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Contents

I *Acts whose publication is obligatory*

- Commission Regulation (EC) No 1612/97 of 11 August 1997 on the supply of vegetable oil as food aid 1
- ★ **Commission Decision No 1613/97/ECSC of 8 August 1997 amending Annex V to Decision No 3/96/ECSC on administering certain restrictions on imports of certain steel products from Russia and Ukraine 4**
- Commission Regulation (EC) No 1614/97 of 11 August 1997 establishing the standard import values for determining the entry price of certain fruit and vegetables 6
- Commission Regulation (EC) No 1615/97 of 11 August 1997 amending representative prices and additional duties for the import of certain products in the sugar sector 8
- ★ **Commission Directive 97/48/EC of 29 July 1997 amending for the second time Council Directive 82/711/EEC laying down the basic rules necessary for testing migration of the constituents of plastic materials and articles intended to come into contact with foodstuffs⁽¹⁾ 10**

II *Acts whose publication is not obligatory*

Council

97/541/EC:

- ★ **Council Decision of 21 May 1997 concerning the conclusion of the Agreement between the European Community and the United States of America on customs cooperation and mutual assistance in customs matters 16**

(¹) Text with EEA relevance

Agreement between the European Community and the United States of America on customs cooperation and mutual assistance in customs matters	17
Information relating to the entry into force of the Agreement between the European Community and the United States of America on Customs Cooperation and Mutual Assistance in Customs Matters	25
 Commission	
97/542/EC:	
* Commission Decision of 18 December 1996 on tax exemptions for biofuels in France ⁽¹⁾	26
97/543/ECSC:	
* Commission Decision of 7 July 1997 on the conclusion of an Agreement in the form of an exchange of letters between the European Coal and Steel Community and the Russian Federation extending the Agreement between the European Coal and Steel Community and the Russian Federation on trade in certain steel products for the period 1 July to 30 September 1997	36
Agreement in the form of an Exchange of Letters between the European Coal and Steel Community and the Russian Federation extending the Agreement between the European Coal and Steel Community and the Russian Federation on trade in certain steel products for the period 1 July to 30 September 1997	37

⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

**COMMISSION REGULATION (EC) No 1612/97
of 11 August 1997
on the supply of vegetable oil as food aid**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

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

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

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

Whereas it is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community food aid⁽²⁾, as amended by Regulation (EEC) No 790/91⁽³⁾;

Whereas it is necessary to specify the time limits and conditions of supply and the procedure to be followed to determine the resultant costs;

Whereas, in order to ensure that the supplies are carried out, provision should be made for tenderers to be able to mobilize either rapeseed oil or sunflower oil; whereas the

contract for the supply of such each lot is to be awarded to the tenderer submitting the lowest tender,

HAS ADOPTED THIS REGULATION:

Article 1

Vegetable oil shall be mobilized in the Community, as Community food aid for supply to the recipient listed in the Annex, in accordance with Regulation (EEC) No 2200/87 and under the conditions set out in the Annex. Supplies shall be awarded by the tendering procedure.

The supply shall cover the mobilization of vegetable oil produced in the Community. Mobilization may not involve a product manufactured and/or packaged under inward processing arrangements.

Tenders relating to the lots specified in the Annex shall cover either rapeseed oil or sunflower oil. Tenders shall be rejected unless they specify the type of oil to which they relate.

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

Article 2

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

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

Done at Brussels, 11 August 1997.

For the Commission

Emma BONINO

Member of the Commission

⁽¹⁾ OJ No L 166, 5. 7. 1996, p. 1.

⁽²⁾ OJ No L 204, 25. 7. 1987, p. 1.

⁽³⁾ OJ No L 81, 28. 3. 1991, p. 108.

ANNEX

LOT A

1. **Operation No** ⁽¹⁾: 389/96
2. **Programme**: 1996
3. **Recipient** ⁽²⁾: WFP (World Food Programme), via Cristoforo Colombo 426, I-00145 Roma (tel.: (39-6) 5228 2988; fax: 5228 2844/3; telex: 626675 WFP I)
4. **Representative of the recipient**: WFP Yemen, Attn. Country Director, Khorashi Building, Siteen Street, Sana'a
5. **Place or country of destination**: Yemen
6. **Product to be mobilized**: vegetable oil: refined rapeseed oil or refined sunflower oil
7. **Characteristics and quality of the goods** ⁽³⁾ ⁽⁵⁾ ⁽⁷⁾: see OJ No C 114, 29. 4. 1991, p. 1 (III. A (1) (a) or (b))
8. **Total quantity (tonnes net)**: 1 750
9. **Number of lots**: 1
10. **Packaging and marking** ⁽⁶⁾ ⁽⁸⁾: see OJ No C 267, 13. 9. 1996, p. 1 (10.4 A, B and C.2)
see OJ No C 114, 29. 4. 1991, p. 1 (III.A. 3)
Language to be used for the marking: English
Supplementary markings: 'Expiry date ...'
11. **Method of mobilization**: mobilization of refined vegetable oil produced in the Community. Mobilization may not involve a product manufactured and/or packaged under inward-processing arrangements
12. **Stage of supply**: free at port of landing — landed
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: Hodeidah
16. **Address of the warehouse and, if appropriate, port of landing**: —
17. **Period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage**: 22. 9 — 5. 10. 1997
18. **Deadline for the supply**: 26. 10. 1997
19. **Procedure for determining the costs of supply**: invitation to tender
20. **Date of expiry of the period allowed for submission of tenders**: 26. 8. 1997 (12 noon (Brussels time))
21. **In the case of a second invitation to tender**:
 - (a) deadline for the submission of tenders: 9. 9. 1997 (12 noon (Brussels time))
 - (b) period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage: 6 — 19. 10. 1997
 - (c) deadline for the supply: 9. 11. 1997
22. **Amount of tendering security**: ECU 15 per tonne
23. **Amount of delivery security**: 10 % of the amount of the tender in ecus
24. **Address for submission of tenders and tendering securities** ⁽¹⁾:

Bureau de l'aide alimentaire, Attn. Mr T. Vestergaard,
Bâtiment Loi 130, bureau 7/46,
Rue de la Loi/Wetstraat 200, B-1049 Brussels
(telex: 25670 AGREC B; fax: (32-2) 296 70 03/296 70 04 (exclusively))
25. **Refund payable on application by the successful tenderer** ⁽⁴⁾: —

Notes:

- (¹) The operation number should be mentioned in all correspondence.
- (²) The successful tenderer shall contact the recipient as soon as possible to establish which consignment documents are required.
- (³) The successful tenderer shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.
- (⁴) Article 7 (3) (g) of Regulation (EEC) No 2200/87 shall not be applicable to tenders submitted.
- (⁵) The successful tenderer shall supply to the beneficiary or its representative, on delivery, a sanitary certificate.
- (⁶) Notwithstanding OJ No C 114, point IIIA(3)(c) is replaced by the following: 'the words "European Community"'.

- (⁷) Tenders shall be rejected unless they specify the type of oil to which they relate.
- (⁸) The free holding period for containers must be at least 15 days.

COMMISSION DECISION No 1613/97/ECSC

of 8 August 1997

amending Annex V to Decision No 3/96/ECSC on administering certain restrictions on imports of certain steel products from Russia and Ukraine

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to Commission Decision No 3/96/ECSC of 21 November 1995 on administering certain restrictions on imports of certain steel products from Russia and Ukraine⁽¹⁾, as last amended by Decision No 350/97/ECSC⁽²⁾, and in particular Article 8 in conjunction with Article 7 thereof,

Whereas the Agreement on trade in certain steel products between the European Coal and Steel Community and Russia⁽³⁾ has been amended by way of Agreement in the form of an exchange of letters extending the Agreement for the period 1 July to 30 September 1997⁽⁴⁾;

Whereas it is therefore necessary to amend Annex V to Decision No 3/96/ECSC to take account of the above-mentioned exchange of letters;

Whereas the measures provided for in this Decision are in accordance with the opinion of the committee established pursuant to Article 7 of Decision No 3/96/ECSC,

HAS ADOPTED THIS DECISION:

Article 1

Annex V to Decision No 3/96/ECSC is replaced by the text contained in Appendix 1 to this Decision.

Article 2

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

It shall apply from 1 July 1997.

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

Done at Brussels, 8 August 1997.

For the Commission

Leon BRITTAN

Vice-President

⁽¹⁾ OJ No L 5, 8. 1. 1996, p. 1.

⁽²⁾ OJ No L 59, 28. 2. 1997, p. 2.

⁽³⁾ OJ No L 5, 8. 1. 1996, p. 25.

⁽⁴⁾ See page 37 of this Official Journal.

*Appendix 1**ANNEX V***QUANTITATIVE LIMITS**
(expressed in metric tonnes)

The CN codes corresponding to these product categories were published in Official Journal No L 76 on 26 March 1996, p. 41.

RUSSIA

<i>(in tonnes)</i>	
Products	1 January to 30 September 1997
SA. Flat products	
SA1. Coils	155 823
SA1.a. Hot-rolled coils for re-rolling ⁽¹⁾	358 333
SA2. Heavy plate	24 936
SA3. Other flat products	21 413
SB. Long products	
SB1. Beams	9 985
SB2. Wire rod	21 585
SB3. Other long products	77 792

⁽¹⁾ In the case of Russia, CN codes 7208 37 10, 7208 38 10 and 7208 39 10 form a separate sub-category within SA1.

COMMISSION REGULATION (EC) No 1614/97

of 11 August 1997

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

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

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

Whereas Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commis-

sion fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto;

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 12 August 1997.

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

Done at Brussels, 11 August 1997.

For the Commission

Emma BONINO

Member of the Commission

⁽¹⁾ OJ No L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ No L 325, 14. 12. 1996, p. 5.

⁽³⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 11 August 1997 establishing the standard import values for determining the entry price of certain fruit and vegetables

(ECU/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0709 90 79	052	78,8
	999	78,8
0805 30 30	388	62,8
	524	63,0
	528	53,2
	999	59,7
	052	125,8
0806 10 40	400	224,2
	512	89,4
	600	131,1
	624	159,3
	999	146,0
	388	74,2
	400	61,5
0808 10 92, 0808 10 94, 0808 10 98	508	60,3
	512	31,7
	524	83,3
	528	48,3
	804	81,3
	999	62,9
	388	47,5
	512	9,5
	528	39,2
	999	32,1
0808 20 57	052	74,1
	999	74,1
0809 30 41, 0809 30 49	064	73,3
	066	70,4
	999	71,9

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 68/96 (OJ No L 14, 19. 1. 1996, p. 6). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 1615/97
of 11 August 1997

**amending representative prices and additional duties for the import of certain
products in the sugar sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector ⁽¹⁾, as last amended by Regulation (EC) No 1599/96 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1423/95 of 23 June 1995 laying down detailed implementing rules for the import of products in the sugar sector other than molasses ⁽³⁾, as last amended by Regulation (EC) No 1143/97 ⁽⁴⁾, and in particular the second subparagraph of Article 1 (2), and Article 3 (1) thereof,

Whereas the amounts of the representative prices and additional duties applicable to the import of white sugar, raw sugar and certain syrups are fixed by Commission Regulation (EC) No 1222/97 ⁽⁵⁾, as last amended by Regulation (EC) No 1601/97 ⁽⁶⁾;

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 12 August 1997.

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

Done at Brussels, 11 August 1997.

For the Commission

Emma BONINO

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ No L 141, 24. 6. 1995, p. 16.

⁽⁴⁾ OJ No L 165, 24. 6. 1997, p. 11.

⁽⁵⁾ OJ No L 173, 1. 7. 1997, p. 3.

⁽⁶⁾ OJ No L 216, 8. 8. 1997, p. 69.

ANNEX

to the Commission Regulation of 11 August 1997 amending representative prices and the amounts of additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 99

(ECU)

CN code	Amount of representative prices per 100 kg net of product concerned	Amount of additional duty per 100 kg net of product concerned
1701 11 10 ⁽¹⁾	26,25	3,41
1701 11 90 ⁽¹⁾	26,25	8,41
1701 12 10 ⁽¹⁾	26,25	3,28
1701 12 90 ⁽¹⁾	26,25	7,98
1701 91 00 ⁽²⁾	30,03	10,22
1701 99 10 ⁽²⁾	30,03	5,70
1701 99 90 ⁽²⁾	30,03	5,70
1702 90 99 ⁽³⁾	0,30	0,35

⁽¹⁾ For the standard quality as defined in Article 1 of amended Council Regulation (EEC) No 431/68 (OJ No L 89, 10. 4. 1968, p. 3).

⁽²⁾ For the standard quality as defined in Article 1 of Council Regulation (EEC) No 793/72 (OJ No L 94, 21. 4. 1972, p. 1).

⁽³⁾ By 1 % sucrose content.

COMMISSION DIRECTIVE 97/48/EC

of 29 July 1997

amending for the second time Council Directive 82/711/EEC laying down the basic rules necessary for testing migration of the constituents of plastic materials and articles intended to come into contact with foodstuffs

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 89/109/EEC of 21 December 1988 on the approximation of the laws of the Member States relating to materials and articles intended to come into contact with foodstuffs⁽¹⁾, and in particular Article 3 thereof,

Whereas Council Directive 82/711/EEC of 18 October 1982 laying down the basic rules necessary for testing migration of the constituents of plastic materials and articles intended to come into contact with foodstuffs⁽²⁾, as amended by Directive 93/8/EEC⁽³⁾, does not specify the migration tests to be carried out in cases where the fatty food simulants are inappropriate;

Whereas the application of the test using the fatty food simulants is time consuming and difficult to conduct and therefore alternative tests in some specified conditions should be permitted;

Whereas it is not clear whether Directive 82/711/EEC authorizes the use of plastic materials and articles which are not intended to come into contact with foodstuffs of all types but which are intended to come into contact with more than one single foodstuff or more than one specific group of foodstuffs; whereas this use may be authorized without posing any problem to health provided an appropriate indication informs the consumer or the retailer of the type(s) of foodstuff(s) with which it may or may not come into contact;

Whereas the indication of an excessive number of foodstuffs types which could be in contact with some plastic materials and articles may not be easy to understand and therefore these materials and articles should be submitted to all the food simulants or test media provided by this Directive to protect the consumer;

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

HAS ADOPTED THIS DIRECTIVE:

Article 1

The Annex to Directive 82/711/EEC is replaced by the Annex hereto.

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive as from 1 July 1998. They shall immediately inform the Commission thereof.

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

Article 3

This Directive shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Communities*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 29 July 1997.

For the Commission

Martin BANGEMANN

Member of the Commission

⁽¹⁾ OJ No L 40, 11. 2. 1989, p. 38.

⁽²⁾ OJ No L 297, 23. 10. 1982, p. 26.

⁽³⁾ OJ No L 90, 14. 4. 1993, p. 22.

ANNEX

ANNEX

BASIC RULES FOR OVERALL AND SPECIFIC MIGRATION TESTING

1. "Migration tests" for the determination of specific and overall migration shall be carried out using the "food simulants" laid down in Chapter I of this Annex and under "conventional migration test conditions" specified in Chapter II of this Annex.
2. "Substitute tests" which use the "test media" under the "conventional substitute test conditions" as set out in Chapter III shall be carried out if the migration test using the fatty food simulants (see Chapter I) is not feasible for technical reasons connected with the method of analysis.
3. "Alternative tests" indicated in Chapter IV are permissible instead of migration tests with fatty food simulant when the conditions specified in Chapter IV are fulfilled.
4. In all three cases it is permissible:
 - (a) to reduce the number of tests to be carried out to that or those which, in the specific case under examination, is (are) generally recognized to be the most severe on the basis of scientific evidence;
 - (b) to omit the migration or the substitute or the alternative tests where there is conclusive proof that the migration limits cannot be exceeded in any foreseeable conditions of use of the material or article.

CHAPTER I

Food simulants

1. Introduction

As it is not possible always to use foodstuffs for testing food contact materials, food simulants are introduced. They are classified by convention as having the character of one or more food types. The food types and the food simulants to be used are indicated in Table 1. In practice various mixtures of food types are possible, for instance fatty and aqueous foods. They are described in Table 2 accompanied by the indication of the food simulant(s) to be selected in carrying out the migration tests.

Table 1

Food types and food simulants

Food type	Conventional classification	Food simulant	Abbreviation
Aqueous foods (i.e. aqueous foods having a pH > 4,5)	Foodstuffs for which test with the simulant A only is prescribed in Directive 85/572/EEC ⁽¹⁾	Distilled water or water of equivalent quality	Simulant A
Acidic foods (i.e. aqueous foods having a pH ≤ 4,5)	Foodstuffs for which test with the simulant B only is prescribed in Directive 85/572/EEC	Acetic acid 3 % (w/v)	Simulant B
Alcoholic foods	Foodstuffs for which test with the simulant C only is prescribed in Directive 85/572/EEC	Ethanol 10 % (v/v) This concentration shall be adjusted to the actual alcoholic strength of the food if it exceeds 10 % (v/v)	Simulant C
Fatty foods	Foodstuffs for which test with the simulant D only is prescribed in Directive 85/572/EEC	Rectified olive oil or other fatty food simulants	Simulant D
Dry foods		None	None

⁽¹⁾ OJ No L 372, 31. 12. 1985, p. 14.

2. Selection of food simulants

2.1. *Materials and articles intended for contact with all food types*

The tests shall be carried out using the food simulants mentioned below, which are considered the more severe, at the test conditions specified in Chapter II, taking a new test specimen of the plastic material or article for each simulant:

- 3 % acetic acid (w/v) in aqueous solution,
- 10 % ethanol (v/v) in aqueous solution,
- rectified olive oil ("reference simulant D").

However this reference simulant D may be replaced by a synthetic mixture of triglycerides or sunflower oil or corn oil with standardized specifications ("Other fatty food simulants", called "simulants D"). If, when using any of these other fatty food simulants, the migration limits are exceeded, for the judgement of non compliance a confirmation of the result by using olive oil is obligatory, when technically feasible. If this information is not technically feasible and the material or article exceeds the migration limits it shall be deemed not in compliance with the Directive 90/128/EEC.

2.2. *Materials and articles intended for contact with specific food types*

This case refers only to the following situations:

- (a) when the material or article is already in contact with a known foodstuff;
- (b) when the material or article is accompanied, according to the rules of Article 6 of Directive 89/109/EEC, by a specific indication stating with which food types described in Table 1 it may or may not be used, for example "only for aqueous foods";
- (c) when the material or article is accompanied, according to the rules of Article 6 of Directive 89/109/EEC, by a specific indication stating with which foodstuff(s) or group(s) of foodstuffs mentioned in Directive 85/572/EEC they may or may not be used. This indication shall be expressed:
 - (i) at the marketing stages other than retail stage, by using the "reference number" or "description of foodstuffs" provided in the Table of Directive 85/572/EEC;
 - (ii) at the retail stage using an indication which shall refer to only a few foods or groups of food, preferably with examples which are easy to understand.

In these situations the tests shall be carried out using for the case under (b) the food simulant(s) indicated as examples in Table 2 and for the case under (a) and (c) the food(s) simulant(s) mentioned in Directive 85/572/EEC. Where the foodstuff(s) or group(s) of foodstuffs is (are) not included in the list specified in Directive 85/572/EEC, select the item from Table 2 which corresponds most closely to the foodstuff(s) or group(s) of foodstuffs under examination.

If the material or article is intended to come into contact with more than one foodstuff or group(s) of foodstuffs having different reduction factors, for each foodstuff apply the appropriate reduction factors to the test result. If one or more results of such calculation exceed the restriction, then the material is not suitable for that particular foodstuff or group(s) of foodstuff.

The tests shall be carried out at the test conditions specified in Chapter II, taking a new test specimen for each simulant.

Table 2

Food simulants to be selected for testing food contact materials in special cases

Contact foods	Simulant
Only aqueous foods	Simulant A
Only acidic foods	Simulant B
Only alcoholic foods	Simulant C
Only fatty foods	Simulant D
All aqueous and acidic foods	Simulant B
All alcoholic and aqueous foods	Simulant C

Contact foods	Simulant
All alcoholic and acidic foods	Simulants C and B
All fatty and aqueous foods	Simulants D and A
All fatty and acidic foods	Simulants D and B
All fatty and alcoholic and aqueous foods	Simulants D and C
All fatty foods and alcoholic and acidic foods	Simulants D, C and B

CHAPTER II

Migration test conditions (times and temperatures)

- The migration tests are to be carried out, selecting from the times and temperatures specified in Table 3 those which correspond to the worst foreseeable conditions of contact for the plastic material or article being studied and to any labelling information on maximum temperature for use. Therefore if the plastic material or article is intended for a food contact application covered by a combination of two or more times and temperatures taken from the table, the migration test shall be carried out subjecting the test specimen successively to all the applicable worst foreseeable conditions appropriate to the sample, using the same portion of food simulant.

- Contact conditions generally recognized as more severe**

In application of the general criteria that the determination of migration should be restricted to the test conditions which, in the specific case under examination, are recognized to be the most severe on the basis of scientific evidence, some specific examples for the test contact conditions are given below.

- 2.1. Plastic materials and articles intended to come into contact with foodstuffs at any condition of time and temperature*

Where no labelling or instructions are given to indicate contact temperature and time expected in actual use, depending on food type(s), simulant(s) A and/or B and/or C shall be used for 4 hours at 100 °C or for 4 hours at reflux temperature and/or simulant D shall be used only for 2 hours at 175 °C. These conditions of time and temperature are conventionally considered to be the more severe.

- 2.2. Plastic materials and articles intended to come into contact with foodstuffs at room temperature or below for an unspecified period*

Where the materials and articles are labelled for use at room temperature or below or where the materials and articles by their nature are clearly intended for use at room temperature and below, the test shall be carried out at 40 °C for 10 days. These conditions of time and temperature are conventionally considered to be the more severe.

- Volatile migrants**

When testing for the specific migration of volatile substances, the test(s) with simulant(s) shall be performed in a manner which recognizes the loss of volatile migrants which may occur in the worst foreseeable conditions of use.

- Special cases**

- 4.1. For materials and articles intended for use in microwave ovens, migration testing may use either a conventional or a microwave oven provided the appropriate time and temperature conditions are selected from Table 3.
- 4.2. If it is found that carrying out the tests under the contact conditions specified in Table 3 causes physical or other changes in the test specimen which do not occur under worst foreseeable conditions of use of the material or article under examination, the migration tests shall be carried out under the worst foreseeable conditions of use in which these physical or other changes do not take place.
- 4.3. By derogation from the test conditions provided in Table 3 and in paragraph 2, if the plastic material or article may in actual use be employed for periods of less than 15 minutes at temperatures between 70 °C and 100 °C (e.g. "hot fill") and is so indicated by appropriate labelling or instructions, only the 2 hours test at 70 °C shall be carried out. However if the material or article is intended to be used also for storage at room temperature, the above-mentioned test is replaced by a test at 40 °C for 10 days conventionally considered more severe.

- 4.4. In those instances where the conventional conditions for migration testing are not adequately covered by the test contact conditions of Table 3 (for instance contact temperatures greater than 175 °C or contact time less than 5 minutes), other contact conditions may be used which are more appropriate to the case under examination, provided that the selected conditions may represent the worst foreseeable conditions of contact for the plastic materials or articles being studied.

Table 3
Conventional conditions for migration tests with food simulants

Conditions of contact in worst foreseeable use	Test conditions
Contact time	Test time
$t \leq 5 \text{ min}$	See the conditions in point 4.4.
$5 \text{ min} < t \leq 0,5 \text{ hours}$	0,5 hours
$0,5 \text{ h} < t \leq 1 \text{ hour}$	1 hours
$1 \text{ h} < t \leq 2 \text{ hours}$	2 hours
$2 \text{ h} < t \leq 4 \text{ hours}$	4 hours
$4 \text{ hours} < t \leq 24 \text{ hours}$	24 hours
$t > 24 \text{ hours}$	10 days
Contact temperature	Test temperature
$T \leq 5 \text{ °C}$	5 °C
$5 \text{ °C} < T \leq 20 \text{ °C}$	20 °C
$20 \text{ °C} < T \leq 40 \text{ °C}$	40 °C
$40 \text{ °C} < T \leq 70 \text{ °C}$	70 °C
$70 \text{ °C} < T \leq 100 \text{ °C}$	100 °C or reflux temperature
$100 \text{ °C} < T \leq 121 \text{ °C}$	121 °C (*)
$121 \text{ °C} < T \leq 130 \text{ °C}$	130 °C (*)
$130 \text{ °C} < T \leq 150 \text{ °C}$	150 °C (*)
$T > 150 \text{ °C}$	175 °C (*)

(*) This temperature shall be used only for simulant D. For simulants A, B or C the test may be replaced by a test at 100 °C or at reflux temperature for a duration of four times the time selected according to the general rules of paragraph 1.

CHAPTER III

Substitute fat test for overall and specific migration

1. If the use of the fatty food simulants is not feasible for technical reasons connected with the method of analysis, use instead all test media prescribed in Table 4 under the test conditions corresponding to the test conditions for simulant D.

This table gives some examples of the most important conventional migration test conditions and their corresponding conventional conditions of the substitute tests. For other test conditions not stated in Table 4, take into account these examples as well as the existing experience for the type of polymer under examination.

Use for each test a new test specimen. Apply for each test medium the same rules prescribed in Chapters I and II for simulant D. Use, where appropriate, the reduction factors established in Directive 85/572/EEC. To ascertain compliance with any migration limit, select the highest value obtained using all the test media.

However if it is found that carrying out these tests causes physical or other changes in the test specimen which do not occur under the worst foreseeable conditions of use of the material or article under examination, the result for this test media shall be discarded and the highest of the remaining values shall be chosen.

2. By derogation of point 1, it may be possible to omit one or two of the substitute tests provided in Table 4, if these tests are generally recognized as not appropriate for the sample under consideration on the basis of scientific evidence.

Table 4
Conventional conditions for substitute tests

Test condition with simulant D	Test conditions with isooctane	Test conditions with ethanol 95 %	Test conditions with MPPO (*)
10 d at 5 °C	0,5 d at 5 °C	10 d at 5 °C	—
10 d at 20 °C	1 d at 20 °C	10 d at 20 °C	—
10 d at 40 °C	2 d at 20 °C	10 d at 40 °C	—
2 h at 70 °C	0,5 h at 40 °C	2,0 h at 60 °C	—
0,5 h at 100 °C	0,5 h at 60 °C (**)	2,5 h at 60 °C	0,5 h at 100 °C
1 h at 100 °C	1,0 h at 60 °C (**)	3,0 h at 60 °C (**)	1 h at 100 °C
2 h at 100 °C	1,5 h at 60 °C (**)	3,5 h at 60 °C (**)	2 h at 100 °C
0,5 h at 121 °C	1,5 h at 60 °C (**)	3,5 h at 60 °C (**)	0,5 h at 121 °C
1 h at 121 °C	2,0 h at 60 °C (**)	4,0 h at 60 °C (**)	1 h at 121 °C
2 h at 121 °C	2,5 h at 60 °C (**)	4,5 h at 60 °C (**)	2 h at 121 °C
0,5 h at 130 °C	2,0 h at 60 °C (**)	4,0 h at 60 °C (**)	0,5 h at 130 °C
1 h at 130 °C	2,5 h at 60 °C (**)	4,5 h at 60 °C (**)	1 h at 130 °C
2 h at 150 °C	3,0 h at 60 °C (**)	5,0 h at 60 °C (**)	2 h at 150 °C
2 h at 175 °C	4,0 h at 60 °C (**)	6,0 h at 60 °C (**)	2 h at 175 °C

(*) MPPO = Modified polyphenylene oxide

(**) The volatile tests media are used up to a maximum temperature of 60 °C. A precondition of using the substitute tests is that the material or article will withstand the test conditions that would otherwise be used with simulant D. Immerse a test specimen in olive oil under the appropriate conditions. If the physical properties are changed (e.g. melting, deformation) then the material is considered unsuitable for use at that temperature. If the physical properties are not changed, then proceed with the substitute tests using new specimens.

CHAPTER IV

Alternative fat tests for overall and specific migration

1. It is permissible to use the result of alternative tests as specified in this Chapter provided that both the following conditions are fulfilled:
 - (a) the results obtained in a "comparison test" show that the values are equal to or greater than those obtained in the test with simulant D;
 - (b) the migration in alternative test does not exceed the migration limits, after application of appropriate reduction factors provided in Directive 85/572/EEC.

If either or both conditions are not fulfilled, then the migration tests must be performed.

2. By derogation of the condition previously mentioned in paragraph 1 (a), it is possible to omit the comparison test if there is other conclusive proof based on scientific experimental results that the values obtained in the alternative test are equal to or greater than those obtained in the migration test.

3. Alternative tests

3.1. Alternative tests with volatile media

These tests use volatile media such as isooctane or ethanol 95 % or other volatile solvents or mixture of solvents. They shall be carried out at the contact conditions such that the condition under 1 (a) is fulfilled.

3.2. "Extraction tests"

Other tests, which use media having a very strong extraction power under very severe test conditions, may be used if it is generally recognized, on the basis of scientific evidence, that the results obtained using these tests ("extraction tests") are equal to or higher than those obtained in the test with simulant D.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 21 May 1997

concerning the conclusion of the Agreement between the European Community and the United States of America on customs cooperation and mutual assistance in customs matters

(97/541/EC)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Whereas on 5 April 1993 the Council authorized the Commission to negotiate, on behalf of the Community, customs cooperation agreements with some of the Community's main trading partners;

Whereas the Agreement between the European Community and the United States of America on customs cooperation and mutual assistance in customs matters should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and the United States of America on customs cooperation and mutual assistance in customs matters is hereby approved on behalf of the European Community.

The text of the Agreement is attached to this Decision.

Article 2

The Commission, assisted by representatives of the Member States, shall represent the Community on the Joint Customs Cooperation Committee set up under Article 22 of the Agreement.

Article 3

The President of the Council is hereby authorized to designate the persons empowered to sign the Agreement on behalf of the Community.

Article 4

The President of the Council shall effect the notification provided for in Article 23 of the Agreement on behalf of the Community.

Article 5

This Decision shall be published in the *Official Journal of the European Communities*.

Done at Brussels, 21 May 1997.

For the Council

The President

M. PATIJN

AGREEMENT

between the European Community and the United States of America on customs cooperation and mutual assistance in customs matters

THE EUROPEAN COMMUNITY AND THE UNITED STATES OF AMERICA, hereinafter referred to as the 'Contracting Parties',

TAKING ACCOUNT of the joint European Union-United States action plan, signed in Madrid on 3 December 1995;

CONSIDERING the importance of the commercial links between the European Community and the United States of America and desirous of contributing, to the benefit of both Contracting Parties, to the harmonious development of those links;

BELIEVING THAT, in order to attain this objective, there should be an undertaking to develop customs cooperation of the widest possible scope;

CONSIDERING that operations in breach of customs legislation are prejudicial to the economic, fiscal and commercial interests of both Contracting Parties, and recognizing the importance of ensuring the accurate assessment of customs duties and other taxes;

CONVINCED that action against such operations can be made more effective by cooperation between their customs authorities;

TAKING ACCOUNT of the respective competencies of the European Community and the Member States of the European Community, and desiring to conclude an agreement on those matters falling under the competencies of the European Community;

CONSIDERING the existing agreements on customs cooperation and mutual assistance which have been concluded between individual Member States of the European Community and the United States of America and other international agreements and conventions already accepted by the CONTRACTING PARTIES,

HAVE AGREED AS FOLLOWS:

TITLE I

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Agreement:

- (a) 'customs legislation' shall mean provisions adopted by the European Community and the United States of America governing the import, export, transit of goods and their placing under any customs procedure, including measures of prohibition, restriction and control;
- (b) 'customs authority' shall mean, in the European Community, the competent services of the Commission of the European Communities and the customs authorities of the Member States of the European Community, and, in the United States of America, the US Customs Service, Department of the Treasury;

- (c) 'applicant authority' shall mean the competent customs authority which has been appointed by a Contracting Party for this purpose and which makes a request for assistance in customs matters;
- (d) 'requested authority' shall mean the competent customs authority which has been appointed by a Contracting Party for this purpose and which receives a request for assistance in customs matters;
- (e) 'personal data' shall mean all information relating to an identified or identifiable individual;
- (f) 'breach of customs legislation' shall mean any violation of the customs legislation as well as any attempted violation of such legislation.

Article 2

Territorial application

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty and, on the other hand, to the territory of the United States of America.

*Article 3***Future developments**

The Contracting Parties may by mutual consent expand this Agreement with a view to increasing the levels of customs cooperation and supplementing them, in accordance with their respective customs legislation, by means of agreements on specific sectors or matters.

TITLE II

SCOPE OF AGREEMENT*Article 4***Performance of cooperation and assistance**

All cooperation and assistance under this Agreement shall be performed by the Contracting Parties in accordance with their relevant laws, rules, and other legal instruments. In addition, all cooperation and assistance under this Agreement by either Contracting Party shall be performed within the competence and available resources of its customs authority.

*Article 5***Obligations imposed under other agreements**

1. Taking into account the respective competencies of the European Community and the Member States, the provisions of this Agreement shall:

- not affect the obligations of the Contracting Parties under any other international agreement or convention,
- be deemed complementary with agreements on customs cooperation and mutual assistance which have been, or may be, concluded between individual Member States of the European Union and the United States of America, and
- not affect the provisions governing the communication between the competent services of the Commission and the customs authorities of the Member States of any information obtained under this Agreement which could be of interest to the Community.

2. Notwithstanding the provisions of paragraph 1, the provisions of this Agreement shall take precedence over the provisions of the bilateral agreements on customs cooperation and mutual assistance which have been, or may be, concluded between individual Member States of the European Union and the United States of America insofar as the provisions of the latter are incompatible with those of this Agreement.

3. In respect of questions relating to the applicability of this Agreement, the Contracting Parties shall consult

each other to resolve the matter in the framework of the Joint Committee set up under Article 22.

TITLE III

CUSTOMS COOPERATION*Article 6***Scope of the cooperation**

1. The customs authorities undertake to develop customs cooperation of the widest possible scope. In particular, the Contracting Parties shall seek to cooperate in:

- (a) establishing and maintaining channels of communication between their customs authorities to facilitate the secure and rapid exchange of information;
- (b) facilitating effective coordination between their customs authorities;
- (c) any other administrative matters related to this Agreement that may from time to time require their joint action.

2. Under this Agreement, customs cooperation shall cover all matters relating to the application of customs legislation.

*Article 7***Cooperation in customs procedures**

The Contracting Parties affirm their commitment to the facilitation of the legitimate movement of goods and shall exchange information and expertise on measures to improve customs techniques and procedures and on computerized systems with a view toward achieving that objective in accordance with the provisions of this Agreement.

*Article 8***Exchange of personnel**

The customs authorities may exchange personnel when mutually beneficial, for the purpose of advancing their understanding of each other's customs techniques and procedures, and computerized systems.

*Article 9***Coordination in international organizations**

The customs authorities shall seek to develop and strengthen their cooperation on topics of common interest in order to seek a coordinated position when those topics are discussed in the framework of international organizations, such as the Customs Cooperation Council.

*Article 10***Technical assistance to third countries**

The Contracting Parties may, where appropriate, exchange information on actions undertaken or to be undertaken with third countries in relation to technical assistance in the customs field, with the aim of improving on the provision of such assistance.

TITLE IV**MUTUAL ASSISTANCE***Article 11***Scope of the mutual assistance**

1. The Contracting Parties shall assist each other, in the areas within their competence, in the manner and under the conditions laid down in this Agreement, in ensuring compliance with customs legislation.

2. Consistent with the terms of this Agreement, each Contracting Party shall, on its own initiative or upon request, furnish the other Contracting Party appropriate information regarding activities that may result in operations in breach of customs legislation within the territory of one Contracting Party.

3. Assistance provided pursuant to this Agreement shall include in particular:

- (a) information which might be useful to combat operations in breach of customs legislation and, in particular, special means of combating such operations;
- (b) information concerning new methods used in committing operations in breach of customs legislation or relevant to patterns of illegal activity; and
- (c) information concerning observations and findings resulting from the successful application of new enforcement aids and techniques.

4. This Agreement is solely between the Contracting Parties; the provisions of this Agreement shall not give rise to a right on the part of any private person to obtain information or to impede in the execution of a request.

5. Nothing in this Agreement shall prejudice the relevant laws, rules and other legal instruments governing criminal matters or judicial proceedings, including mutual legal assistance.

*Article 12***Assistance on request**

1. The Contracting Parties shall assist each other, upon request, by providing appropriate information to the

applicant authority, to enable it to ensure compliance with customs legislation, including information regarding operations noted or planned which are, or might be, in breach of such legislation.

2. At the request of the applicant authority, the requested authority shall inform it:

- (a) whether goods exported from the territory of one of the Contracting Parties have been properly imported into the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods;
- (b) whether goods imported into the territory of one of the Contracting Parties have been properly exported from the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods.

3. The Customs authorities of one Contracting Party, upon request of the Customs authorities of the other Contracting Party, shall, to the extent of their ability, and within the limits of their available resources, exercise special surveillance of:

- (a) persons known to the applicant authority to have committed a breach of customs legislation or suspected of doing so;
- (b) goods either in transport or in storage notified by the applicant authority as giving rise to suspected illicit traffic; and
- (c) means of transport suspected of being used in breaches of customs legislation.

4. The customs authorities of the Contracting Parties shall, upon request, provide relevant documentation relating to transportation and shipment of goods.

*Article 13***Spontaneous assistance**

1. On their own initiative, the Contracting Parties shall assist each other by providing appropriate information if they consider that information to be necessary to ensure compliance with customs legislation, particularly when they obtain information pertaining to:

- (a) operations which are, or appear to be, in breach of such legislation and which may be of interest to the other Contracting Party;
- (b) new means or methods employed in carrying out such operations;
- (c) goods known to be the subject of breaches of customs legislation.

2. In serious cases that could involve substantial damage to the economy, public health, public security, or any other essential interest of the other Contracting Party, the Customs authorities shall wherever possible supply such information on their own initiative.

Article 14

Form and substance of requests for assistance

1. Requests pursuant to this Agreement shall be made in writing. Documents necessary for the execution of such requests shall accompany the request. When required because of the urgency of the situation, oral requests may be accepted, but must be confirmed in writing immediately.

2. Requests made pursuant to paragraph 1 shall include the following information:

- (a) the name of the authority making the request;
- (b) the nature of the requested proceedings;
- (c) the subject of, and the reason for, the request;
- (d) the names and addresses of the parties concerned in the proceedings, if known;
- (e) a brief description of the matter under consideration and the legal elements involved; and
- (f) a summary of the investigation to date and any relevant facts.

3. Requests shall be submitted in an official language of the requested authority or in a language acceptable to that authority.

4. Where a request fails to meet requirements as set forth in this Article, the applicant authority may be asked to revise or supplement it. Where appropriate, precautionary measures may be taken.

Article 15

Execution of requests

1. In order to comply with a request for assistance, the requested authority shall, within the limits of its competence and available resources, take all reasonable measures to execute the request.

2. Where the requested authority is not the appropriate agency to comply with the request for assistance, it shall promptly transmit the request to the appropriate agency and so advise the applicant authority.

3. Duly authorized officials of a Contracting Party may, with the agreement of the other Contracting Party and within the conditions laid down by the latter, obtain from

the offices of the requested authority the relevant books, registers, and other documents or data media held in those offices, make copies thereof or extract any information or particulars relating to operations in breach of customs legislation which the applicant authority needs for the purposes of this Agreement.

4. Officials of a Contracting Party may, with the agreement of the other Contracting Party and subject to the conditions laid down by the latter, be present at inquiries carried out in the latter's territory and assist in the formulation of the official report.

5. A request by a Contracting Party that a certain procedure be followed shall be complied with, subject to the legislation of the requested Party.

6. The applicant authority shall, if it so requests, be advised of the time and place of the action to be taken in response to the request, so that such action may be coordinated.

Article 16

Form in which information is to be communicated

1. The requested authority shall communicate appropriate information to the applicant authority in the form of documents, certified copies of documents, reports and the like.

2. Originals of files, documents and other materials shall be requested only in cases where copies would be insufficient. Upon specific request, copies of such files, documents and other materials shall be appropriately authenticated.

3. Originals of files, documents and other materials that have been transmitted shall be returned at the earliest opportunity; rights of the Contracting Parties or of third parties relating thereto shall remain unaffected.

4. In lieu of documents stipulated in this Agreement, computer-based information may be transmitted in any form for the same purpose. All relevant information for interpreting or utilizing that information shall be supplied at the same time.

Article 17

Exchange of information and confidentiality

1. Any information communicated in whatsoever form pursuant to this Agreement shall be of a confidential or restricted nature, depending on the laws, rules and other legal instruments applicable in each of the Contracting Parties. It shall enjoy the protection extended to like information under the relevant laws, rules and legal instruments of the Contracting Party which received it.

2. Personal data may be provided only where the Contracting Party which will receive the data undertakes to protect such data in a way which is at least equivalent to the one applicable to that particular case in the Contracting Party which may supply the data.

3. Information obtained shall be used solely for the purposes of this Agreement. Where one of the Contracting Parties requests the use of such information for other purposes, it shall obtain the prior written consent of the administrative authority which furnished the information. Such use shall then be subject to any conditions established by that authority.

4. Paragraph 3 shall not impede the use of information in any judicial or administrative proceedings subsequently instituted for failure to comply with customs legislation. The Contracting Parties may, in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts, use as evidence information obtained and documents consulted in accordance with the provisions of this Agreement. The competent authority which supplied that information shall be notified of such use.

5. The receiving Contracting Party may disclose, to a defendant in a criminal prosecution, information material to that defendant's innocence or the credibility of witnesses testifying against that defendant in the prosecution to the extent that the law applicable in such a case in the receiving Contracting Party so requires. The receiving Contracting Party shall notify the providing Contracting Party in advance of such proposed disclosure and provide an explanation regarding the legal requirements for disclosure.

The receiving Contracting Party shall consider specific concerns related to disclosure of the information such as the safety and privacy of persons named or identified by the information. In any case, the receiving Contracting Party shall ensure that the items of information which are to be disclosed shall be limited to what is strictly necessary for the specific purpose of the disclosure concerned, and that personal data can only be used, treated or stored for the purpose of that criminal prosecution.

Article 18

Experts and witnesses

An official of a requested authority may be authorized to appear, within the limitations of the authorization granted, as expert or witness in judicial or administrative proceedings regarding the matters covered by this Agreement in the territory of the other Contracting Party and

to produce such objects, documents or authenticated copies thereof, as may be needed for the proceedings. The request for an appearance must indicate specifically on what matters and by virtue of what title or qualification the official will be questioned.

Article 19

Exceptions to the obligation to provide assistance

1. Assistance may be refused or withheld or may be subject to the satisfaction of certain conditions or requirements in cases where a Party is of the opinion that assistance under this Agreement would be likely to prejudice the sovereignty of the United States of America or of a Member State of the Community, or would be likely to prejudice public policy, security, or other essential interest (such as that referred to in Article 17 (2)), or be contrary to the legal system of the requested Contracting Party, including, where appropriate, the legal system of the Member States of the Community liable to provide assistance.

2. If the applicant authority would be unable to comply if a similar request were made by the requested authority, it shall draw attention to that fact in its request. Compliance with such a request shall be at the discretion of the requested authority.

3. Assistance may be postponed by the requested authority on the ground that it will interfere with an ongoing investigation, prosecution or proceeding. In such a case, the requested authority shall consult with the applicant authority to determine if assistance can be given subject to such terms or conditions as the requested authority may require.

4. Where a request cannot be complied with, the applicant authority shall be promptly notified of that fact, and provided with a statement of the reasons for postponement or denial of the request. Circumstances that might be of importance for the further pursuit of the matter shall also be provided to the applicant authority.

Article 20

Assistance expenses

1. The Contracting Parties shall waive all claims for reimbursement of costs incurred in the execution of this Agreement, except for expenses and allowances paid to experts and to witnesses as well as costs of interpreters other than Government and public service employees.

2. If expenses of a substantial and extraordinary nature are, or will be, required to execute the request, the Contracting Parties shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.

TITLE V

FINAL PROVISIONS

Article 21

Management

1. The management of this Agreement shall be entrusted to the competent departments of the Commission of the European Communities and, where appropriate, the customs authorities of the Member States on the one hand and the Customs Service (Department of Treasury) of the United States of America on the other. They shall decide on all practical measures and arrangements necessary for its application.

2. The Contracting Parties shall consult each other and subsequently keep each other informed of:

- any detailed rules which arise from the implementation of this Agreement,
- the evolution of their respective competencies which affect the scope of the Agreement.

Article 22

Joint Customs Cooperation Committee

1. A Joint Customs Cooperation Committee is hereby established, consisting of representatives of the customs authorities of the Contracting Parties. The Joint Customs Cooperation Committee shall meet at a place and on a date with an agenda fixed by mutual consent.

2. The Joint Customs Cooperation Committee shall, *inter alia*:

- (a) see to the proper functioning of this Agreement;
- (b) examine all issues arising from its application;
- (c) take measures necessary for customs cooperation in accordance with the objectives of this Agreement;
- (d) exchange views on any points of common interest regarding customs cooperation, including future measures and the resources for them;
- (e) recommend solutions aimed at attaining the objectives of this Agreement.

3. The Joint Customs Cooperation Committee shall adopt its rules of procedure.

Article 23

Entry into force and termination

1. This Agreement shall enter into force on the first day of the month following the date on which the Contracting Parties have notified each other of the completion of the procedures necessary for this purpose.

2. Either Contracting Party may terminate this Agreement at any time by notification through diplomatic channels. The termination shall take effect three months from the date of notification to the other Contracting Party. Ongoing proceedings at the time of termination shall nonetheless be completed in accordance with the provisions of this Agreement.

Article 24

Authentic texts

This Agreement is drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic.

En fe de lo cual, los plenipotenciarios abajo firmantes suscriben el presente Acuerdo.

Til bekræftelse heraf har undertegnede befuldmægtigede underskrevet denne aftale.

Zu Urkund dessen haben die unterzeichneten Bevollmächtigten ihre Unterschrift unter dieses Abkommen gesetzt.

Σε πίστωση των ανωτέρω, οι υπογράφοντες πληρεξούσιοι έθεσαν την υπογραφή τους κάτω από την παρούσα συμφωνία.

In witness whereof, the undersigned Plenipotentiaries have signed this Agreement.

En foi de quoi les plénipotentiaires soussignés ont signé le présent accord.

In fede di che, i sottoscritti plenipotenziari hanno apposto le loro firme in calce al presente accordo.

Ten blijke waarvan de ondergetekende gevolmachtigden hun handtekening onder deze overeenkomst hebben gesteld.

Em fé do que, os plenipotenciários abaixo assinados apuseram as suas assinaturas no presente acordo.

Tämän vakuudeksi allekirjoittaneet täysivaltaiset edustajat ovat allekirjoittaneet tämän sopimuksen.

Till bevis härpå har undertecknade befullmäktigade undertecknat detta avtal.

Hecho en La Haya, el veintiocho de mayo de mil novecientos noventa y siete.

Udfærdiget i Haag, den otteogtyvende maj nitten hundrede og syvoghalvfems.

Geschehen zu Den Haag am achtundzwanzigsten Mai neunzehnhundertsiebenundneunzig.

Έγινε στη Χάγη, στις είκοσι οκτώ Μαΐου χίλια εννιακόσια ενενήντα επτά.

Done at the Hague on the twenty-eighth day of May in the year one thousand nine hundred and ninety-seven.

Fait à La Haye, le vingt-huit mai mil neuf cent quatre-vingt-dix-sept.

Fatto a l'Aia, addì ventotto maggio millenovecentonovantasette.

Gedaan te Den Haag, de achtentwintigste mei negentienhonderd zevenennegentig.

Feito em Haia, em vinte e oito de Maio de mil novecentos e noventa e sete.

Tehty Haagissa kahdentenäkymmenentenäkahdeksantena päivänä toukokuuta vuonna tuhatyhdeksänsataayhdeksänkymmentäseitsemän.

Som skedde i Haag den tjugoåttonde maj nittonhundra nittiosju.

Por la Comunidad Europea

For Det Europæiske Fællesskab

Für die Europäische Gemeinschaft

Για την Ευρωπαϊκή Κοινότητα

For the European Community

Pour la Communauté européenne

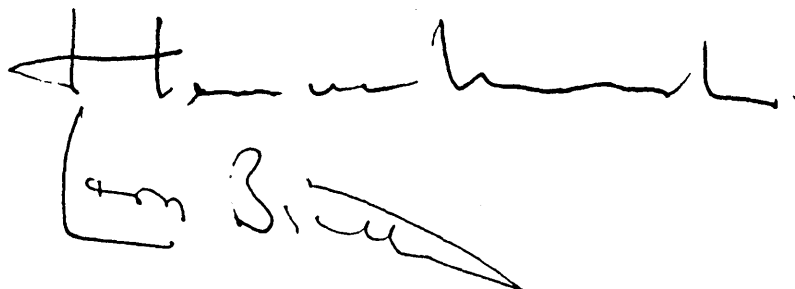
Per la Comunità europea

Voor de Europese Gemeenschap

Pela Comunidade Europeia

Euroopan yhteisön puolesta

På Europeiska gemenskapens vägnar



Por los Estados Unidos de América

For Amerikas Forenede Stater

Für die Vereinigten Staaten von Amerika

Για τις Ηνωμένες Πολιτείες της Αμερικής

For the United States of America

Pour les États-Unis d'Amérique

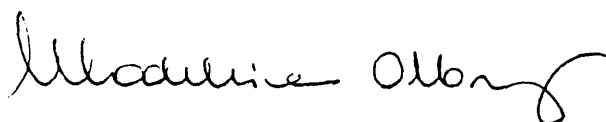
Per gli Stati Uniti d'America

Voor de Verenigde Staten van Amerika

Pelos Estados Unidos da América

Amerikan yhdysvaltojen puolesta

På Amerikas förenta staternas vägnar



Information relating to the entry into force of the Agreement between the European Community and the United States of America on Customs Cooperation and Mutual Assistance in Customs Matters

The Agreement between the European Community and the United States of America on Customs Cooperation and Mutual Assistance in Customs Matters which the Council decided to conclude on 21 May 1997 entered into force on 1 August 1997, the procedures provided for in Article 23 of the Agreement having been completed on 23 July 1997.

COMMISSION

COMMISSION DECISION

of 18 December 1996

on tax exemptions for biofuels in France

(Only the French text is authentic)

(Text with EEA relevance)

(97/542/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by Regulation (EC) No 3290/94⁽²⁾, and in particular Article 33 thereof,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector⁽³⁾, as last amended by Regulation (EC) No 1101/95⁽⁴⁾, and in particular Article 44 thereof,

Having regard to Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops⁽⁵⁾, as last amended by Commission Regulation (EC) No 1664/95⁽⁶⁾,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the

market in cereals⁽⁷⁾, as last amended by Regulation (EC) No 3290/94⁽⁸⁾, and in particular Article 19 thereof,

Having given the interested parties notice, pursuant to Article 93 (2) of the Treaty, to submit their comments⁽⁹⁾, and having regard to those comments,

Whereas:

I

- (1) By letter of 19 March 1992, the French Permanent Representative to the European Communities notified the Commission of provisions relating to exemption from the domestic tax on petroleum products (*taxe intérieure sur les produits pétroliers*: TIPP) for biofuels of agricultural origin. The French authorities sent further information to the Commission in letters dated 19 November 1992 and 20 July 1993.

By letter dated 19 May 1994, the French Permanent Representative to the European Union notified the Commission of two 'technical progress' agreements for biofuels, linked to that exemption. The French authorities sent further information to the Commission in a letter dated 6 September 1994.

By letter of 12 December 1994, the Commission informed France of its decision to initiate the procedure provided for in Article 93 (2) of the Treaty in respect of the aid schemes, which seemed to be operating aid schemes not eligible for any of the exemptions under the State aid rules and thus incompatible with the common market.

⁽¹⁾ OJ No 172, 30. 9. 1966, p. 3025/66.

⁽²⁾ OJ No L 349, 31. 12. 1994, p. 105.

⁽³⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽⁴⁾ OJ No L 110, 17. 5. 1995, p. 1.

⁽⁵⁾ OJ No L 181, 1. 7. 1992, p. 12.

⁽⁶⁾ OJ No L 158, 8. 7. 1995, p. 13.

⁽⁷⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽⁸⁾ OJ No L 349, 31. 12. 1994, p. 105.

⁽⁹⁾ OJ No C 143, 9. 6. 1995, p. 8.

- (2) The measures consist, first, in exemption for products of agricultural origin from the domestic tax on petroleum products for use as fuels (TIPP) and secondly, of two 'technical progress' agreements, called the ETBE conventions, guaranteeing recipients that the rate of this exemption will remain at the level fixed by the 1993 amending Finance Act.
- (3) The tax exemption has direct effects as regards the alternative fuels and indirect effects as regards the agricultural raw materials from which these fuels are made.
- (4) The tax exemption applies directly to the fuels produced, namely esters of rapeseed oil and sunflower oil (both belonging to the 'diester' category), pure ethyl alcohol for incorporation into high-grade petrols, high-grade lead-free petrols and standard petrols, and pure ethyl alcohol as derivatives (including ethyl tert-butyl ether, or ETBE) incorporated into high-grade lead-free petrols and standard petrols (belonging to the 'bioethanol' category).

From 1 January 1994, it involves an exemption limited to FF 230 per hectolitre for esters of rapeseed and sunflower oil, an exemption limited to FF 329,50 per hectolitre for pure ethyl alcohol and derivatives, and an exemption of 100 % for certain products⁽¹⁾ of agricultural origin incorporated under customs control into oil products, when the mixture obtained is released for own use under tariff headings corresponding to indices 20, 22, 24 and 26 of Table B of Article 265 of the Customs Code.

The raw materials indirectly affected are rapeseed and sunflower seed for the diester category, and cereals, Jerusalem artichokes, potatoes and beet grown on set-aside land for the bioethanol category. The recipients are therefore certain industrial and agricultural producers. The tax exemption is granted under the following conditions:

First, under Article 30 of the 1993 amending Finance Act⁽²⁾, from 1994 the exemption is granted exclusively for products (diester and bioethanol) obtained from agricultural raw materials produced on land set aside for non-food use within the meaning of Commission Regulation (EEC) No 334/93 of 15 February 1993.

⁽¹⁾ Esters of rapeseed and sunflower oil used as a substitute for domestic fuel oil and diesel.

⁽²⁾ *Journal officiel de la République française*, 31 December 1993, p. 18 526.

Secondly, under Article 22 of the Decree of 27 March 1992⁽³⁾, the exemption from the domestic tax for ethyl alcohol, derivatives and esters of rapeseed and sunflower oil is subject to the production of certificates of production and exemption.

The certificate of production attesting the agricultural origin of the products is issued by the Ministry of Agriculture and Forests. In their letter of 19 November 1992, however, the French authorities said that certificates of production issued by the other Member States to producers operating within their borders could be acceptable equivalents.

The certificate of exemption defines the volume of fuel the holder may release for own use. Article 24 of the abovementioned Decree provides for a separate issuing procedure for each type of product: for ethyl alcohol, the exemption certificate is issued by Customs after denaturing, carried out in establishments under the supervision of the tax authorities, and approved by the Director General of Customs and Excise; for ETBE manufactured in a non-petroleum establishment, and transported for incorporation to a petroleum establishment under customs control, the certificate is issued by Customs upon entry of the ETBE into the establishment, for the volume of ethyl alcohol calculated on the basis of a processing coefficient. For esters, the exemption certificate is issued by Customs upon entry into the establishment under Customs control. In their letter of 19 November 1992, the French authorities said that the exemption certificate was issued, for all eligible ethyl alcohol originating in another Member State, in accordance with the above arrangements if the product arriving in an establishment under customs control was accompanied by a production certificate drawn up with the same guarantees as in France, ensuring in particular its agricultural origin. However, no equivalent commitment has been given for ETBE or esters.

Thirdly, the exempted products must also have been produced in production units considered experimental by the French authorities as part of an experimental project, within the meaning of the Decree of 27 March 1992.

That decree defines the 'experimental' unit as 'an establishment or group of establishments producing ethyl alcohol or derivatives from cereals, Jerusalem artichokes, potatoes or new beet crops, or producing esters of rapeseed oil or sunflower oil'. The establishment or group of establishments must be approved

⁽³⁾ *Journal officiel de la République française*, 28 March 1992, p. 4 323.

by the Ministry of Agriculture and the Ministry responsible for Customs, for establishments producing ethyl alcohol or esters, and by the Ministry responsible for hydrocarbon fuels for establishments producing derivatives of alcohol, such as ETBE. Approval of an experimental plant is subject to production of a specific contract between a supplier of raw materials and a manufacturer, and to prior verification of the production unit and the conditions of reception of the raw materials. In their letter of 19 November 1992, the French authorities said that the capacity of each unit producing ester or alcohol was not limited by the Decree, and could be up to 100 000 tonnes per year.

Article 4 of the Decree provides that the production and use of one of the exempt products constitutes an experimental project under the following conditions: the product must be supplied by an experimental unit, as defined above; a forward work programme must be lodged with the Ministries responsible; a half-yearly report on the monitoring of the distribution and use of the fuels containing ethyl alcohol, derivatives or esters of rapeseed oil or sunflower oil must be sent to the Ministries responsible.

Where the conditions for an experimental project, or the technical requirements on utilization, are not fulfilled, the Ministry responsible for Customs may refuse exemption within 30 days of the lodging of the experimental project for consideration.

- (5) The two 'technical progress' agreements provide for compensation from the State for each hectolitre of ethyl alcohol in the ETBE produced, to offset the gap recorded on the date of release for own use between the maximum exemption from the TIPP applicable to ethyl alcohol, on the one hand, and the amount guaranteed by the agreement on the other. This applies for ten years from the date of entry into service of the experimental unit, up to 31 December 2005 at the latest, if the rate of exemption is revised downwards. If the rate is revised upwards, an amount equal to the product of the difference between the two amounts and the number of hectolitres of ethyl alcohol for which the exemption has been granted during the period of overshoot, must be refunded to the State.

II

- (1) Under the abovementioned procedure, the Commission gave the French Government notice to submit its comments. The French Government's comments were notified to the Commission in a letter dated 31

March 1995, and at meetings between representatives of the French Government and the Commission on 7 March 1995, 2 February 1996 and 10 July 1996.

The Commission informed the Member States and other interested parties, by means of a communication published in the *Official Journal of the European Communities*⁽¹⁾, of its decision to initiate the procedure provided for in Article 93 (2) of the Treaty, and gave them notice to submit their comments. Comments were received from the United Kingdom in a letter of 7 July 1995, and from interested third parties in letters of 29 June and 4, 5 and 6 July 1995. Those observations were transmitted to France by letter of 3 August 1995.

- (2.1) The French authorities argue in the first place that the measures, in respect of which the Commission has initiated the Article 93 (2) procedure, are consonant with the Community policy of encouraging the use of renewable energy in general, and the development of biofuel in particular. In this context, they refer to Council Directive 92/81/EEC of 19 October 1992 on the structures of excise duties on mineral oils⁽²⁾, and in particular Article 8 (2) (d) thereof, and to the proposal for a Council Directive of 5 March 1992 on excise duties on motor fuels from agricultural sources⁽³⁾, and Council Decision 93/500/EEC concerning the promotion of renewable energy sources in the Community (Altener programme)⁽⁴⁾.

They argue that these are indeed experimental projects within the meaning of the Directive for two main reasons. First, although the rules do not set a limit on capacity, the important factor is not the rules but actual production capacity. Secondly, in reply to the Commission's remark that there is no provision for following up the results of research, the French authorities draw attention to Article 13 of the Decree of 27 March 1992, which provides for monitoring of the distribution and use of the fuels referred to in the instrument.

- (2.2) The French authorities also question the validity of the Commission's reasoning as to the legal arrangements applicable to some of the products concerned, which are included in Annex II of the Treaty, but not covered by a common organization of the market. Those products, namely ethyl alcohol and potatoes, should not be subject to the competition rules and to the checks carried out by the Commission by virtue of Articles 92 and 93 of the Treaty.

⁽¹⁾ OJ No C 143, 9. 6. 1995, p. 8.

⁽²⁾ OJ No L 316, 31. 10. 1992, p. 12.

⁽³⁾ COM(92) 36 final; OJ No C 73, 24. 3. 1992, p. 6.

⁽⁴⁾ OJ No L 235, 18. 9. 1993, p. 41.

- (2.3) The French authorities deny that the provisions of the Treaty and of Community legislation have been infringed, as is claimed in the decision initiating the Article 93 (2) procedure⁽¹⁾.

According to those authorities, Article 95 has not been infringed, since there is no reference to the place of establishment of the 'experimental units', nor to the nationality of the operators. They quote the example of approval granted to certain plants in Belgium and in Italy.

They also deny the charge of infringement of rules on common organization of markets, since the measure does not constitute indirect aid to certain basic products, because it serves a different purpose. Moreover, the quantities produced would not interfere with the market, and therefore would not affect prices, since by virtue of the contracts between manufacturers and producers, the raw materials are intended for the manufacture of esters or ETBE from the time when the plots of land are first cultivated. As to the limited list of basic products, they claim that it is justified by the fact that those products are the most suitable in view of the technical, economic and environmental constraints operating in the sectors. Even if the measure did constitute State aid within the meaning of Article 92 (1), the French authorities argue that it should be eligible for the derogation under Article 92 (3) (b) as a project of common European interest. In support of their argument, they mention the European economic interest grouping Eurobiodiesel, a grouping of undertakings from five Member States whose purpose is research to promote the use of biofuels.

- (3) Comments were received from interested third parties both for and against the French measures. The comments in support of the measures are based on the Commission's statements in favour of the development of biofuels, and the expectation of a Community framework. Comments in support of the Commission's position are based on the following reasons: most support the Commission's argument that the production units concerned ought not to be selected by virtue of the agricultural origin, on the one hand, and the national origin on the other, of the products used. Moreover, concern is expressed about the consequences of different treatment between Member States if the Union were to take new measures in the interest of the agreement on oilseeds with the United States.

An Italian company with a biofuels production plant in Belgium supplied information on the development of the European market in biofuels, and the

application, which it regards as discriminatory, of the tax exemption concerned. This company claims that the comparative figures it gives for the supply and demand of biofuels in Europe in 1994-95 clearly show that production is no longer at the experimental stage, and that France is well placed on the market.

This company was refused approval by the French Ministry for its Belgian factory as an 'experimental establishment' despite having supplied the information requested, and despite the fact that the Belgian authorities were prepared to carry out the inspections required by the French authorities. The reason given for the refusal was that the application related to an excessively large quantity, 'at all events, not less than 10 000 tonnes per year.' The factory had capacity to produce 45 000 tonnes per year of diesel of plant origin. At the same time, however, new capacity for the production of ester of rapeseed oil was authorized in France for up to 400 000 tonnes a year, including one factory with capacity for 170 000 tonnes, and another with capacity for 100 000 tonnes (see the *Bulletin de l'Industrie Pétrolière*, 10 November 1994). According to this company, the decision of the French authorities can be explained only by their wish to cordon off the French market, which would conflict with Article 95 of the EC Treaty.

III

- (1) Esters are industrial products, not included in Annex II of the EC Treaty, covered by the rules on competition, particularly those on State aid.
- (2) The other biofuel is ethyl alcohol, a product obtained from the raw materials mentioned above in point 4 of section I (cereals, Jerusalem artichokes, potatoes and new beets). This alcohol is then permanently incorporated into various high-grade fuels and petrols, and becomes an integral part of the final product. Ethyl alcohol is listed in Annex II to the Treaty, but is not covered by a common organization of the market (COM). Articles 92 and 93 do not therefore fully apply, and so the Commission can only make observations on aid in the sector pursuant to the first sentence of Article 93 (3) of the Treaty. However, where the conditions for the grant of aid contain restrictions either on the raw material from which such a product is obtained (such as cereals) or on the outlets for such a product (such as bio-ethanol), the Commission takes the view that the impact of the aid can no longer be considered to be limited to the product for which the aid is granted (in this case, ethyl alcohol). In the Commission's opinion, the aid, because it is only granted if the product is produced from a limited list of basic products covered by a common organization of the market and thus subject to all the rules laid down in

(1) OJ No C 143, 9. 6. 1995, p. 8.

Articles 92 and 93 of the Treaty, constitutes a scheme in which aid inevitably affects the said basic products. If aid to alcohol (not subject to competition rules) is granted on the strict condition that the alcohol has been manufactured on the basis of a product subject to the rules of competition (the raw materials⁽¹⁾), there is no need to treat that aid any differently from aid to raw materials granted on condition they are used to produce alcohol, since the practical effects of the two forms of aid produce the same impact on the markets for the products concerned. Application of the competition rules to these 'spill-over' effects is justified since aid to products not subject to the rules will inevitably have consequences in the markets for products subject to the rules. With respect to the application of the rules of competition to alcohol, the Commission adopts the same reasoning, *mutatis mutandis*, for bio-ethanol as an outlet for the alcohol necessarily used for that purpose. However, if the conditions for granting the aid left the recipient a free choice of raw materials and utilization of the products assisted, there would no longer be an inevitable effect on other products subject to competition rules, since the effects of granting aid for raw materials and markets of destination would result solely from economic and commercial choices by the recipients of the aid.

In the present case, for all the basic products concerned with the exception of potatoes and alcohol, all the rules on competition laid down in Articles 92 and 93 are applicable. If the aid had been granted with no legal constraint on the final use of the alcohol, the Commission would have considered that the measure could not be questioned under Articles 92 to 94 of the Treaty. However, given that aid for ethyl alcohol, in the case in point, necessarily produces effects solely on the market for fossil and plant-based fuels (to which the rules of competition apply), the Commission considers that the scheme may be examined in the full light of the Articles cited to the extent that they produce effects, albeit indirect effects, on certain other products which are

all subject to Articles 92 and 93 of the Treaty. Consequently, the aid does affect the conditions of competition of the other products.

- (3) Under Article 33 of Regulation No 136/66/EEC, Article 19 of Regulation (EEC) No 1766/92 and Article 44 of Regulation (EEC) No 1785/81, Articles 92, 93 and 94 of the Treaty are applicable to the production and trading of the products referred to in Article 1 of each of those Regulations, subject to any provisions in those Regulations to the contrary. The relevant products in the case in point are rapeseed and sunflower, cereals and Jerusalem artichokes and beets. Although potatoes are also listed in Annex II to the Treaty, they are not covered by a common organization of the market (COM). However, for the reasons given under point 2 above, the Commission considers that the arrangements can be examined in the light of the competition rules in Articles 92 and 93 of the Treaty.

IV

- (1) Under Article 92 (1) of the Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is incompatible with the common market in so far as it affects trade between Member States.
- (2) The tax exemption for certain biofuels meets the criteria to be regarded as aid within the meaning of Article 92 (1) of the Treaty.
- (3) Biofuels are already subject to trade and competition between Member States, the main producers in the European Union being Belgium, France and Italy.

The value of trade in biofuels and basic products between France and the other Member States in 1995 was as follows⁽²⁾:

Product	Exports from France to other EC countries	Imports into France from other EC countries
I. Biofuels		
— esters	184 899,37	32 139,93
— ETBE	47 187,95	20 254,05
II. Basic products for the Diester sector		
— rapeseed	204 289,04	5 315,07
— sunflower	172 430,03	4 471,36

(¹) Except potatoes.

(²) Source: COMEXT 2.

Product	Exports from France to other EC countries	Imports into France from other EC countries
III. Basic products for the bioethanol sector		
— potatoes	156 396,19	104 128,44
— cereals	3 101 417,12	234 046,52
— Jerusalem artichokes	25,93	807,97
— beet	516,62	34,07

In view of the trade in products in the biofuels sector concerned, aid may affect trade between the Member States when it affords an advantage to national production over the production of other Member States.

Moreover, biofuels benefiting from this measure are also in direct competition, not only with biofuels of origins other than those provided for in the measure, but also with fuels based on chemicals such as methanol. The concerns of the competitors who submitted comments to the Commission show this problem to be pressing. France does not contest this point.

- (4) What the French authorities do contest, however, is that the measures lead to indirect aid for the small number of basic products concerned. However, the Commission can only confirm the analysis that first led it to take the decision to initiate the Article 93 (2) procedure.
- (5) The exclusion of certain basic products from the benefits of tax exemption is a strong argument for asserting that this measure constitutes aid within the meaning of Article 92 (1) of the Treaty, since it distorts competition by giving an advantage to certain agricultural products, and may, for the same reasons, affect trade between the Member States. Although the French authorities allege that the products chosen are those most suitable for the objective of developing the biofuels sector, no explanation has been given to justify the need to limit the measure to crops produced on set-aside land. On the contrary, as no technical constraint has been mentioned that could explain such severe restrictions on the origin of the products that can take advantage of the measure, it would seem that the real reason for the aid is principally to support the incomes of the farmers operating on set-aside land rather than to encourage biofuels.
- (6) Some of the comments presented to the Commission after the opening of the procedure also expressed anxiety about the influence of such a measure on intra-Community trade, in particular in the context of the obligations on the European Union as a result of international agreements to limit the use of

by-products of certain oilseed crops for the production of animal feed.

- (7) Consequently, direct aid to certain biofuels, and indirect aid to certain basic products constitute State aid within the meaning of Article 92 (1) of the Treaty and Article 61 (1) of the Agreement on the European Economic Area (EEA).
- (8) There are, however, exceptions to the principle of incompatibility between State aid and the common market.

V

- (1) The French authorities argue that this measure is eligible for the derogation in Article 8 (2) (d) of Directive 92/81/EEC, mentioned above.

The Commission cannot allow the derogation, for the following reasons. First, the provision refers solely to the mineral oils defined in Article 2 (1). Moreover, Article 2 (3) of the Directive lays down as a matter of principle that other products used as fuels (such as the vegetable oils considered here) should be taxed as mineral oils.

Only one derogation can be invoked for those other products. Article 8 (4) of the Directive provides that the Council, acting unanimously on a proposal from the Commission, may authorize any Member State to introduce further exemptions or reductions for specific policy considerations. However, no such action has been taken by the Council.

As to the definition of the measure as a 'pilot project' ⁽¹⁾, the French authorities have not provided any new information to change the position adopted by the Commission when the procedure was initiated. Considering in particular the manufacturing capacity of up to 100 000 tonnes per year, the Commission took the view that establishments operating on an industrial scale could take advantage of the reduction in excise duties. The French authorities' remarks confirm the Commission's argument

⁽¹⁾ Within the meaning of Council Directive 94/74/EC of 22 December 1994 amending Directive 92/12/EEC, Directive 92/81/EEC and Directive 92/82/EEC; OJ No L 365, 31. 12. 1994, p. 46.

that the real purpose and effect of the measure is not basic or even applied research, within the meaning of the aforementioned Directive, but the development on a commercial scale of non-food uses and the establishment of a larger volume of production of biofuels based on set-aside land.

- (2) The only derogations provided for in the Treaty which can be considered in this case are those of Article 92 (3) (b) and (c).

The derogation in Article 92 (3) (b) for aid to promote the execution of an important project of common European interest is not relevant here. Even if one of the aims of the measures was in line with Community policy to promote the development of fuels with lower pollution potential, the aid is still confined to a national scale, and further limited by the discrimination and infringements it involves.

- (3) The French authorities also present this measure as being consonant with the Community policy of encouraging the use of renewable energy in general, and the development of biofuels in particular.

This policy aim is not in doubt. The Commission stressed in its letter of 12 December 1994 to the French Government that 'this in no way calls into question the Community's interest in developing biofuels', but it has also pointed out repeatedly that the desirable development of alternative fuels cannot be achieved at the expense of other Community policies, and especially the rules in the Treaty and in Community regulations.

- (4) In its decision to initiate the procedure, the Commission clearly demonstrates that by taxing esters and ETBE imported from the other Member States and the European Economic Area more heavily than those produced in France, the measure constitutes an infringement of Article 95 of the Treaty.

As the tax exemption applied only to biofuels produced from certain basic products, the Commission takes the view that the measure discriminates against other biofuels made from other basic products (other types of product, or the same type grown on land other than set-aside land). Those other biofuels will be subject in France to the normal rate of excise. The aid measure, in the form of tax exemption, therefore constitutes an infringement of Article 95 of the Treaty since it is restricted to biofuels produced from a limited number of basic products (while excluding certain basic products that could be technically appropriate for the production of biofuels, but which are grown mainly outside France) and biofuels imported from other Member

States and produced from other basic products will be subject to a higher tax.

While it is true that the French Government has approved two establishments in Belgium and Italy, for very small quantities, that Government has also refused approval in other cases, such as that of the firm referred to in the second subparagraph of paragraph 3 of section II above.

As for imported products, the French authorities have not given any undertaking that esters and ETBE will be covered by the same arrangements for the issuing of exemption certificates as those applied to French products (see above, section I, paragraph 4).

The French authorities deny infringement of Article 95 of the Treaty, although without putting forward any argument that changes the Commission's view.

The aid measure in the form of a tax exemption is therefore an infringement of Article 95 of the Treaty, since it does not necessarily extend the same favourable treatment to biofuels imported from the other Member States.

- (5) Consequently, the Commission considers that the aid to biofuels is operating aid contravening Article 95 of the Treaty, and thus incompatible with the common market, whilst also being ineligible for any of the derogations provided for in Article 92 (3) of the EC Treaty.

VI

- (1) The French Government denies having infringed any of the rules for the common organization of the markets, as referred to in the decision initiating the Article 93 (2) procedure⁽¹⁾, for two reasons: first, the aims of the measures, which are different, and secondly, the fact that the measures do not affect the quantities produced on the markets concerned.

In the Commission's view, these arguments are irrelevant. According to the case law of the Court of Justice (see the judgment of 26 June 1979 in Case 177/78: *Pigs and Bacon Commission v. McCarren and Company Limited*⁽²⁾), the rules for the common organization of markets should be regarded as a complete and comprehensive system, for which the Community has sole competence, with Member States having no powers whatsoever to take any measures that derogate or detract from it.

⁽¹⁾ OJ No C 143, 9. 6. 1995, p. 8.

⁽²⁾ [1979] ECR 2161.

This measure is legally restricted to certain basic products grown on certain categories of land, which shows that its purpose is to support certain producers; it thus has an impact on the markets for the basic products concerned, by influencing output. The Commission would have taken a different view if the measure had applied to all the basic products that could be turned into biofuels, irrespective of whether or not they were produced on set-aside land.

- (2) The French authorities have put forward no new factors to justify the restricted list of basic products considered for aid.

In particular, they have not explained why the measure is legally restricted to products grown on set-aside land. For the sectors concerned, the provisions of Regulation (EEC) No 1765/92 involve integration of the common organizations of the corresponding markets. Article 13 of that Regulation provides that Community expenditure for the application of the arrangements should be deemed to be intervention intended to stabilize the agricultural markets within the meaning of Article 3 (1) of Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy⁽¹⁾. That Article provides that such intervention, undertaken to stabilize the markets according to the framework for the common organization of markets, is to be financed by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF). Therefore, any government aid in the field covered by Regulation (EEC) No 1765/92 would be equivalent to State interference in the complete and comprehensive system of the common organizations of markets.

This exemption, limited in certain cases, from 1994, to crops grown on set-aside land, thus constitutes an infringement of Regulation (EEC) No 1765/92.

- (3) Aid measures that involve infringements to Community provisions are not eligible for any of the derogations under Article 92 (3) of the Treaty. In particular, the derogation provided for in Article 92 (3) (b), which the French authorities invoke, is not applicable.
- (4) Consequently, indirect aid to the basic products contravenes the arrangements for common organization of markets under Regulation (EEC) No 1765/92 and Article 95 of the Treaty, and cannot therefore be eligible for any of the derogations provided for in Article 92 (3) of the EC Treaty.

VII

- (1) For the reasons given above, this aid fulfils the conditions laid down in Article 92 (1) of the Treaty and in Article 61 of the Agreement on the European Economic Area (EEA) without being eligible for any of the derogations provided for in paragraphs 2 and 3 of those Articles. The aid is therefore incompatible with the common market and with the operation of the EEA Agreement.

- (2) As this aid was not notified to the Commission, and was implemented without awaiting the Commission's final decision, it should be pointed out that the invalid measures cannot be regularized *ex post facto*, given the binding nature of the procedural rules laid down in Article 93 (3) of the Treaty; the Court recognized the direct effects of those rules in its judgments of 19 June 1973 (Case 77/72: *Carmine Capolongo v. Azienda Agricola Maya*)⁽²⁾, 11 December 1973 (Case 120/73: *Gebr. Lorenz GmbH v. Federal Republic of Germany*)⁽³⁾, 22 March 1977 (Case 78/76: *Steinike & Weinlig v. Federal Republic of Germany*)⁽⁴⁾ and 21 November 1991 (Case C-354/90: *Fédération nationale du commerce extérieur des produits alimentaires and others v. France*)⁽⁵⁾.

Moreover, where aid is incompatible with the common market, the Commission, in accordance with the case law of the Court of Justice, and in particular the judgment of 12 July 1973 (Case 70/72: *Commission v. Federal Republic of Germany*)⁽⁶⁾, confirmed by the judgments of 24 February 1987 (Case 310/85: *Deufil v. Commission*)⁽⁷⁾ and of 20 September 1990 (Case C-5/1989: *Commission v. Federal Republic of Germany*)⁽⁸⁾, may require the Member States to recover from the recipients any aid that was granted unlawfully.

- (3) France did not take account of the suspensory effect of Article 93 (3) of the Treaty, since it did not give the Commission time to reach a conclusion before granting the aid. Consequently, the aid was unlawful under Community law from the time it was first granted.

The Commission usually expects that unlawful and incompatible aid will be recovered. In this case, however, there is no reason to require recovery of the aid.

⁽²⁾ [1973] ECR 611.

⁽³⁾ [1973] ECR 1471.

⁽⁴⁾ [1977] ECR 595.

⁽⁵⁾ [1991] ECR I-5505.

⁽⁶⁾ [1973] ECR 813.

⁽⁷⁾ [1987] ECR 901.

⁽⁸⁾ [1990] ECR I-3437.

⁽¹⁾ OJ No L 94, 28. 4. 1970, p. 13.

It must be borne in mind that France has undertaken the development of a biofuels sector. In the first place, the use of biofuels could help to reduce pollution, thus contributing to conserving the environment; and in the second, the Commission wishes to support environment-friendly energy and farm policies.

Moreover, the advantage to the manufacturers of the direct aid was temporary, or at least marginal, although not quantifiable. While it did enable them to supply biofuels at a competitive price, the quantities concerned were generally not very large in relation to the market for fuels in general. Data from expert sources relating to the diester sector, which is preponderant, show that the aid to the plant-based fuels concerned did not in general overcompensate for the excess production costs. While it is true that the question of overcompensation in each case depends on individual circumstances and a variety of factors, in particular production capacity and continuity of output in each establishment producing biofuels, it can still be argued that even where there was some overcompensation, the effect would have been attenuated by higher indirect costs such as the distribution costs exceeding those in the sector of fossil fuels.

It should be observed, however, that on the basis of the above-mentioned data, the non-weighted average does not in general indicate compensation in excess of the extra cost of producing biofuels. Moreover, the Commission has no evidence such as would suggest that the real effect of the aid was to benefit manufacturers in terms of significantly higher sales or profits for the total amount of fuel produced. It would appear, indeed, that reducing the tax on biofuels to a level where those biofuels could be put on the market, and thus compete with fossil fuels, was not likely to lead to more than a marginal increase in the total output of fuels by those manufacturers, in view of the fact that the size of the market for those manufacturers is conditioned by factors other than the availability of agricultural raw materials for processing into fuel. However, the farmers, as indirect recipients of the aid, did benefit from considerably increased demand for the agricultural products concerned, grown on set-aside land. The real effect of the aid was thus to create a market for the said agricultural products where there had previously been no significant demand. Had the tax reduction not occurred, taking account of market prices for fossil fuels, there would have been little or no commercial point in farmers' producing the agricultural raw materials for the production of fuels of plant origin. This leads to the conclusion that from the point of view of the broad structure of the system, the

substantive effect of the aid bypassed the manufacturers, technically the direct recipients, and benefited the producers of the raw materials, who became the indirect recipients.

However, the infringements of Community law which the French arrangements entailed were not of themselves liable to increase output of raw materials, or to raise prices. On the contrary, the infringement is characterized by the discretionary choice of certain recipients: if the French authorities had given entitlement to the tax reduction to any raw material of any origin whatsoever, demand for the raw materials would have been likely to expand, which would in turn have increased output.

In view of the temporary nature of the advantage to the biofuel manufacturers and of the specific nature of the infringement at the level of farmers, who were the actual beneficiaries, it seems unnecessarily severe to require recovery of the amounts granted under this measure, which is basically in agreement with Community policy, and which (apart from the procedural aspects) is essentially unlawful only in terms of the excessively restrictive approach to the indirect recipients of aid.

Moreover, the economic justification for requiring recovery of illegal and incompatible aid is that it restores the *status quo*, in that it brings the economic situation of the recipients back to what it would have been before the grant of aid. In view of the very temporary nature of the advantage to the manufacturers, the recovery of the aid from the direct recipients would in this case produce an economic situation for those operators considerably worse than before the grant of aid. Indeed, as demonstrated above, there was in general no overcompensation of manufacturers as a consequence of the arrangements introduced by the French authorities. Recovery of the aid would not, therefore, restore the *status quo*.

However, for the farmers who benefited from the measure, two specific factors should be considered. First, the real (albeit indirect) advantage was the creation of a new market that had not previously existed. Sales of agricultural products, from the point of view of the farmers concerned, were effected under the conditions of that market.

On the other hand, the Commission cannot ignore a very special feature of the case in point: the farmers whose products were sold to manufacturers did not know and could not have known that the purchase was due to State aid. For those farmers, there was no

sign that the manufacturers were not operating under the normal commercial conditions of the market.

Consequently, a request for recovery of the aid would not be sustainable under law.

Nevertheless, this decision does not prejudice the conclusions the Commission may draw, if necessary, for the financing of the common agriculture policy by the European Agricultural Guidance and Guarantee Fund (EAGGF),

HAS ADOPTED THIS DECISION:

Article 1

The aid granted in France in the form of a tax exemption for biofuels of agricultural origin as provided for in Article 32 of the 1992 Finance Act, Article 89 of the 1993 Finance Act and Article 30 of the 1993 amending Finance Act, and in the two 'technical progress' agreements known as the ETBE Conventions, is illegal, having been granted in contravention of the procedural rules laid down in Article 93 (3) of the Treaty.

Article 2

This aid is incompatible with the common market within the meaning of Article 92 of the Treaty.

Article 3

France is required to discontinue the aid referred to in Article 2 within two months of notification of this Decision.

Article 4

France shall inform the Commission within two months of notification of this Decision of the measures it intends to take to comply herewith, and shall also inform the Commission within the time limit laid down in Article 3 of the measures that have been taken to comply therewith.

Article 5

This Decision is addressed to the French Republic.

Done at Brussels, 18 December 1996.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION DECISION

of 7 July 1997

on the conclusion of an Agreement in the form of an exchange of letters between the European Coal and Steel Community and the Russian Federation extending the Agreement between the European Coal and Steel Community and the Russian Federation on trade in certain steel products for the period 1 July to 30 September 1997

(97/543/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 95 (1), thereof,

Having consulted the Consultative Committee and with the unanimous assent of the Council,

Whereas, the Commission has finalized negotiations for an Agreement in the form of exchange of letters between the European Coal and Steel Community and the Russian Federation extending the Agreement between the European Coal and Steel Community and the Russian Federation on trade in certain steel products for the period 1 July to 30 September 1997,

HAS DECIDED AS FOLLOWS:

Sole Article

1. The Agreement in the form of exchange of letters between the European Coal and Steel Community and

the Russian Federation extending the Agreement between the European Coal and Steel Community and the Russian Federation on trade in certain steel products for the period 1 July to 30 September 1997 is hereby approved on behalf of the European Coal and Steel Community.

2. The text of the Agreement⁽¹⁾ is annexed to this Decision.

Done at Brussels, 7 July 1997.

For the Commission

Leon BRITTAN

Vice-President

⁽¹⁾ See page 37 of this Official Journal.

AGREEMENT IN THE FORM OF AN EXCHANGE OF LETTERS

between the European Coal and Steel Community and the Russian Federation extending the Agreement between the European Coal and Steel Community and the Russian Federation on trade in certain steel products for the period 1 July to 30 September 1997

Letter from the Commission of the European Communities

Sir,

1. I have the honour to refer to the Agreement between the European Coal and Steel Community and the Russian Federation on trade in certain steel products signed on 7 December 1995, as extended for the period 1 January to 30 June 1997, and to propose that, pending the completion of negotiations on a new bilateral steel agreement and of the formal procedures for its entry into force, the present ECSC Agreement as already extended for the period 1 January to 30 June 1997 should be extended by a further period of up to three months (i.e. from 1 July to 30 September 1997). If the new agreement enters into force before 1 October 1997, the present ECSC Agreement shall expire on the day on which the new agreement enters into force.
2. The quantitative limits for the period 1 January to 30 September 1997 shall be as shown in the Annex to this letter. These limits represent 10/12ths of the Russian Federation's quantitative limits for 1996 (including certain switches between product groups within the same product category) and are without prejudice to the level at which quantitative limits for 1997 might be agreed with the Russian Federation under a new bilateral agreement.
3. Export licences issued by the Russian Federation during 1997 in accordance with the provisions of this exchange of letters and counted against the limits set out in the Annex hereto will be counted against the overall limits established for 1997 in the new agreement when the latter enters into force.
4. In conclusion, I have the honour to propose that, if this letter and its Annex are acceptable to your Government, this letter and your confirmation shall together constitute an agreement between the European Coal and Steel Community and the Russian Federation, which shall enter into force on the date of your reply.

Yours faithfully,

*For the Commission
of the European Communities*

ANNEX

RUSSIAN FEDERATION

QUANTITATIVE LIMITS

		(tonnes)
Products		1 January to 30 September 1997
SA. Flat products		
SA1. Coils		155 823
SA1.a. Hot-rolled coils for re-rolling		358 333
SA2. Heavy plate		24 936
SA3. Other flat products		21 413
SB. Long products		
SB1. Beams		9 985
SB2. Wire rod		21 585
SB3. Other long products		77 792

Letter from the Government of the Russian Federation

Sir,

I have the honour to acknowledge receipt of your letter of 18 July 1997 which reads as follows:

'Sir,

1. I have the honour to refer to the Agreement between the European Coal and Steel Community and the Russian Federation on trade in certain steel products signed on 7 December 1995, as extended for the period 1 January to 30 June 1997, and to propose that, pending the completion of negotiations on a new bilateral steel agreement and of the formal procedures for its entry into force, the present ECSC Agreement as already extended for the period 1 January to 30 June 1997 should be extended by a further period of up to three months (i.e. from 1 July to 30 September 1997). If the new agreement enters into force before 1 October 1997, the present ECSC Agreement shall expire on the day on which the new agreement enters into force.
2. The quantitative limits for the period 1 January to 30 September 1997 shall be as shown in the Annex to this letter. These limits represent 10/12ths of the Russian Federation's quantitative limits for 1996 (including certain switches between product groups within the same product category) and are without prejudice to the level at which quantitative limits for 1997 might be agreed with the Russian Federation under a new bilateral agreement.
3. Export licences issued by the Russian Federation during 1997 in accordance with the provisions of this exchange of letters and counted against the limits set out in the Annex hereto will be counted against the overall limits established for 1997 in the new agreement when the latter enters into force.
4. In conclusion, I have the honour to propose that, if this letter and its Annex are acceptable to your Government, this letter and your confirmation shall together constitute an agreement between the European Coal and Steel Community and the Russian Federation, which shall enter into force on the date of your reply.

Yours faithfully,'

I have the honour to confirm that the above is acceptable to my Government and that your letter, this reply and the attached Annex together constitute an agreement, in accordance with your proposal.

Yours faithfully,

For the Government of the Russian Federation

ANNEX

RUSSIAN FEDERATION

QUANTITATIVE LIMITS

		(tonnes)
Products		1 January to 30 September 1997
SA.	Flat products	
SA1.	Coils	155 823
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