, by weight, exceeding 1,5 %	0401 20 19 9500		3,165
- - exceeding 3 %:			
- - - in immediate packings of a net content not exceeding two litres	0401 20 91 9000		4,005
- - - Other	0401 20 99 9000		4,005
- Of a fat content, by weight, exceeding 6 %:			
- - 21 % or less:			
- - - in immediate packings of a net content not exceeding two litres			
- - - of a fat content by weight:			
- - - exceeding 10 % but not exceeding 17 %	0401 30 11 9400		9,24
- - - exceeding 17 %	0401 30 11 9700		13,88
- - - other:			
- - - of a fat content by weight:			
- - - exceeding 17 %	0401 30 19 9700		13,88
- - exceeding 21 % but not exceeding 45 %			
- - - in immediate packings of a net content not exceeding two litres			
- - - of a fat content, by weight:			
- - - not exceeding 35 %	0401 30 31 9100		33,72
- - - exceeding 35 % but not exceeding 39 %	0401 30 31 9400		52,67
- - - exceeding 39 %	0401 30 31 9700		58,08
- - - other:			
- - - of a fat content, by weight:			
- - - not exceeding 35 %	0401 30 39 9100		33,72
- - - exceeding 35 % but not exceeding 39 %	0401 30 39 9400		52,67
- - - exceeding 39 %	0401 30 39 9700		58,08
- - exceeding 45 %			
- - - in immediate packings of a net content not exceeding two litres			
- - - of a fat content, by weight:			
- - - not exceeding 68 %	0401 30 91 9100		66,19
- - - exceeding 68 %	0401 30 91 9500		97,28
- - - other:			
- - - of a fat content, by weight:			
- - - not exceeding 68 %	0401 30 99 9100		66,19
- - - exceeding 68 %	0401 30 99 9500		97,28
Milk and cream, concentrated or containing added sugar or other sweetening matter <sup>(1)</sup>			
Skimmed-milk powder of a fat content, by weight, not exceeding 1,5 %	0402 10 11 9000 0402 10 19 9000	( <sup>2</sup> )	30,00
Whole-milk powder of a fat content, by weight, not exceeding 27 %	0402 21 11 9900 0402 21 19 9900	( <sup>2</sup> )	78,00

(in EUR/100 kg weight, unless otherwise specified)

Description	Product code	Notes	Aid amounts
----- in immediate packings of a net content not exceeding 2,5 kg:			
- of a fat content, by weight:			
- not exceeding 11 %	0402 21 11 9200	( <sup>2</sup> )	30,00
- exceeding 11 % but not exceeding 17 %	0402 21 11 9300	( <sup>2</sup> )	68,64
- exceeding 17 % but not exceeding 25 %	0402 21 11 9500	( <sup>2</sup> )	72,46
- exceeding 25 %	0402 21 11 9900	( <sup>2</sup> )	78,00
----- Other:			
----- Of a fat content, by weight, exceeding 11 % but not exceeding 27 %:			
- not exceeding 17 %	0402 21 19 9300	( <sup>2</sup> )	68,64
- exceeding 17 % but not exceeding 25 %	0402 21 19 9500	( <sup>2</sup> )	72,46
- exceeding 25 %	0402 21 19 9900	( <sup>2</sup> )	78,00
Butter and other fats and oils derived from milk; dairy spreads:			
- Butter:			
- - Of a fat content, by weight, not exceeding 85 %:			
- - - Natural butter:			
- - - in immediate packings of a net content not exceeding 1 kg:			
- - - - of a fat content by weight:			
- - - - - 80 % or more but less than 82 %	0405 10 11 9500		170,73
- - - - - 82 % or more	0405 10 11 9700		175,00
- - - - other:			
- - - - - of a fat content by weight:			
- - - - - - 80 % or more but less than 82 %	0405 10 19 9500		170,73
- - - - - - 82 % or more	0405 10 19 9700		175,00
- - - Recombined butter			
- - - in immediate packings of a net content not exceeding 1 kg:			
- - - - of a fat content by weight:			
- - - - - 80 % or more but less than 82 %	0405 10 30 9100		170,73
- - - - - 82 % or more	0405 10 30 9300		175,00
- - - - other:			
- - - - - of a fat content by weight:			
- - - - - - 82 % or more	0405 10 30 9700		175,00
- - - Whey butter			
- - - in immediate packings of a net content not exceeding 1 kg:			
- - - - of a fat content by weight:			
- - - - - 82 % or more	0405 10 50 9300		175,00
- - - - other:			
- - - - - of a fat content by weight:			
- - - - - - 80 % or more but less than 82 %	0405 10 50 9500		170,73
- - - - - - 82 % or more	0405 10 50 9700		175,00
- - - other:	0405 10 90 9000		181,41
- Dairy spreads:			
- - Of a fat content, by weight, of more than 75 %, but less than 80 %			
- - - of a fat content, by weight:			
- - - - more than 75 % but less than 78 %	0405 20 90 9500		160,07
- - - - 78 % or more	0405 20 90 9700		166,47
- Other:			
- - of a fat content, by weight, of 99,3 % or more, and of a water content, by weight, not exceeding 0,5 %	0405 90 10 9000		222,36
- - - other	0405 90 90 9000		175,00

(in EUR/100 kg weight, unless otherwise specified)

Description	Product code	Additional requirements for use of the product code		Notes	Aid amounts
		Maximum water content by weight (%)	Minimum fat content in the dry matter (%)		
Cheese and curd <sup>(1)</sup> :					
--- Edam	0406 90 23 9900	47	40	( <sup>3</sup> )	88,33
--- Tilsit	0406 90 25 9900	47	45	( <sup>3</sup> )	87,38
----- Danbo, Fontal, Fontina, Fynbo, Havarti, Maribo, Samsø:					
----- of a fat content exceeding 45 % by weight in the dry matter but not exceeding 55 %:					
----- of a dry matter content by weight of 50 % or more, but not exceeding 56 %	0406 90 76 9300	50	45	( <sup>3</sup> )	82,43
----- of a dry matter content by weight, of 56 % or more,	0406 90 76 9400	44	45	( <sup>3</sup> )	92,33
----- of a fat content, by weight of dry matter, of 55 % or more,	0406 90 76 9500	46	55	( <sup>3</sup> )	87,08
----- Gouda:					
----- of a fat content, by weight of dry matter, of less than 48 %	0406 90 78 9100	50	20	( <sup>3</sup> )	86,92
----- of a fat content, exceeding 48 % by weight in the dry matter but not exceeding 55 %	0406 90 78 9300	45	48	( <sup>3</sup> )	90,08
----- Other	0406 90 78 9500	45	55	( <sup>3</sup> )	88,70
----- Esrom, Italico, Kernhem, Saint-Nectaire, Saint-Paulin, Taleggio	0406 90 79 9900	56	40	( <sup>3</sup> )	73,33
----- Cantal, Cheshire, Wensleydale, Lancashire, Double Gloucester, Blarney, Colby, Monterey	0406 90 81 9900	44	44	( <sup>3</sup> )	92,33
----- exceeding 47 % but not exceeding 52 %:					
----- cheese manufactured from whey	0406 90 86 9100				—
----- other, of a fat content, by weight of dry matter:					
----- Less than 5 %	0406 90 86 9200	52		( <sup>3</sup> )	86,90
----- 5 % or more but less than 19 %	0406 90 86 9300	51	5	( <sup>3</sup> )	87,82
----- 19 % or more but less than 39 %	0406 90 86 9400	47	19	( <sup>3</sup> )	92,33
----- 39 % or more	0406 90 86 9900	40	39	( <sup>3</sup> )	100,22
----- exceeding 52 % but not exceeding 62 %:					
----- Cheese manufactured from whey, except Manouri	0406 90 87 9100				—
----- other, of a fat content, by weight of dry matter:					
----- Less than 5 %	0406 90 87 9200	60		( <sup>3</sup> )	72,41
----- 5 % or more but less than 19 %	0406 90 87 9300	55	5	( <sup>3</sup> )	80,66
----- 19 % or more but less than 40 %	0406 90 87 9400	53	19	( <sup>3</sup> )	81,88
----- 40 % or more					
----- Idiazabal, Manchego and Roncal manufactured exclusively from ewe's milk	0406 90 87 9951	45	45	( <sup>3</sup> )	90,68
----- Maasdam	0406 90 87 9971	45	45	( <sup>3</sup> )	90,68
----- Manouri	0406 90 87 9972	43	53	( <sup>3</sup> )	38,79
----- Hushallsost	0406 90 87 9973	46	45	( <sup>3</sup> )	89,03
----- Murukoloinen	0406 90 87 9974	41	50	( <sup>3</sup> )	96,21
----- Other	0406 90 87 9979	47	40	( <sup>3</sup> )	88,33



(in EUR/100 kg weight, unless otherwise specified)

Description	Product code	Additional requirements for use of the product code		Notes	Aid amounts
		Maximum water content by weight (%)	Minimum fat content in the dry matter (%)		
----- exceeding 62 % but not exceeding 72 %: ----- Cheese manufactured from whey ----- Other: ----- Other: ----- of a fat content, by weight of dry matter: ----- 10 % or more but less than 19 %	0406 90 88 9100				—
	0406 90 88 9300	60	10	( <sup>3</sup> )	70,98

(<sup>1</sup>) Where the milk protein content (nitrogen content  $\times 6,38$ ) in the non-fatty milk solid of a product under this position is less than 34 %, no aid shall be granted. Where the water content by weight of the powdered products under this position is greater than 5 %, no aid shall be granted.

When completing customs formalities, the applicant shall state on the declaration provided for this purpose the minimum milk protein content in the non-fatty milk solid, and the maximum water content for powdered products.

(<sup>2</sup>) Aid payable for cheese presented in immediate packing which also contains preservative liquid, in particular brine, shall be granted on the basis of net weight, after deduction of the weight of the liquid.

(<sup>3</sup>) Where the product contains non-milk matter, the share of such matter shall not be taken into account for the purposes of calculating the amount of aid. When completing customs formalities, the applicant shall state on the declaration provided for this purpose, whether or not non-milk matter has been added, and if so the maximum content by weight of added non-milk matter in 100 kilograms of finished product.

## ANNEX II — CANARY ISLANDS

## Part 9

*Milk and milk products*

Forecast supply balance and Community aid for the supply of Community products

Forecast supply balance for the marketing period from 1 January to 31 December

Description	CN code	Quantity (in tonnes)
Milk and cream, not concentrated nor containing added sugar or other sweetening matter (direct consumption)	0401	105 000
Milk and cream, not concentrated nor containing added sugar or other sweetening matter (industrial consumption)	0401	1 300
Milk and cream, concentrated or containing added sugar or other sweetening matter (direct consumption)	0402	12 000
Milk and cream, concentrated or containing added sugar or other sweetening matter (industrial consumption)	0402	17 000
Butter and other fats and oils derived from milk; dairy spreads (direct consumption)	0405	4 000
Cheese (direct consumption)	0406	15 000
	0406 30	
	0406 90 23	
	0406 90 25	
	0406 90 27	
	0406 90 76	
	0406 90 78	
	0406 90 79	
	0406 90 81	
	0406 90 86	
	0406 90 87	1 900
	0406 90 88	
Fat-free milk preparations (industrial consumption)	1901 90 99	3 000
Milk preparations for children containing no milk fat etc.	2106 90 92	180

Where, as regards a particular product separate amounts are fixed in the forecast supply balance for direct consumption, and for processing and/or packaging respectively, an adjustment in the breakdown as between the prescribed uses is permitted, within a limit of 20 % of the total quantity fixed for that product.

## Community aid for the supply of Community products

(in EUR/100 kg weight, unless otherwise specified)

Description	Product code	Notes	Aid amounts
Milk and cream, not concentrated nor containing added sugar or other sweetening matter:			
– of a fat content, by weight, not exceeding 1 %:			
– – in immediate packings of a net content not exceeding two litres	0401 10 10 9000		2,048
– – other	0401 10 90 9000		2,048
– of a fat content, by weight, exceeding 1 % but not exceeding 6 %:			
– – 3 % or less:			
– – – in immediate packings of a net content not exceeding two litres			
– – – of a fat content, by weight, not exceeding 1,5 %	0401 20 11 9100		2,048
– – – of a fat content, by weight, exceeding 1,5 %:	0401 20 11 9500		3,165
– – – other:			
– – – of a fat content, by weight, not exceeding 1,5 %	0401 20 19 9100		2,048
– – – of a fat content, by weight, exceeding 1,5 %	0401 20 19 9500		3,165
– – exceeding 3 %:			
– – – in immediate packings of a net content not exceeding two litres	0401 20 91 9000		4,005
– – – Other	0401 20 99 9000		4,005
– Of a fat content, by weight, exceeding 6 %:			
– – 21 % or less:			
– – – in immediate packings of a net content not exceeding two litres			
– – – of a fat content, by weight:			
– – – exceeding 10 % but not exceeding 17 %:	0401 30 11 9400		9,24
– – – exceeding 17 %	0401 30 11 9700		13,88
– – – other:			
– – – of a fat content, by weight:			
– – – exceeding 17 %	0401 30 19 9700		13,88
– – exceeding 21 % but not exceeding 45 %:			
– – – in immediate packings of a net content not exceeding two litres			
– – – of a fat content by weight:			
– – – not exceeding 35 %	0401 30 31 9100		33,72
– – – exceeding 35 % but not exceeding 39 %:	0401 30 31 9400		52,67
– – – exceeding 39 %	0401 30 31 9700		58,08
– – – other:			
– – – of a fat content, by weight:			
– – – not exceeding 35 %	0401 30 39 9100		33,72
– – – exceeding 35 % but not exceeding 39 %:	0401 30 39 9400		52,67
– – – exceeding 39 %	0401 30 39 9700		58,08
– – exceeding 45 %			
– – – in immediate packings of a net content not exceeding two litres			
– – – of a fat content, by weight:			
– – – not exceeding 68 %	0401 30 91 9100		66,19
– – – exceeding 68 %	0401 30 91 9500		97,28
– – – other:			
– – – of a fat content, by weight:			
– – – not exceeding 68 %	0401 30 99 9100		66,19
– – – exceeding 68 %	0401 30 99 9500		97,28
Milk and cream, concentrated or containing added sugar or other sweetening matter <sup>(1)</sup>			
– In powder, granules or other solid forms, of a fat content, by weight, not exceeding 1,5 % <sup>(2)</sup> :			
– – Not containing added sugar or other sweetening matter:			
– – – in immediate packidngs of a net content not exceeding 2,5 kg	0402 10 11 9000	<sup>(3)</sup>	30,00
– – – Other	0402 10 19 9000	<sup>(3)</sup>	30,00
– – Other:			

(in EUR/100 kg weight, unless otherwise specified)

Description	Product code	Notes	Aid amounts
--- in immediate packings of a net content not exceeding 2,5 kg	0402 10 91 9000	( <sup>4</sup> )	0,3000
--- Other	0402 10 99 9000	( <sup>4</sup> )	0,3000
- In powder, granules or other solid forms, of a fat content, by weight, exceeding 1,5 % ( <sup>2</sup> ):			
-- Not containing added sugar or other sweetening matter:			
--- Of a fat content, by weight, not exceeding 27 %:			
---- in immediate packings of a net content not exceeding 2,5 kg			
- of a fat content by weight:			
- not exceeding 11 %	0402 21 11 9200	( <sup>3</sup> )	30,00
- exceeding 11 % but not exceeding 17 %:	0402 21 11 9300	( <sup>3</sup> )	68,64
- exceeding 17 % but not exceeding 25 %:	0402 21 11 9500	( <sup>3</sup> )	72,46
- exceeding 25 %	0402 21 11 9900	( <sup>3</sup> )	78,00
---- Other:			
----- Of a fat content, by weight, not exceeding 11 %	0402 21 17 9000	( <sup>3</sup> )	30,00
----- Of a fat content, by weight, exceeding 11 % but not exceeding 27 %:			
- not exceeding 17 %	0402 21 19 9300	( <sup>3</sup> )	68,64
- exceeding 17 % but not exceeding 25 %	0402 21 19 9500	( <sup>3</sup> )	72,46
- exceeding 25 %	0402 21 19 9900	( <sup>3</sup> )	78,00
--- Of a fat content, by weight, exceeding 27 %:			
---- in immediate packings of a net content not exceeding 2,5 kg			
- of a fat content by weight:			
- not exceeding 28 %	0402 21 91 9100	( <sup>3</sup> )	78,52
- exceeding 28 % but not exceeding 29 %	0402 21 91 9200	( <sup>3</sup> )	79,16
- exceeding 29 % but not exceeding 45 %	0402 21 91 9350	( <sup>3</sup> )	79,93
- exceeding 45 %	0402 21 91 9500	( <sup>3</sup> )	87,45
---- Other:			
- of a fat content by weight:			
- not exceeding 28 %	0402 21 99 9100	( <sup>3</sup> )	78,52
- exceeding 28 % but not exceeding 29 %	0402 21 99 9200	( <sup>3</sup> )	79,16
- exceeding 29 % but not exceeding 41 %	0402 21 99 9300	( <sup>3</sup> )	79,93
- exceeding 41 % but not exceeding 45 %	0402 21 99 9400	( <sup>3</sup> )	85,41
- exceeding 45 % but not exceeding 59 %	0402 21 99 9500	( <sup>3</sup> )	87,45
- exceeding 59 % but not exceeding 69 %	0402 21 99 9600	( <sup>3</sup> )	94,87
- exceeding 69 % but not exceeding 79 %	0402 21 99 9700	( <sup>3</sup> )	98,98
- exceeding 79 %	0402 21 99 9900	( <sup>3</sup> )	103,82
-- Other:			
--- Of a fat content, by weight, not exceeding 27 %:			
---- Other:			
----- In immediate packings of a net content not exceeding 2,5 kg			
- of a fat content by weight:			
- not exceeding 11 %	0402 29 15 9200	( <sup>4</sup> )	0,3000
- exceeding 11 % but not exceeding 17 %:	0402 29 15 9300	( <sup>4</sup> )	0,6866
- exceeding 17 % but not exceeding 25 %:	0402 29 15 9500	( <sup>4</sup> )	0,7248

(in EUR/100 kg weight, unless otherwise specified)

Description	Product code	Notes	Aid amounts
– exceeding 25 %	0402 29 15 9900	(4)	0,7800
----- Other:			
– of a fat content by weight:			
– exceeding 11 % but not exceeding 17 %:	0402 29 19 9300	(4)	0,6866
– exceeding 17 % but not exceeding 25 %:	0402 29 19 9500	(4)	0,7248
– exceeding 25 %	0402 29 19 9900	(4)	0,7800
--- Of a fat content, by weight, exceeding 27 %:			
---- In immediate packings of a net content not exceeding 2,5 kg	0402 29 91 9000	(4)	0,7852
---- Other:			
– of a fat content, by weight:			
– not exceeding 41 %	0402 29 99 9100	(4)	0,7852
– exceeding 41 %	0402 29 99 9500	(4)	0,8541
– Other:			
-- Not containing added sugar or other sweetening matter:			
--- Of a fat content, by weight, not exceeding 8 %:			
---- in immediate packings of a net content not exceeding 2,5 kg			
– of a non-fat milk solid content of 15 % or more by weight and a fat content by weight exceeding 7,4 %	0402 91 11 9370	(3)	6,670
---- Other:			
– of a non-fat milk solid content of 15 % or more by weight and a fat content by weight:			
– not exceeding 3 %	0402 91 19 9310	(3)	4,50
– of a non-fat milk solid content of 15 % or more by weight and a fat content by weight exceeding 7,4 %	0402 91 19 9370	(3)	6,670
--- of a fat content, by weight, exceeding 8 % but not exceeding 10 %:			
--- in immediate packings of a net content not exceeding 2,5 kg			
– with a non-fat milk solid content of 15 % or more by weight	0402 91 31 9300	(3)	7,900
---- Other:			
– with a non-fat milk solid content of 15 % or more by weight	0402 91 39 9300	(3)	7,900
--- with a fat content, by weight, exceeding 10 % but not exceeding 45 %:			
---- Other	0402 91 99 9000	(3)	36,61
-- Other:			
--- of a fat content by weight, not exceeding 9,5 %:			
---- in immediate packings of a net content not exceeding 2,5 kg			
----- of a sucrose content of 40 % or more by weight, a non-fat milk solid content of 15 % or more by weight and a fat content by weight exceeding 6,9 %	0402 99 11 9350	(4)	0,1700
---- other:			
----- of a sucrose content of 40 % or more by weight, a non-fat milk solid content of 15 % or more by weight and a fat content by weight exceeding 6,9 %	0402 99 19 9350	(4)	0,1700
--- of a fat content, by weight, exceeding 9,5 % but not exceeding 45 %:			
---- in immediate packings of a net content not exceeding 2,5 kg:			
----- of a fat content by weight not exceeding pas 21 %:			
----- of a sucrose content of 40 % or more by weight, a non-fat milk solid content of 15 % or more by weight	0402 99 31 9150	(4)	0,1780
----- of a fat content, by weight, exceeding 21 % but not exceeding 39 %:	0402 99 31 9300	(4)	0,2191

(in EUR/100 kg weight, unless otherwise specified)

Description	Product code	Notes	Aid amounts
----- of a fat content, by weight, exceeding 39 %:	0402 99 31 9500	(4)	0,3775
----- other:			
----- of a fat content by weight not exceeding pas 21 % by weight, a sucrose content of 40 % or more by weight, a non-fat milk solid content of 15 % or more by weight	0402 99 39 9150	(4)	0,1780
Butter and other fats and oils derived from milk; dairy spreads:			
- Butter:			
-- of a fat content, by weight, not exceeding 85 %:			
--- Natural butter:			
---- in immediate packings of a net content not exceeding 1 kg:			
----- of a fat content by weight:			
----- 80 % or more but less than 82 %	0405 10 11 9500		170,73
----- 82 % or more	0405 10 11 9700		175,00
----- other:			
----- of a fat content by weight:			
----- 80 % or more but less than 82 %	0405 10 19 9500		170,73
----- 82 % or more	0405 10 19 9700		175,00
--- Recombined butter			
---- in immediate packings of a net content not exceeding 1 kg:			
----- of a fat content by weight:			
----- 80 % or more but less than 82 %	0405 10 30 9100		170,73
----- 82 % or more	0405 10 30 9300		175,00
----- other:			
----- of a fat content by weight:			
----- 82 % or more	0405 10 30 9700		175,00
--- Whey butter			
---- in immediate packings of a net content not exceeding 1 kg			
----- of a fat content by weight:			
----- 82 % or more	0405 10 50 9300		175,00
----- other:			
----- of a fat content by weight:			
----- 80 % or more but less than 82 %	0405 10 50 9500		170,73
----- 82 % or more	0405 10 50 9700		175,00
-- other:	0405 10 90 9000		181,41
- Dairy spreads:			
-- of a fat content, by weight, of more than 75 % but less than 80 %			
--- of a fat content, by weight:			
---- 75 % or more but less than 78 %	0405 20 90 9500		160,07
---- 78 % or more	0405 20 90 9700		166,47
- other:			
-- of a fat content, by weight, of 99,3 % or more and of a water content, by weight, not exceeding 0,5 %	0405 90 10 9000		222,36
-- other	0405 90 90 9000		175,00

(in EUR/100 kg weight, unless otherwise specified)

Description	Product code	Additional requirements for use of the product code		Notes	Aid amounts
		Maximum water content by weight (%)	Fat content in the dry matter (%)		
Cheese and curd <sup>(?)</sup> :					
– Processed cheese, not grated or powdered <sup>(6)</sup> :					
– – Other:					
– – – of a fat content, by weight, not exceeding 36 % and of a fat content, by weight, in the dry matter:					
– – – – not exceeding 48 %:					
– – – – – of a dry matter content by weight:					
– – – – – of 40 % or more, but not exceeding 43 % and of a fat content by weight in the dry matter:					
– – – – – Less than 20 %	0406 30 31 9710	60		<sup>(5)</sup>	12,33
– – – – – 20 % or more	0406 30 31 9730	60	20	<sup>(5)</sup>	18,09
– – – – – of 43 % or more, and of a fat content by weight in the dry matter:					
– – – – – Less than 20 %	0406 30 31 9910	57		<sup>(5)</sup>	12,33
– – – – – of 20 % or more, but less than 40 %	0406 30 31 9930	57	20	<sup>(5)</sup>	18,09
– – – – – 40 % or more	0406 30 31 9950	57	40	<sup>(5)</sup>	26,31
– – – – Exceeding 48 %:					
– – – – – of a dry matter content by weight:					
– – – – – 40 % or more but less than 43 %	0406 30 39 9500	60	48	<sup>(5)</sup>	18,09
– – – – – 43 % or more but less than 46 %	0406 30 39 9700	57	48	<sup>(5)</sup>	26,31
– – – – – 46 % or more, and of a fat content by weight in the dry matter:					
– – – – – Less than 55 %	0406 30 39 9930	54	48	<sup>(5)</sup>	26,31
– – – – – 55 % or more	0406 30 39 9950	54	55	<sup>(5)</sup>	29,75
– – – of a fat content, by weight, exceeding 36 %	0406 30 90 9000	54	79	<sup>(5)</sup>	31,21
– – – Edam	0406 90 23 9900	47	40	<sup>(5)</sup>	88,33
– – – Tilsit	0406 90 25 9900	47	45	<sup>(5)</sup>	87,38
– – – Butterkäse	0406 90 27 9900	52	45	<sup>(5)</sup>	79,14
– – – – – Danbo, Fontal, Fontina, Fynbo, Havarti, Maribo, Samsø:					
– – – – – of a fat content 45 % or more by weight in the dry matter, but not exceeding 55 %:					
– – – – – of a dry matter content of 50 % or more, but not exceeding 56 %	0406 90 76 9300	50	45	<sup>(5)</sup>	82,43
– – – – – of a dry matter content, by weight, of 56 % or more	0406 90 76 9400	46	55	<sup>(5)</sup>	92,33

(in EUR/100 kg weight, unless otherwise specified)

Description	Product code	Additional requirements for use of the product code		Notes	Aid amounts
		Maximum water content by weight (%)	Fat content in the dry matter (%)		
----- of a fat content of 55 % or more by weight in the dry matter	0406 90 76 9500	46	55	( <sup>5</sup> )	87,08
----- Gouda:					
----- of a fat content less than 48 % by weight in the dry matter	0406 90 78 9100	50	20	( <sup>5</sup> )	86,92
----- of a fat content 48 % or more by weight in the dry matter but less than 55 %:	0406 90 78 9300	45	48	( <sup>5</sup> )	90,08
----- other:	0406 90 78 9500	45	55	( <sup>5</sup> )	88,70
----- Esrom, Italico, Kernhem, Saint-Nectaire, Saint-Paulin, Taleggio	0406 90 79 9900	56	40	( <sup>5</sup> )	73,33
----- Cantal, Cheshire, Wensleydale, Lancashire, Double Gloucester, Blarney, Colby, Monterey	0406 90 81 9900	44	45	( <sup>5</sup> )	92,33
----- exceeding 47 % but not exceeding 52 %:					
----- Cheese manufactured from whey:	0406 90 86 9100				—
----- other, of a fat content by weight in the dry matter					
----- Less than 5 %	0406 90 86 9200	52		( <sup>5</sup> )	86,90
----- 5 % or more but less than 19 %	0406 90 86 9300	51	5	( <sup>5</sup> )	87,82
----- 19 % or more but less than 39 %	0406 90 86 9400	47	19	( <sup>5</sup> )	92,33
----- 9 % or more	0406 90 86 9900	40	39	( <sup>5</sup> )	100,22
----- exceeding 52 % but not exceeding 62 %:					
----- Cheese manufactured from whey, except Manouri	0406 90 87 9100				—
----- other, of a fat content by weight in the dry matter,					
----- of less than 5 %	0406 90 87 9200	60		( <sup>5</sup> )	72,41
----- of 5 % or more but less than 19 %	0406 90 87 9300	55	5	( <sup>5</sup> )	80,66
----- of 19 % or more but less than 40 %	0406 90 87 9400	53	19	( <sup>5</sup> )	81,88
----- 40 % or more					
----- Idiazabal, Manchego and Roncal manufactured exclusively from ewe's milk	0406 90 87 9951	45	45	( <sup>5</sup> )	90,68
----- Maasdam	0406 90 87 9971	45	45	( <sup>5</sup> )	90,68
----- Manouri	0406 90 87 9972	43	53	( <sup>5</sup> )	38,79
----- Hushallsost	0406 90 87 9973	46	45	( <sup>5</sup> )	89,03
----- Murukoloinen	0406 90 87 9974	41	50	( <sup>5</sup> )	96,21
----- other	0406 90 87 9979	47	40	( <sup>5</sup> )	88,33
----- exceeding 62 % but not exceeding 72 %:					
----- Cheese manufactured from whey	0406 90 88 9100				—



(in EUR/100 kg weight, unless otherwise specified)

Description	Product code	Additional requirements for use of the product code		Notes	Aid amounts
		Maximum water content by weight (%)	Fat content in the dry matter (%)		
----- other: ----- other: ----- of a fat content by weight in the dry matter, ----- 10 % or more but less than 19 %	0406 90 88 9300	60	10	( <sup>5</sup> )	70,98

(<sup>1</sup>) Where the milk protein content (nitrogen content  $\times 6,38$ ) in the non-fatty milk solid of a product under this position is less than 34 %, no aid shall be granted. Where the water content by weight of the powdered products under this position is greater than 5 %, no aid shall be granted.

When completing customs formalities, the applicant shall state on the declaration provided for this purpose the minimum milk protein content in the non-fatty milk solid, and the maximum water content for powdered products..

(<sup>2</sup>) The amount of aid for frozen condensed milk is the same as that applicable respectively to CN codes 0402 91 or 0402 99.

(<sup>3</sup>) Where the product contains non-milk matter, the share of such matter shall not be taken into account for the purposes of calculating the amount of aid.

When completing customs formalities, the applicant shall state on the declaration provided for this purpose, whether or not non-milk matter has been added, and if so the maximum content by weight of added non-milk matter in 100 kilograms of finished product.

(<sup>4</sup>) Where the product contains non-milk matter other than sucrose, the share of such matter other than sucrose shall not be taken into account for the purposes of calculating the amount of aid.

The amount of aid for 100 kilograms of product under this subheading is equal to the sum of the following items:

a) the amount indicated per kg, multiplied by the weight of the lactic matter in 100 kg of product,

b) an item calculated in accordance with the definition in Article 12(3) of Commission Regulation (EC) No 1466/95 (OJ L 144, 28.6.1995, p. 22).

When completing customs formalities, the applicant shall state on the declaration provided for this purpose the maximum content by weight of sucrose and/or other non-milk matter added to 100 kg of finished product.

(<sup>5</sup>) Aid payable for cheese presented in immediate packing which also contains preservative liquid, in particular brine, shall be granted on the basis of net weight, after deduction of the weight of the liquid.

(<sup>6</sup>) Where the product contains non-milk matter and/or casein and/or caseinates and/or whey and/or products derived from whey and/or lactose and/or permeate and/or, the share of added non-milk matter and/or casein and/or caseinates and/or whey and/or products derived from whey and/or lactose and/or permeate and/or products coming under CN code 3504 is not taken into consideration for the purposes of calculating the amount of aid. When completing customs formalities, the applicant shall state on the declaration provided for this purpose, whether or not non-milk matter and/or casein and/or caseinates and/or whey and/or products derived from whey and/or products derived from whey and/or lactose and/or permeate and/or products coming under CN code 3504 have been added to the product, and if so specify the maximum content by weight of the non-milk matter and/or casein and/or caseinates and/or whey and/or products derived from whey and/or products derived from whey and/or lactose and/or permeate and/or products coming under CN code 3504 added to 100 kg of finished product.

**COMMISSION REGULATION (EC) No 159/2002**  
**of 28 January 2002**  
**determining the world market price for unginne d cotton**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Protocol 4 on cotton, annexed to the Act of Accession of Greece, as last amended by Council Regulation (EC) No 1050/2001 <sup>(1)</sup>,

Having regard to Council Regulation (EC) No 1051/2001 of 22 May 2001 on production aid for cotton <sup>(2)</sup>, and in particular Article 4 thereof,

Whereas:

- (1) In accordance with Article 4 of Regulation (EC) No 1051/2001, a world market price for unginne d cotton is to be determined periodically from the price for ginned cotton recorded on the world market and by reference to the historical relationship between the price recorded for ginned cotton and that calculated for unginne d cotton. That historical relationship has been established in Article 2(2) of Commission Regulation (EC) No 1591/2001 of 2 August 2001 <sup>(3)</sup>. Where the world market price cannot be determined in this way, it is to be based on the most recent price determined.
- (2) In accordance with Article 5 of Regulation (EC) No 1051/2001, the world market price for unginne d cotton is to be determined in respect of a product of specific characteristics and by reference to the most favourable offers and quotations on the world market among those

considered representative of the real market trend. To that end, an average is to be calculated of offers and quotations recorded on one or more European exchanges for a product delivered cif to a port in the Community and coming from the various supplier countries considered the most representative in terms of international trade. However, there is provision for adjusting the criteria for determining the world market price for ginned cotton to reflect differences justified by the quality of the product delivered and the offers and quotations concerned. Those adjustments are specified in Article 3(2) of Regulation (EC) No 1591/2001.

- (3) The application of the above criteria gives the world market price for unginne d cotton determined hereinafter,

HAS ADOPTED THIS REGULATION:

*Article 1*

The world price for unginne d cotton as referred to in Article 4 of Regulation (EC) No 1051/2001 is hereby determined as equalling EUR 24,133/100 kg.

*Article 2*

This Regulation shall enter into force on 29 January 2002.

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

Done at Brussels, 28 January 2002.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

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<sup>(1)</sup> OJ L 148, 1.6.2001, p. 1.

<sup>(2)</sup> OJ L 148, 1.6.2001, p. 3.

<sup>(3)</sup> OJ L 210, 3.8.2001, p. 10.

## II

(Acts whose publication is not obligatory)

## COMMISSION

## COMMISSION DECISION

of 25 July 2001

**on alleged State aid for the American group Reebok in connection with its establishment in Rotterdam, the Netherlands**

(notified under document number C(2001) 2383)

(Only the Dutch text is authentic)

(Text with EEA relevance)

(2002/64/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

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

Having called on interested parties to submit their comments pursuant to the provisions cited above <sup>(1)</sup>, and having regard to their comments,

Whereas:

authorities submitted their comments and further information.

- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* on 14 August 1999 <sup>(2)</sup>. The Commission called on interested parties to submit their comments. It received comments from an interested party on 14 September 1999 and, in order to give the Dutch authorities the opportunity to react, forwarded them to the Netherlands, which replied within one month.
- (4) Upon request the Dutch authorities submitted further information on the alleged aid by letters dated 7 July 2000, 17 July 2000, 6 December 2000, 15 December 2000, 8 February 2001, 9 April 2001, 22 May 2001, 27 June 2001 and 6 July 2001. Meetings with the Dutch authorities took place on 4 July 2000 and 25 October 2000.

I. PROCEDURE

- (1) By letter dated 31 July 1998, the Commission received a complaint according to which the American group Reebok had been induced to establish its new plant in the port of Rotterdam through illegal State aid. Pursuant to this complaint, the Commission requested information from the Dutch authorities on 23 September 1998. By letters dated 2 October 1998 and 7 January 1999, the Dutch authorities requested more time for their reply and finally provided the requested information by letter dated 2 February 1999.
- (2) By letter dated 9 June 1999, the Commission informed the Netherlands of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid. By letter dated 8 September 1999, the Dutch

II. DETAILED DESCRIPTION OF THE ALLEGED AID MEASURES

- (5) The American group Reebok ('Reebok') is a leading worldwide producer of sports footwear in particular and operates in approximately 170 countries with net sales of approximately USD 2,9 billion (EUR 2,72 billion) in 1999. Reebok's products are manufactured in Asia and have to be shipped to Europe.

<sup>(1)</sup> OJ C 233, 14.8.1999, p. 39.

<sup>(2)</sup> OJ C 233, 14.8.1999, p.39.

- (6) In the period 1993/94 Reebok reviewed its distribution network in Europe where it had at that time eight warehousing facilities. The idea was to restructure the logistics and to have one 'bulk' facility (distribution centre) for Europe, probably situated in the Benelux area, and two 'pick and pack centres'. For the location of the distribution centre Reebok received various offers. The company finally decided for a 11,4 ha site in the 'Distripark Maasvlakte' at the port of Rotterdam. According to the Dutch authorities, Reebok's decision was based on strategic considerations such as a reduction of transportation time and costs.
- (7) The complainant alleged that Reebok received illegal State aid as an incentive to establish its new distribution centre in the port of Rotterdam, a non-assisted area. According to the complainant, the aid consisted of four measures:
- preferential rental conditions for a site in the Distripark Maasvlakte at the price of NLG 8,50 per m<sup>2</sup> per year,
  - preferential conditions of access to a whole series of infrastructure facilities in the park,
  - subsidisation of labour costs,
  - customs advantages, i.e. facilitating of the installation and functioning of Reebok's activities by the Rotterdam district customs authorities.
- (8) The Dutch authorities explained that the developer and operator of the relevant port site, the Rotterdam Port Authority (Gemeentelijk Havenbedrijf Rotterdam ('GHR')), is a public undertaking which, however, operates in accordance with the 'private investor principle' and required for its investment a return on capital of at least 7,5 % with an average depreciation period of 25 years.
- (9) Furthermore, it was stated that Reebok's rent of NLG 8,50/m<sup>2</sup> (EUR 3,9/m<sup>2</sup>) for a plot of 11,4 ha was a normal market price in the light of the profitability of the whole Distripark Maasvlakte project and that the rent was fully comparable with rents for competing sites at other European ports. With respect to the conditions of access to infrastructure, the Dutch Government considered that the laying down of such basic facilities was included in the total investment in the park and passed on in the rent. Moreover, every user has to finance the connection to the public services present, such as electricity, gas, water and telecommunications.
- (10) As regards the alleged subsidisation of labour costs, the Dutch Government explained the funding through measures such as the Law on the reduction of income tax and national insurance contributions, the youth employment guarantee Law and the national framework arrangements on the training of persons seeking employment, which in their view are general measures and not aid within the meaning of Article 87 of the EC Treaty. It was furthermore underlined that Reebok would not receive any financial customs advantages.
- (11) The Dutch Government stated, however, that the GHR was granting, on an ad hoc basis, an amount of NLG 4,25 million (EUR 1,9 million) as an incentive, to be paid in instalments depending on the number of additional jobs to be created ('cash incentive').
- Grounds for initiating the procedure**
- (12) The Commission came to the conclusion that the subsidies for labour costs and the alleged customs advantages did not prima facie constitute State aid within the meaning of Article 87(1) of the EC Treaty.
- (13) However, the Commission could not rule out that the cash incentive and the rental terms, including access to infrastructure facilities<sup>(1)</sup>, granted by GHR to Reebok, constituted aid within the meaning of Article 87(1) of the EC Treaty and initiated the procedure with respect to these two measures.
- (14) The cash incentive of NLG 4,25 million (EUR 1,9 million) seemed to constitute aid because it was granted through State resources, the public GHR, and favoured one specific group, Reebok. It seemed to have been granted on an ad hoc basis with the sole aim of attracting Reebok to establish its new plant in the Distripark Maasvlakte. This view was supported by the fact that the Dutch authorities called it an 'incentive to be paid in instalments depending on the rate of investment and the number of additional jobs to be created'. No other justifications or commercial reasoning as used by private investors were given. Finally, by strengthening Reebok's financial position, the cash incentive threatened to distort competition and to affect trade in the single market for footwear in the EEA.

<sup>(1)</sup> The Commission accepted the reasoning of the Dutch Government that Reebok's alleged preferential rental conditions and its alleged preferential conditions of access to infrastructure facilities in the park should be seen as one measure because the cost of the basic infrastructure is included in the total investment in the park and passed on in the rent.

- (15) The rent of NLG 8,50/m<sup>2</sup> (EUR 3,9/m<sup>2</sup>) Reebok is paying for the 11,4 ha plot was assessed to be approximately 30 % lower than the average expected rent. The Commission stated that, in principle, a private or public undertaking could charge different prices, but that such differences must be non-discriminatory and justified on commercial grounds, namely, taking competitive measures to attract a customer, whilst covering the cost and generating a reasonable return on invested capital.
- (16) However, the Commission found it unlikely that a private investor would have given such favourable conditions, in particular as the discount did not seem to reflect any savings in the form of economies of scale. This seemed to involve an issue of price discrimination and, moreover, not to be in line with the private investor principle. In that context it also had to be taken into account that a total of over 60 % of the whole Distripark Maasvlakte was not yet let at that time, and the Commission found it questionable whether the higher expected future rents could be achieved. It calculated that the GHR would suffer a loss on its invested capital if for the remaining plots only the Reebok rent of NLG 8,50/m<sup>2</sup> (EUR 3,9/m<sup>2</sup>) could be achieved. Lacking detailed information, the Commission could also not examine whether Reebok's rent was fully comparable with the rental prices of other European ports, as the Dutch Government claimed.
- (17) Consequently, the Commission could not at that stage exclude the possibility that the preferential rental terms, including access to infrastructure facilities, also constituted aid under Article 87(1) of the EC Treaty. The rental terms were granted by the GHR, a public undertaking. They appeared to favour Reebok in comparison with other sports footwear producers in the European Union and threatened to distort competition as well as affecting trade, not only in the EU sports footwear market, but also in the market for industrial parks. The Commission asked the Dutch Government to provide further information with respect to the economic and legal status of the GHR, the precise criteria governing the granting of the cash incentive, the rental contracts of other tenants and evidence of rental terms for equivalent pieces of land in other European ports.
- (18) The Dutch authorities submitted information regarding the economic and legal status of the GHR. According to that information, the GHR forms part of the statutory body of the municipal corporation of Rotterdam and has no separate corporate personality. It was confirmed that the GHR is a public undertaking within the meaning of Article 86 of the Treaty. The GHR was created to develop, manage and operate the docks and industrial dock lands including the Distripark Maasvlakte. From a financial viewpoint, it is a separate entity from the rest of the municipality of Rotterdam, which finds formal expression in the fact that an annual balance sheet and profit-and-loss account is drawn up for the GHR. It also has to recoup all its investment in and expenditure on personnel, goods and services from the operation of the port facilities. The Dutch authorities stated that in performing its tasks the GHR acts in accordance with the market investor principle.
- (19) As to the cash incentive, the Dutch authorities declared in their submission of 8 September 1999 that the GHR wanted Reebok to share in the savings made as a result of the size of the rented plot. Moreover, it was stated: 'Payment of the incentive to Reebok is dependent on progress with job creation. As soon as a previously agreed level is reached, part of the incentive is to be paid out. Reebok has now announced that it has reached the level at which the full amount is payable.' In a subsequent submission, the Dutch Government explained that the GHR stopped payment of the outstanding incentive amounts following the initiation of the proceedings by the Commission and that the GHR until then had paid out NLG 1,625 million (EUR 0,7 million). Following discussions in the course of which the Commission questioned the justification of the cash incentive, the Dutch authorities announced the withdrawal of the cash incentive and the recovery of the amount already paid out plus interest. By letter of 27 June 2001, the Dutch Government sent the Commission proof of the recovery of NLG 1,872 million, i.e. the present value of the NLG 1,625 million, in the form of a copy of the account statement and the GHR's decision to waive the cash incentive and the undertaking that no further payments would be made in relation to the cash incentive.
- (20) As to the rental conditions, the Dutch authorities explained that the rental charges in the Distripark Maasvlakte in the port of Rotterdam, are high compared to similar sites in other European ports. They submitted a comparative study carried out by consultants in this respect. Furthermore, the Dutch authorities explained that the rental charge of NLG 8,50/m<sup>2</sup> agreed with Reebok was within the range of rates for the customer category 'European distribution centres' which is not bound to a seaport and could move further inland where the rents are generally cheaper. However, there was no evidence of rental charges of such sites further inland. Therefore, upon request, the Dutch authorities in December 2000 submitted a second study carried out by independent consultants on the current average rental charges for comparable sites further inland. The Dutch authorities also submitted copies of two other offers Reebok received in the course of its search for a location.

### III. COMMENTS FROM THE NETHERLANDS

(21) Furthermore, the Dutch authorities explained that the level of the rent charged by the GHR is dependent on criteria such as the time of the agreement, the size of the plot or the attractiveness of the customer for the GHR, for instance, with respect to the flow of goods and the resulting yield for the GHR. In the view of the Dutch authorities these are objectively justified criteria and do not imply discriminatory treatment. Furthermore, Reebok's rent did not entail losses on the GHR investment in the Distripark Maasvlakte and was therefore in line with the market investor principle. As evidence of this, the Dutch authorities submitted detailed calculations of the individual cost and income components, including discounting methods. They also submitted the spreadsheets used by the GHR containing the raw data of expenditures, income and savings in order to allow the Commission to make its own assessment.

(22) Furthermore, they submitted the rental contracts of all current tenants showing that the rents already agreed vary between [...] (\*) and [...] (\*). According to the information submitted, only 33,7 ha of the total area of 86,6 ha of the Distripark Maasvlakte<sup>(1)</sup> is rented out; a further [...] (\*) is under negotiation, and [...] (\*) is still without candidates.

(23) The Dutch authorities also submitted detailed calculations of the cost savings achieved due to the larger size of the plot Reebok rented<sup>(2)</sup>. Due to the three to four times larger size Reebok occupies, an originally planned interconnecting road between the areas normally occupied by four tenants did not have to be built. Furthermore, costs for drainage and fire networks connecting the different tenant buildings as well as for entrances were saved. Upon request by the Commission, the Dutch authorities submitted a calculation of these savings carried out by a construction company which confirmed the above.

#### IV. COMMENTS FROM INTERESTED PARTIES

(24) Following the publication of the Commission decision to initiate proceedings, the United Kingdom Government<sup>(3)</sup> submitted comments which are summarised as follows: the Government welcomes the Commission's investigation into the granting of this aid to Reebok. There are

important implications for the British footwear industry, and aid to such a large company would have a negative impact on other sports footwear companies that did not enjoy such subsidies. Since footwear, particularly, sports footwear, is very price sensitive, aid of this size to one player would have an extremely distortive effect on competition in this sector. One particular sports footwear company situated in the United Kingdom would suffer serious adverse effects if this aid were granted to Reebok. It was considered that if the aid given to Reebok were not recovered, it would have a distorting effect on competition in the European footwear industry, with particular implications for the United Kingdom.

#### V. REACTION OF THE NETHERLANDS TO THE COMMENTS FROM INTERESTED PARTIES

(25) The Dutch authorities denied that the agreements between the port authority and Reebok constituted State aid; nor would these arrangements affect in particular the position of the company to which the United Kingdom referred. This company would focus predominantly on the American market, and only to a small extent on the British market. Moreover, any producer of sports shoes and other sports gear needs a distribution centre. The same arrangements could be agreed if such companies were to settle in Rotterdam. Furthermore, the Rotterdam distribution centre has so far resulted in financial losses for Reebok. The arrangements between the port authority and Reebok concern a very limited amount when calculated per pair of sports shoes. Therefore, one cannot expect substantial effects for the company the United Kingdom referred to.

#### VI. ASSESSMENT OF THE AID MEASURE

(26) Due to the withdrawal and recovery of the paid amount of the cash incentive (see recital 19), the proceedings under Article 88(2) of the EC Treaty can be closed in this respect.

(27) Regarding the rental terms, it is not contested that they were granted by the GHR, which forms part of the municipality of Rotterdam and therefore is a public investor. However, the legal status of the investor alone does not answer the question of whether the rental conditions for Reebok contain an element of State aid within the meaning of Article 87(1) of the Treaty. The

(\*) Confidential information.

<sup>(1)</sup> The original figure of 85,2 ha has been slightly adjusted by the Dutch authorities due to the additional terrain originally planned for part of an interconnecting road within the Distripark.

<sup>(2)</sup> A map shows that the standard size of a plot is 3,4 ha but can vary depending on the location within the rectangular or triangular clusters connected by roads.

<sup>(3)</sup> The United Kingdom Government is not the original complainant mentioned previously.

key factor is whether or not the conduct of the public investor is comparable with the conduct of a private investor (market investor principle), as the Court held in *Tubacex* <sup>(1)</sup>.

The average annual rents for inland sites in this study vary between NLG 0,6/m<sup>2</sup> and NLG 8,3/m<sup>2</sup> and are in general, apart from the peaks, significantly cheaper than harbour sites.

- (28) Private investors are, however, not active in the business in which the GHR operates, i.e. investing in the preparation or indeed creation of land for private customers in a port (draining of land formerly covered by water, providing infrastructure such as roads, pipelines and other networks). This is normally carried out by port operating companies either belonging to the State/municipality or by the municipalities directly. Private investors are also not active in the preparation of ground and infrastructure for business further inland.
- (29) Lacking the possibility of comparing the GHR's conduct with the conduct of private investors, the Commission, as a first step, identified the level of rents for similar sites at other European ports or further inland in order to compare these 'market rents' with the rent Reebok pays at the Distripark Maasvlakte. Secondly, the Commission analysed whether Reebok's rent brings a net profit for the GHR and can thus be regarded as a market rent. Thirdly, the Commission has to establish whether the relatively low rent Reebok pays is objectively justified, for instance, by cost savings.
- (30) The studies submitted by the Dutch authorities and carried out by two independent consultants show that the rent prices for 'dry land' in other northern European ports, are considerably lower than in Rotterdam. The study submitted earlier (including the ports Le Havre, Dunkirk, Zeebrugge, Antwerp, Hamburg, Bremerhaven, Moerdijk, Vlissingen, Amsterdam and Rotterdam) shows average rents for 1993/98 ranging from NLG 4,75/m<sup>2</sup> to NLG 9,75/m<sup>2</sup>, with the latter, highest average rent being for Rotterdam. The second study, actually focusing on another issue (see recital 31), gives an overview of maximum rents for the six largest ports (Rotterdam, Antwerp, Hamburg, Bremen/Bremerhaven, Dunkirk and Le Havre) varying between roughly NLG 14/m<sup>2</sup> and 4/m<sup>2</sup>. Rotterdam in that study also shows the highest maximum rent.
- (31) Due to the fact that the Dutch authorities stated that Reebok was not dependent on a harbour site and could have established its distribution centre further inland where land is generally cheaper, another study was submitted. This study compares rents for 'inland' (non-harbour) sites in northern France (Pas-de-Calais), Belgium and the Netherlands so as to take account of the theoretical alternatives available to Reebok having regard to its requirement for low transportation costs.
- (32) The data show that Reebok's rent in Rotterdam is not only in line with but in the top range of rents charged in the 'market', i.e. for plots at northern European ports or inland sites. The decision to opt for a site with a relatively high rent also indicates that Reebok did not base its decision mainly on land costs, but on more general strategic criteria such as the impact of the location on transportation. This is further supported by the fact that Reebok did not take up an offer of land completely free of charge for 99 years. However, this also indicates that locations at other ports or further inland were not fully comparable in Reebok's view. Moreover, the sites at other ports or further inland are also offered and managed by municipalities or public companies and not by private investors. For these reasons, the Commission requires, as an additional criterion to be fulfilled for accepting it as a 'market rent', that Reebok's rent should result in a net profit for the GHR.
- (33) The Commission therefore, as a second step, assessed whether the GHR's investment in the Reebok project was profitable. Lacking private investors in that type of business, a market rate of return on such investments is not available for comparison. The minimum requirement therefore is that the deduction of the project's costs (present value as at 1 January 1998) from the income (present value as at 1 January 1998) should result in a positive net present value for the GHR.
- (34) The Dutch authorities submitted the GHR's calculations of the income and cost components over 25 years. According to these calculations, the present value of the rental income from Reebok as at 1 January 1998 was [...] (\*)<sup>(2)</sup>, the present value of Reebok's share of the total costs <sup>(2)</sup> minus the cost savings generated by Reebok was [...] (\*)<sup>(2)</sup> million resulting in a positive net present value of [...] (\*)<sup>(3)</sup>.

<sup>(2)</sup> Reebok's share of the total costs was calculated on the basis of the proportion of square metres Reebok occupies in Distripark Maasvlakte: 13,2 % of 86,6 ha.

<sup>(3)</sup> It appears that the Dutch authorities in their calculations of the present values of costs and income used discounting rates varying between 5 % and 6 %. The Commission when discounting the figures by a reference rate of 5,95 % (applicable for the Netherlands in the beginning of 1998) arrives at a rather similar result, i.e. a positive net present value of [...] \*. Considering that the payment of the rent in general only starts one year after signing the contract, i.e. in Reebok's case in 1999, one could also argue for a reference rate of 4,76 %. However, the Commission takes the view that for the calculation of present values of income and costs, the contract time is decisive. Moreover, if profitability is given with a reference rate of 5,95 %, it is even higher with a lower reference rate.

<sup>(1)</sup> ECR [1999] I-2459.

(35) Finally, the Commission addressed the issue of price differentiation, i.e. the fact that other tenants at the Distripark Maasvlakte pay higher rents. In this context the question arose of whether the GHR was granting particularly favourable treatment to Reebok. Private or public undertakings can, in principle, charge differentiated prices provided that the pricing policy does not generate losses on the invested capital and that there is no discrimination against the other customers. The first criterion has been analysed above and is fulfilled (see recital 34). For the second criterion to be met, price reductions must correspond to the savings achieved on the costs, for instance savings caused by larger volumes bought or other economies of scale <sup>(1)</sup>.

(36) The weighed average of the annual rents <sup>(2)</sup> already agreed in the Distripark Maasvlakte and proven by the submitted contracts is [...] <sup>(\*)</sup>. This results in a discount for Reebok of [...] <sup>(\*)</sup> or approximately 15 %. The present value of the total amount of this discount over 25 years as at 1 January 1998 is according to the Commission's calculation [...] <sup>(\*)</sup>, which is less than the present value of the cost savings of [...] <sup>(\*)</sup> <sup>(3)</sup> achieved due to the larger plot Reebok rented (see also recital 23). Consequently, it can be said that the rent discount for Reebok is justified by the cost savings.

#### VII. CONCLUSION

(37) The Commission finds that the rental conditions described above are in line with the market investor principle and therefore do not constitute State aid or contain aid elements within the meaning of Article 87(1)

of the EC Treaty and Article 61(1) of the EEA Agreement,

HAS ADOPTED THIS DECISION:

#### Article 1

The formal investigation procedure was closed with regard to the amount of NLG 4,25 million (EUR 1,9 million) granted as an incentive, the Netherlands having provided convincing evidence that the incentive had been withdrawn and that the amount already disbursed, inclusive of interest up to the date of repayment, calculated on the basis of the reference rate, had been repaid.

#### Article 2

The rent Reebok is paying for its plot at the Distripark Maasvlakte, in the Port of Rotterdam, according to the contract signed by Reebok and the Gemeentelijk Havenbedrijf Rotterdam on 25 June 1998, does not constitute aid or contain aid elements within the meaning of Article 87(1) of the EC Treaty and Article 61(1) of the EEA Agreement.

#### Article 3

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 25 July 2001.

*For the Commission*

Mario MONTI

*Member of the Commission*

<sup>(1)</sup> See ECR [1990] I-3083.

<sup>(2)</sup> Weighed by total size per price/m<sup>2</sup>.

<sup>(3)</sup> For the calculation of the present values the reference rate of 5,95 % was applied.



## COMMISSION DECISION

of 25 January 2002

**on the national provisions concerning HIV testing kits notified under Article 95(4) of the EC Treaty by the United Kingdom as regards Directive 98/79/EC on *in vitro* diagnostic medical devices**

(notified under document number C(2002) 297)

(Text with EEA relevance)

(2002/65/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

**2. The notified national provisions**

Having regard to the Treaty establishing the European Community and in particular Article 95(6) thereof,

Whereas:

**I. FACTS****1. Community legislation: Directive 98/79/EC**

- (1) Directive 98/79/EC of the European Parliament and of the Council of 27 October 1998 on *in vitro* diagnostic medical devices<sup>(1)</sup> lays down harmonised rules concerning the safety, health protection and performance, characteristics and authorisation procedures for *in vitro* diagnostic medical devices, with a view to their placing on the market and putting into service.
- (2) Directive 98/79/EC stipulates in Article 2 that the Member States shall take all necessary steps to ensure that devices may be placed on the market and/or put into service only if they comply with the requirements laid down by the Directive when duly supplied and properly installed, maintained and used in accordance with their intended purpose.
- (3) Directive 98/79/EC stipulates in Article 4 that the Member States shall not create any obstacle to the placing on the market or the putting into service within their territory of devices bearing the EC marking indicating that they are considered to meet the requirements set out in the Directive.
- (4) Directive 98/79/EC, in Annex I, contains specific labelling requirements related to the product and its characteristics, including instructions for a proper and safe use. These requirements aim, among others, to inform users of the residual risks in relation with the product, as also to provide information on the identification of the device, on any special microbiological state, particular storage or handling conditions, particular operating instructions and appropriate precautions to take.

- (5) The United Kingdom intends to maintain in force national provisions concerning HIV testing kits. These provisions are set out in the HIV testing kits and services regulations 1992 (SI 1992/460 — 1992 Regulations) and apply since 1 April 1992.
- (6) The notification of the United Kingdom relates to 'those provisions of the 1992 Regulations that potentially relate to the free movement of goods'. These are, according to the notification, the provisions, that make it an offence within the UK, to sell, supply or advertise, for sale or supply, a HIV testing kit or any component part of such a kit to a member of the public (Article 2 of the Regulations) and also these, that make it an offence to sell or supply a HIV testing kit that is not accompanied at the time of sale or supply in the United Kingdom by a notice indicating that it may not be supplied to a member of the public (Article 3(2)(a) of the Regulations), that a positive test should not be relied upon unless confirmed by at least one other test result, and that a negative test may not have detected recently acquired HIV (Article 3(2)(b) and (c) of the Regulations).
- (7) The United Kingdom justifies its request by referring to the protection of life and public health. They consider it necessary to ensure the quality of HIV Testing Services and to underpin Government public health policy on HIV. In that context, individuals taking HIV tests should have the opportunity to receive pre-test discussion and post (positive) test counselling with a trained health care professional. Such discussions allow for the impact and consequences of a positive HIV test to be dealt with and for the communication of important advice on the prevention of transmission.

**II. PROCEDURE**

- (8) Directive 98/79/EC of the European Parliament and of the Council was adopted on 27 October 1998. Member States has to adopt and publish the national provisions necessary to comply with the Directive before 7 December 1999 and to apply them with effect from 7 June 2000.

<sup>(1)</sup> OJ L 331, 7.12.1998, p. 1.

- (9) Article 95(4) of the Treaty reads as follows: 'If, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 30, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them'.
- (10) By letter of 31 July 2001, the United Kingdom Permanent Representation informed the Commission, in accordance with Article 95(4) of the EC Treaty, that the United Kingdom intends to maintain in force the HIV Testing Kits and Services Regulations 1992. This notification was received on 1 August 2001.
- (11) According to Article 95(6) of the Treaty, the six months period for the examination of the notification under Article 95(4) starts on 2 August 2001, the day following the one when the notification was received.

### III. ASSESSMENT

- (12) The notification submitted by the United Kingdom authorities on 31 July 2001 intends to maintain in force national provisions after the adoption of Directive 98/79/EC, which constitutes a harmonisation measure adopted on the basis of Article 95 of the Treaty (ex Article 100A).
- (13) Directive 98/79/EC provides for the prohibition of any restriction regarding the placing on the market or the putting into service of devices complying with the Directive. Article 2 of the Regulations introduce restrictions to the distribution of HIV testing kits, limiting their availability to the medical profession. Directive 98/79/EC does not contain any rules concerning the distribution of *in vitro* diagnostic medical devices after their placing on the market or their putting into service. Consequently, the national measure corresponding to Article 2 of the Regulations does not fall under the scope of Directive 98/79/EC.
- (14) The labelling requirements of Directive 98/79/EC, are related to the product and its characteristics. They concern, among others, its proper and safe use, particular storage or handling conditions, instructions for use and particular operating instructions and also any other relevant information related to the product. The notified national measures, as far as they require a notice indicating that the product must not be sold or supplied to a member of the public, intend to give information regarding restrictions to the distribution of the HIV testing kits. Directive 98/79/EC does not contain neither any provisions regarding the distribution of *in vitro* diagnostic medical devices, nor any labelling requirements regarding their distribution and marketing. Consequently, this national measure, corresponding to Article

3(2)(a) of the Regulations, does not fall under the scope of Directive 98/79/EC.

- (15) The labelling requirements of Directive 98/79/EC aim, among others, to inform users of the residual risks in relation with the product. They impose information on a proper and safe use, on appropriate precautions to take. This should include the possibility of false positive or false negative result. The notified national measures, as far as they require a warning, drawing the attention of the users to a possible fault positive or negative result, intend to give information concerning the risks related to the product. Consequently, the national measures, corresponding to Article 3(2)(b) and (c) of the Regulations, implement Directive 98/79/EC.

### IV. CONCLUSION

- (16) Article 95(6) of the EC Treaty, aims at approving or rejecting a national measure that derogates from a harmonisation measure. National provisions that are either falling outside the scope of a harmonisation Directive or intended to implement such a Directive cannot be assessed under this procedure.
- (17) In the light of the above considerations and without prejudice to any assessment that the Commission can make as regards the compatibility of the notified national measures with the EC Treaty, the Commission is of the opinion that the notification of the United Kingdom for maintaining the measures in the HIV Testing Kits and Services Regulations 1992, as submitted on 31 July 2001, with reference to Article 95(4) of the Treaty, is inadmissible.

HAS ADOPTED THIS DECISION:

#### Article 1

The notification concerning the maintenance of the notified measures in the HIV Testing Kits and Services Regulations 1992, which the United Kingdom submitted to the Commission on 31 July 2001, on the basis of Article 95(4) of the Treaty, is hereby declared inadmissible.

#### Article 2

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 25 January 2002.

For the Commission

Erkki LIIKANEN

Member of the Commission