

Official Journal

of the European Communities

ISSN 0378-6978

L 50

Volume 41

20 February 1998

English edition

Legislation

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⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 393/98
of 16 February 1998**

**imposing a definitive anti-dumping duty on imports of stainless steel fasteners
and parts thereof originating in the People's Republic of China, India, the
Republic of Korea, Malaysia, Taiwan and Thailand**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾, and in particular Article 9(4) thereof,

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

Whereas:

A. PROVISIONAL MEASURES

- (1) By Commission Regulation (EC) No 1732/97 ⁽²⁾ (hereinafter referred to as 'the provisional duty Regulation') provisional anti-dumping duties were imposed on imports into the Community of stainless steel fasteners and parts thereof (hereafter called SSFs) falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61, 7318 15 70 and 7318 16 30 originating in the People's Republic of China, India, the Republic of Korea, Malaysia, Taiwan and Thailand.

B. SUBSEQUENT PROCEDURE

- (2) Following the imposition of the provisional anti-dumping measures, certain interested parties submitted comments in writing.
- (3) Those parties who so requested were granted an opportunity to be heard by the Commission.
- (4) The Commission continued to seek and verify all information deemed necessary for its definitive findings.

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

- (6) The oral and written comments were considered and, where deemed appropriate, taken into account in the definitive findings.

C. PRODUCT CONCERNED AND LIKE PRODUCT

- (7) For the purposes of its preliminary findings the Commission considered stainless steel fasteners produced and sold in India, Malaysia, the Republic of Korea, Taiwan and Thailand and those exported to the Community from the countries concerned as well as those produced and sold in the Community by Community producers, as like products within the meaning of Article 1(4) of Regulation (EC) No 384/96 (hereafter called 'the Basic Regulation') as they have the same basic physical, chemical and technical characteristics and uses.
- (8) It has again been claimed by some exporters (as prior to the imposition of provisional measures) that nuts imported from the countries concerned should be excluded from the investigation on the basis that there is little or no production of nuts within the Community.
- (9) However, as at the provisional stage, this allegation is not confirmed by the results of the investigation which has shown that nuts are manufactured by the Community producers. It was not, therefore, considered justifiable to exclude nuts from the scope of the present proceeding.

⁽¹⁾ OJ L 56, 6. 3. 1996, p. 1. Regulation as amended by Regulation (EC) No 2331/96 (OJ L 317, 6. 12. 1996, p. 1).

⁽²⁾ OJ L 243, 4. 9. 1997, p. 17.

- (10) One exporting Indian producer claimed that the domestic sales of a certain type of high carbon alloy steel screws made by that company should be used to determine the normal value of some stainless steel screws exported to the Community on the grounds that these types of screws were comparable. However the investigation has shown that these different types of steel screws could not be considered as like products since their physical characteristics are different from those of the exported product concerned. This claim was therefore rejected.
- (11) Several exporting producers in Taiwan contested the fact that in the provisional duty Regulation non-standard SSFs have been excluded from the dumping calculations, although the Commission considered these non-standard SSFs as a like product. As already explained in recital 9 of the provisional duty Regulation, the Commission considered standard SSFs to be sufficiently representative, i.e. more than 70 % of total exports of SSFs to the Community to serve as a basis for the determination of dumping of all exports concerned. This approach is confirmed for all companies with the exception of one. For this company the analysis revealed that non-standard SSFs represented a large majority of its export sales to the Community. It was therefore decided that for this exporter the dumping calculations had to be adjusted in order to include non-standard SSFs.
- (12) Since no other comments were received on the definition of the 'like product' the findings made on the issue, as established in recital 11 of the provisional duty Regulation, are confirmed.

D. DUMPING

1. Normal value

(a) *India*

- (13) One company claimed that the Commission had wrongly determined its constructed normal value by using an inaccurate allocation key in the calculation of cost of production. This claim was rejected since the allocation key used by the Community institution more accurately reflected the raw material costs as compared to the one proposed by the company concerned.
- (14) The other two cooperating exporting producers claimed that the methodology used for the determination of normal value set out in recital 15 of the provisional duty Regulation, i.e. to use, whenever possible, the weighted average ex-works prices of the cooperating producer which had domestic

sales, did not allow a proper comparison with their export prices.

In this respect, it was eventually found that normal values based on the ex-works domestic prices of the only cooperating Indian producer selling SSFs on the domestic market were not comparable with the export prices of the two exporting producers. This was due to an incorrect classification by this company of the different types of SSFs sold on the domestic market which made the comparison inappropriate.

For these two companies, the Commission therefore calculated a constructed normal value for all types of SSFs exported to the Community during the investigation period. This was done on the basis of manufacturing costs of the exported types plus a reasonable amount for sales, general and administrative expenses (hereafter called 'SG&A') and profit. The methodology applied for the determination of the amount for SG&A and profit remains the same as at the provisional stage, i.e. it is based on the only cooperating producer selling the product concerned on the Indian market. However, since the normal value of this Indian producer has changed, the amount for SG&A and profit margin has been corrected accordingly.

(b) *Republic of Korea*

- (15) In the absence of further arguments, the provisional findings are hereby confirmed.

(c) *Malaysia*

- (16) One Malaysian exporting producer contested the methodology used in establishing SG&A and profit margin when constructing normal value. It is recalled that, in accordance with Article 2(6) of the Basic Regulation, SG&A were based on the data pertaining to this company while the profit margin was based on the weighted average profit made by the group to which the company belonged.

In this respect, it is considered that the fact that the domestic sales are not made in representative quantities is not in itself sufficient to disregard the data pertaining to these sales in the context of Article 2(6)(c) of the Basic Regulation. In this particular case, as far as SG&A are concerned, the investigation showed that this company's SG&A proved to be in line with the average amount of SG&A found for all companies investigated in the proceeding as already explained in recital 18 of the provisional duty Regulation. The use of this SG&A was therefore considered to be the most reasonable method. With regard to profits, as the company's profits differed greatly from those found for other producers, which might result from the fact that

this company is a fully-owned subsidiary of a foreign group, it was considered that the domestic sales could not constitute a reasonable basis for this determination. In these circumstances, the Commission considered that the methodology used in the provisional duty Regulation (based on the profit margin found in respect of the product concerned for the group to which this company belonged) was the most appropriate means of reflecting the economic reality of this company for establishing profit realised on sales in Malaysia. Consequently, the claim was rejected.

- (17) The same company objected to the fact that the Commission had disregarded unprofitable domestic sales when calculating the profit margin to be used in the constructed normal value. It should be recalled that for certain product types domestic sales made at a loss represented more than 20 % of total domestic sales of this type. Thus, sales made at a loss were not made in the ordinary course of trade and could consequently not be taken into consideration for the determination of the profit margin.

(d) *Taiwan*

- (18) Three exporting producers objected to the methodology used to determine normal value as set out in recital 20 of the provisional duty Regulation. They argued that normal value should have been constructed rather than being based on the prices charged by other producers in Taiwan.

In accordance with Article 2(1) of the Basic Regulation, normal value is normally based on domestic prices. If an exporter does not make sufficient domestic sales in the ordinary course of trade, normal value will be established on the basis of other exporters' sales prices for the comparable product. Only in the absence of representative domestic sales by other producers, or if such sales prices are not suitable, will normal value be constructed in accordance with Article 2(3) of the Basic Regulation. Moreover, the exporters in question did not substantiate why the use of the other exporters' prices should not have been suitable. Therefore, normal value was determined, wherever possible, on the basis of the domestic prices of the other Taiwanese companies.

- (19) Two exporting producers estimated that the profit margin used for the constructed normal values was too high and claimed that the Commission had not provided sufficient information on the calculation method of this profit margin. In this respect, it should be noted that the Commission provided a summary table regarding the data used for the calculation of the average profit margin. As these data were taken from other Taiwanese companies, no further details could be disclosed since, in accordance with Article 19(4) of the Basic Regula-

tion, disclosure must take into account the legitimate interests of the parties concerned that their business secrets should not be divulged.

- (20) As in Malaysia, one exporting producer claimed that unprofitable domestic sales should be taken into account when calculating the profit margin to be used in constructed normal value. This request was rejected on the grounds explained in recital 17 with regard to Malaysia.

- (21) Two related exporting producers contested that, in the case of domestic sales made through a related reselling company, normal value was established on the basis of the prices at which the product was first resold to an independent customer. They argued that, although these sales were made to a related company, they were made at arm's length prices, i.e. they were in the ordinary course of trade in the sense of the third paragraph of Article 2(1) of the Basic Regulation. Consequently, it was requested that the prices paid by the related reselling company be used in the calculation of normal value. However, the analysis of prices of sales by these two related producers to both related and unrelated customers did not show that the prices to the former were at arm's length. Under these circumstances, this claim had to be rejected.

(e) *Thailand*

- (22) A Thai company claimed that certain amounts related to export sales had been included in the SG&A used for constructing the normal value and that they should consequently be excluded. After verification the Commission granted this request and amended the calculations of the costs of production accordingly.

- (23) It should be noted that this amendment also influenced the determinations for the second company as these SG&A were used to construct its normal value.

- (24) The same company claimed that the use of the constructed normal value was not appropriate where there were sales of similar types on the domestic market. This claim could not be accepted since the differences between the exported types and the types proposed were of more than a minor nature. Thus, a comparison on the basis proposed by this company would have necessitated adjustments for differences in physical characteristics of such an extent that the comparison would no longer have been accurate.

- (25) It should be noted that as far as the third Thai company is concerned, which had been provisionally subject to an individual duty, it was finally not possible to establish a definitive dumping margin as it exported a negligible quantity of stainless steel fasteners which were not produced in Thailand.

(f) *People's Republic of China*

(i) Analogue country

- (26) One cooperating company in Hong Kong which exported SSFs originating in the People's Republic of China proposed that its domestic sales in Hong Kong be used to determine normal value for the People's Republic of China instead of data relating to Taiwan, which was selected as an analogue country. In the absence of new arguments to justify the choice of Hong Kong as an analogue country and since the domestic sales of this company represented less than 5 % of the total Chinese export sales to the Community, this proposal was rejected.

(ii) Amendment to normal value

- (27) For the company referred to in recital 26, it should be noted that the amendments made to the Taiwanese normal value influenced the calculations of its own normal value.

(g) *Conclusion*

- (28) The other findings made in recitals 12 to 28 of the provisional duty Regulation concerning the determination of normal value are hereby confirmed.

2. Export price(a) *India*

- (29) As stated in recital 29 of the provisional duty Regulation, the export prices of the Indian producer which sold the product concerned for export through a trading company were established on the basis of the prices it charged to the trading company. This company contested the adjustments made to these export prices. However, after verification and in the light of all available information, it was concluded that the approach taken at the provisional stage was not appropriate as the price charged to the trading company was not reliable because of the existence of an association or compensatory arrangement between the producer and this company. At the definitive stage export prices were therefore based on the prices charged to the first independent customer in the Community.

(b) *Taiwan*

- (30) As no arguments were received except for those relating to the changes regarding the product concerned mentioned under recital 8, the findings set out in recital 33 of the provisional duty Regulation are hereby confirmed.

(c) *People's Republic of China*

(i) Individual treatment

- (31) The six cooperating companies which were refused individual treatment reiterated their claim in this respect. However, only one of the six companies provided substantial additional evidence in support of its claim. After a careful examination of this evidence, it was concluded that this company enjoyed a degree of legal and factual independence from the influence of the State comparable to that which would prevail in a market economy country. Individual treatment was therefore granted to this company.

- (32) The other five cooperating companies did not provide relevant additional evidence in support of their claim for individual treatment. It was therefore confirmed that these companies were not sufficiently independent from the Chinese State in their operations, in particular in view of the fact that four of them were joint ventures in which the partner from the People's Republic of China was a State-owned enterprise. The remaining company also failed to show that its operations were sufficiently independent of the Chinese authorities.

Under these circumstances, the claim for individual treatment made by these five companies was rejected.

(ii) Use of Eurostat as export prices

- (33) Some interested parties contested the use of Eurostat by the Commission in the determination of the export prices. These interested parties argued that the Eurostat figures were greatly overestimated, and that the seven cooperating companies in the People's Republic of China and Hong Kong in reality accounted for the majority of the exports concerned, and were therefore representative.

However, these interested parties failed to show the alleged inaccuracy of Eurostat figures and to provide more reliable alternative data. Moreover, the Commission investigated the accuracy of Eurostat data by contacting Eurostat, national custom authorities, and the European importers concerned. The outcome of this inquiry confirmed that Eurostat was the most reliable source of information for the purpose of the current investigation. Therefore, the methodology used in the provisional determination is confirmed.

(d) *Republic of Korea, Malaysia and Thailand*

- (34) In the absence of new arguments, the provisional findings are hereby confirmed.

3. Comparison

(a) *India*

- (35) For the two companies mentioned under recital 29, in order to make a fair comparison between normal value and export price the latter had to be adjusted to take account of the activities of the trading company. Since its function can be considered to be similar to that of a trader acting on a commission basis, an adjustment was made on the basis of this company's own SG&A and a reasonable amount for profit. This adjustment was deducted from the prices charged by the trading company to independent customers in the Community.
- (36) These companies also alleged that insufficient allowance had been granted for duty drawback. In this respect it should be noted that they failed to submit conclusive evidence to substantiate the claim that all stainless steel used for the production of fasteners, including those sold domestically, contained imported raw materials for which duties were paid in accordance with Article 2(10)(b) of the Basic Regulation. Therefore the position set out in recital 42 of the provisional duty Regulation is hereby confirmed.
- (37) Of these two companies, the one which produced and sold the product concerned on the domestic market repeated the claim set out in recital 41 of the provisional duty Regulation concerning adjustment for credit costs. As the company concerned did not supply new supporting evidence, the position set out in recital 41 of the provisional duty Regulation is hereby confirmed.
- (38) The same companies also claimed an adjustment for level of trade on the grounds that domestic sales were made to traders and end users whereas the sales for export were made to traders only. The companies provided sufficient evidence showing that a part of domestic sales was made at a level of sale different to export sales and that this difference affected price comparability. Indeed, there were consistent and distinct differences in the functions and prices of the two companies for the different levels of trade. Consequently, the claim was granted and the calculation based on a comparison of the domestic and export sales to traders only where they were made in sufficient quantities to be representative.

(b) *Malaysia*

- (39) One Malaysian exporting producer claimed an allowance for currency conversions on export sales and requested that the exchange rate prevailing on the payment date be used. This claim was rejected on the grounds that, in accordance with Article 2(10)(j) of the Basic Regulation, the relevant

exchange rate can be either that on the date of invoice, the date of contract, the date of purchase order or the date of order confirmation, but not the one valid for the date of payment.

(c) *Taiwan*

- (40) The exporting producers mentioned under recital 18 who had requested that normal value be constructed rather than based on the prices of other producers claimed that if this request were rejected, an adjustment for differences in level of trade should be made since the product concerned was sold to retailers on the domestic market whereas the export product was sold to traders. This claim was rejected since the prices used were taken from producers who had already in comparable circumstances been refused the same kind of level of trade adjustment.
- (41) Two related exporting producers claimed an allowance for currency conversions similar to the one discussed in recital 39. The claim was rejected on the same grounds set out in that recital.
- (42) These two related companies claimed an allowance for the credit cost of sales on the domestic market and requested that the actual payment date be used. This claim was rejected on the grounds already mentioned in recital 41 of the provisional duty Regulation.

(d) *Republic of Korea, Thailand, People's Republic of China*

- (43) In the absence of new arguments, the provisional methodology is hereby confirmed.

4. Dumping margins

(a) *General*

- (44) In the absence of any other new arguments concerning the determination of the dumping margin, the methodology set out in recitals 45 to 47 of the provisional duty Regulation is hereby confirmed. On this basis, the dumping margins are as follows:

(b) *India*

- (45) In view of the changes in the calculations mentioned above, it was found that, for the two exporting producers in India which did not sell the product concerned on the domestic market, there was a pattern of export prices which differed significantly among different time periods and that a calculation based on weighted average would not reflect the full degree of dumping being practised. The new weighted average normal value was therefore compared to prices of all individual export transactions.

- (46) The dumping margins expressed as a percentage of the cif price at Community frontier are as follows:

— Audler Fasteners, Vasai	11,2 %
— Lakshmi Precision Screws Ltd, Rothak	19,8 %
— Kundan Industries Ltd, Vasai/ Tata Export Ltd, Mumbai	47,4 %.

- (47) The dumping margin definitively established for Indian exporters other than those cooperating in this investigation, expressed as a percentage of the cif price at Community frontier, is 59,4 %.

(c) *Republic of Korea*

- (48) In the absence of any comment from the sole cooperating exporting producer in Korea, its dumping margin remains unchanged; this margin, expressed as a percentage of the cif price at Community frontier is as follows:

— Daegil Trading Co. Ltd, Seoul	24,0 %
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The definitive dumping margin established for Korean exporting producers other than those cooperating in this investigation, expressed as a percentage of the cif price at Community frontier is 26,7 %.

(d) *Malaysia*

- (49) One Malaysian exporting producer contested the existence of a pattern in its export prices which differed significantly among different time periods in the sense of Article 2(11) of the Basic Regulation. This exporter pointed out that the steady decrease in its export prices during the period of investigation could be explained by a parallel decrease in the costs of raw materials. Should monthly average costs instead of a yearly average cost have been used in the dumping calculation, the pattern mentioned above would have disappeared. In view of the evidence submitted the claim was accepted and the dumping margin for this company was established on an average to average basis for the purpose of definitive determination.

One company in Malaysia offered undertakings on the basis of Article 8 of the Basic Regulation. However, after consultation with the Commission the company withdrew its request.

The definitive dumping margins calculated for the cooperating Malaysian exporting producers, expressed as a percentage of the cif price at Community frontier, are as follows:

— Tong Heer Fasteners Co., Sdn. Bhd., Penang	7,0 %
— Tigges Stainless Steel Fasteners (M) Sdn. Bhd.	5,7 %.

- (50) The definitive dumping margin established for Malaysian exporting producers other than those cooperating in this investigation, expressed as a

percentage of the cif price at Community frontier is 7,0 %.

(e) *Taiwan*

- (51) Some non-cooperating exporting producers in Taiwan submitted information to the Commission concerning their export prices in order to show that, had these prices been used in the calculation of the residual duty, this duty would have been much lower. Whilst these companies acknowledged that they should be considered as non-cooperating parties, they requested that their data nevertheless be taken into consideration as part of the facts available in the sense of Article 18(1) of the Basic Regulation. This claim is not acceptable since it would constitute a bonus for non-cooperation and could result in unreliable findings due to selectively submitted information. Moreover, pursuant to Article 18(3) of the Basic Regulation, the information submitted by an interested party should not be disregarded provided that, *inter alia*, it is appropriately submitted in good time and it is verifiable. However, none of these conditions is fulfilled in the present case.

- (52) The same non-cooperating companies contested that, whilst a single dumping margin had been imposed on two related Taiwanese companies, the residual duty was based on the individual margin found for one of these related companies, this margin being the highest found in Taiwan. However, the fact that an average dumping margin is imposed on a group of related companies in order to avoid circumvention does not have a bearing on the determination of the duty applicable to non-cooperating companies. The claim was therefore rejected.

- (53) For three exporting producers in Taiwan, the new weighted average normal value was compared to prices of all individual export transactions as it was found that there was a pattern of export prices which differed significantly among different time periods and that a calculation based on weighted average would not have reflected the full degree of dumping being practised.

- (54) The definitive dumping margins established for the cooperating Taiwanese exporting producers, expressed as a percentage of the cif price at Community frontier, are as follows:

— Arrow Fastener Co. Ltd/ Level Fastener Co. Ltd, Taipei	5,3 %
— CLC Industrial Co. Ltd, Taiwan	5,4 %
— Min Hwei, Kaohsiung	10,2 %
— Rodex Fasteners Corp., Chung Li	8,8 %
— Sen Chang, Tao Yuen	11,1 %
— Tong Hwei, Kaohsiung	10,2 %.

- (55) The definitive dumping margin established for the Taiwanese exporting producers other than those cooperating in this investigation, expressed as a percentage of the cif price at Community frontier is 23,1 %.

(f) *Thailand*

- (56) In view of the amendments made to the normal value mentioned above, the definitive dumping margins established for the two cooperating Thai exporting producers, expressed as a percentage of the cif price at Community frontier, are as follows:

— A.B.P. Stainless Steel Fastener Co. Ltd	8,4 %
— Dura Fastener Co. Ltd	2,7 %.

- (57) The definitive dumping margin established for the Thai exporting producers other than those cooperating in this investigation, expressed as a percentage of the cif price at Community frontier is 8,4 %.

(g) *People's Republic of China*

- (58) With regard to the company in the People's Republic of China which was granted individual treatment only at the definitive stage, the weighted average normal value fob Taiwan national frontier was compared with its own weighted average export prices fob China national frontier at the same level of trade.

Four cooperating companies in China which were not granted individual treatment requested an undertaking on the basis of Article 8 of the Basic Regulation. However, undertakings are not normally accepted from companies operating in non-market economy countries. Moreover, in this case the risk of circumvention is high and it should be noted that these companies were refused individual treatment because it was considered that they were not operating under normal market economy conditions. Under these circumstances the proposed undertakings could not be accepted.

The definitive dumping margin, expressed as a percentage of the cif price at Community frontier, is as follows.

— Ningbo Shyechang Metal Products	24,2 %.
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With regard to the company which was already granted individual treatment in the provisional duty Regulation, the definitive dumping margin based on the amended Taiwanese normal value expressed as a percentage of the cif price at Community frontier is as follows:

— Power Van Industrial Co. Ltd	13,6 %.
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- (59) For the Chinese exporting producers other than those mentioned above, the definitive dumping margin based on the amended Taiwanese normal value expressed as a percentage of the cif price at Community frontier is 78,0 %.

E. INJURY

1. Cumulative assessment of the effects of the dumped imports

- (60) Representatives of certain Indian exporters have claimed that imports from India should not be cumulated with imports of the product concerned from the People's Republic of China, Malaysia, the Republic of Korea, Taiwan and Thailand and should be excluded from the scope of the proceeding. This claim was made on the basis that the increase in the volume and market share of imports from India was not comparable to that of the other third countries concerned and that the volume of imports from India during the investigation period was lower than in 1995 (by 1,5 %). In addition, it was alleged that the market share held by India during the investigation period (2,9 %) was negligible 'in the overall trade of the product concerned'.

- (61) In this respect, the investigation has shown that the volume of imports from India during the investigation period was significant, as were the volume of imports from the other countries concerned. Moreover, when the volume of imports from India during the investigation period (11 months) is extrapolated for a 12-month period and compared to 1995 levels the volume actually increased. Furthermore, pursuant to Articles 5(7) and 9(3) of the Basic Regulation a market share of 2,9 % cannot be considered as negligible.

- (62) In the light of the above, it is concluded that imports of the product concerned from India should be examined cumulatively with the imports from the other countries concerned.

2. Prices of the dumped imports on the Community market

- (63) Indian exporters have claimed that the imports of the product concerned originating in India have not caused injury to the Community industry given that their average prices have been stable for much of the period considered and, between 1994 and 1996, have increased by 19 %.

- (64) The investigation has shown that the weighted average prices of the Indian imports remained relatively stable between 1992 and 1994, but at a very low price level and significantly below the level of the Community producers' prices, even when account is taken of the subsequent increase in prices. It should also be remembered that substantial levels of undercutting were established during the investigation period.

- (65) Similar allegations have been made by the Taiwanese exporters, i.e. that the prices of the imports from Taiwan were stable over the period considered.

Again, the prices of the Taiwanese imports show some stability but at a relatively low price level. SSFs from Taiwan were imported in large quantities and undercut the Community producer's prices substantially during the investigation period.

3. Price undercutting

- (66) The basis of calculation of price undercutting is set out in recital 65 of the provisional duty Regulation.
- (67) However, new information on export sales and prices was supplied by three exporters (two Indian and one Taiwanese). Revised undercutting margins were established on the basis of this new data.
- (68) As a consequence of individual treatment being granted to a second cooperating exporter in China an individual undercutting margin was calculated for the exporter concerned and a revised undercutting margin calculated for the remaining five cooperating exporters in China.
- (69) In addition to the above, the adjustments to the cif export price granted to all exporters (to take account of post-importation expenses incurred) were recalculated and resulted in minor changes to the margins of undercutting provisionally established.
- (70) The revised margins of undercutting are expressed, as in the provisional duty Regulation, as a percentage of the Community industry's prices (at ex-works level). The undercutting margins established are as follows:

Country	Undercutting margin
People's Republic of China	from 39,4 to 39,8 %
Malaysia	from 21,8 to 42,5 %
Taiwan	from 17,8 to 60,9 %
India	from 23,6 to 36,6 %
Korea	22,7 %
Thailand	from 25 to 33,5 %

- (71) An overall weighted average price undercutting from all countries concerned of 28,7 % was found for the investigation period.

4. Situation of the Community industry

4.1. Production, capacity, capacity utilisation rates and market shares

- (72) Chinese exporters have alleged that any injury suffered by the Community industry is due to the increase in production and production capacity by the producers concerned over the period considered, most noticeably in 1994.
- (73) However, the investigation has shown that consumption of the product concerned increased by 75 % between 1992 and 1996. Even though capacity increased by 91 % (mainly due to acquisi-

tion by a complaining Community producer of a non-complaining producer's production facilities), production by the Community industry increased by only 48 %. In addition, capacity utilisation rates decreased by 18 %. The market share of the Community producers decreased by 7 % over the period considered while that of the exporters concerned increased by 16,5 %. The investigation has shown that the Community industry was unable to take full advantage of the increase in consumption due to the high volume and low prices of the dumped imports.

4.2. Stocks

- (74) Chinese exporters have claimed that the increase in the stocks of the Community producers is due to an increase in production of SSFs during a period when there was 'no increase in consumption to absorb these extra SSFs'.
- (75) The investigation has shown that this is not the case as can be seen from the development of consumption as outlined in the preceding recital. Indeed, the increase in consumption (75 %) was significantly greater than that of production (48 %) and sales (27 %) of the Community industry.

4.3. Prices

- (76) Chinese exporters have further claimed that (contrary to the above) although consumption increased between 1992 and 1996, the Commission failed to take account of the increase in production capacity by the Community producers and that in the circumstances any drastic increase in prices would not have been expected.
- (77) This argument does not appear to be particularly pertinent and fails to take account of the fact that, despite an increase in production capacity, and an overall negligible increase in prices by the Community industry, the increase in sales did not keep pace with the increase in consumption and the Community industry's lost market share over the period considered.

4.4. Profitability

- (78) It has been claimed that the negative situation of the Community industry was overstated in the provisional duty Regulation and separate information has been provided by exporters' representatives on the overall financial strength of each of the five complaining producers.
- (79) Information supplied related to all five companies for the periods prior and up to the investigation period. However, information in relation to profitability during the period of investigation was provided for only one of the complaining producers and was therefore incomplete. For this producer the information confirms the facts as established during the investigation, i.e. that there

was a sharp and significant decrease in profitability during the investigation period. In addition, the investigation has shown that this decline was clearly evident for each of the other complaining producers during the investigation period. This claim is therefore rejected.

4.5. *Employment*

- (80) It has been alleged that despite heavy investment in automated production machinery the number of employees in the Community industry increased by 16 % over the period considered (from 325 to 378) and that this increase in employment is an indication that the Community industry is not suffering material injury.
- (81) The investigation has shown that, despite heavy investment in production machinery (which necessitated additional employment) and an increase in productivity of 10 % between 1992 and the investigation period, the Community industry experienced a loss of market share and a serious deterioration in its financial situation.

5. *Conclusion on injury*

- (82) It should be remembered, in accordance with Article 3(5) of the Basic Regulation, that any one of the above injury factors cannot necessarily give decisive guidance as to the impact of the dumped imports on the situation of the Community industry.
- (83) In this respect it is to be noted that, while production and sales by the Community industry increased, this development cannot lead to the conclusion that the Community industry has not been injured as consumption on the Community market shows a much greater increase. Furthermore, the market share held by the dumped imports increased by 17 % (to 50,1 %) during a period when the Community industry's market share decreased by 7 % (to 19 %) and its profitability suffered and significant decline.
- (84) In the light of the above and in the absence of other arguments, it is confirmed that, as was established in recitals 66 to 73 of the provisional duty Regulation, the Community industry has suffered material injury within the meaning of Article 3(1) of the Basic Regulation.

F. CAUSATION

1. *Effect of the dumped imports*

- (85) Indian exporters have referred to the fact that the financial situation of the Community producers was negative in 1992 at a time when the imports from India were 'nearly non-existent'.

- (86) In this respect it is noted, in the first instance, that the impact of the Indian imports on the situation of the Community industry should, as previously stated, be examined cumulatively with the imports from the other countries concerned. Cumulatively, the volume of imports from the countries concerned represented 57,5 % of total imports in 1992 (33,5 % of Community consumption). In addition, even if considered separately, the Indian imports were seen to increase at the same time as the market share and profits of the Community industry decreased.

2. *Effect of other factors*

- (87) The Commission had provisionally examined the extent to which the material injury suffered by the Community industry was caused by the impact of the dumped imports originating in the People's Republic of China, India, Malaysia, the Republic of Korea, Taiwan and Thailand and whether other factors had caused or contributed to that injury in order to ensure that any injury caused by these other factors was not attributed to the dumped imports concerned. Such other factors included the evolution of consumption, the effect of imports from other third countries, fluctuations in the price of raw materials and any possible anti-competitive practices by the Community industry.
- (88) In spite of this detailed analysis on the causation of injury it has been alleged that there was no causal link between the material injury suffered by the Community industry and the dumped imports, or alternatively, that any material injury suffered was caused by factors other than the dumped imports.
- (89) In particular, it has been alleged that the scope of the anti-dumping proceeding is clearly discriminatory as imports of stainless steel fasteners originating in South Africa have been omitted from the investigation even though they have been imported in large quantities and at very low prices. It is further alleged that the only explanation given by the Commission in the provisional duty Regulation for the exclusion of these imports from the scope of the investigation is that, in this particular instance, Eurostat data was found to be unreliable.
- (90) In this respect it is noted that as far as Eurostat data are concerned, imports alleged to originate in South Africa are considered unreliable as available evidence suggests that there is no production of the product concerned in South Africa. No submission has been received to support the contrary.

- (91) It has also been alleged that imports originating in the Philippines may have contributed to the injury suffered by the Community industry and it was stated that the price of the product concerned originating in the Philippines decreased by 18,3 % between 1995 and 1996.

- (92) The Council confirms that the price of SSFs originating in the Philippines decreased between 1995 and 1996. However, the investigation has shown that, having decreased, prices were still significantly (and consistently) higher than those of the countries concerned by the present investigation. Furthermore, the Commission has no evidence that the prices of the product concerned originating in the Philippines were being dumped.
- (93) It has been alleged that the decrease in apparent Community consumption in 1996, following three years in which consumption increased, had an effect on the situation of the Community industry as the industry concerned was expecting a continuous increase in consumption, had invested heavily in machinery and had increased production in the light of this expectation. Attention was drawn to Article 3(7) of the Basic Regulation which states that a 'contraction of demand' is one of a number of elements which may be considered when assessing whether factors other than the dumped imports have caused injury to the Community industry.
- (94) The investigation has shown that, between 1992 and 1995, Community consumption increased from 47 187 tonnes to 86 472 tonnes (an increase of 83 %) while it shows a slight decrease in 1996 to 82 352 tonnes (a decrease of 4,7 %). This small decrease in consumption can not by itself explain the substantial deterioration of the economic situation of the Community industry during the investigation period, in particular in terms of the decrease in the market share of this industry.
- (95) It has also been alleged that any injury suffered is partly due to a 'frivolous' pricing policy adopted by the Community producers. It was alleged that between 1992 and 1994 the Community industry reduced its sales prices by 10 %, but in compensation its production increased by 48 %, its volume of sales by 44 % and its profitability improved by 7,7 %. It was then alleged that in 1995 the Community industry radically changed its policy and increased its prices which resulted in a decrease in sales volume and loss of market share.
- (96) This allegation should be seen in the context of the overall results of the investigation. Essentially, the investigation has shown that while the weighted average prices of the Community industry decreased between 1992 and 1994 and increased in 1995, prices decreased again substantially during the investigation period. Over the entire period considered prices only show an increase of 1 %.
- (97) Specifically, between 1994 and 1995, the prices and profits of the Community industry increased (at a time when, under pressure from the imports concerned, the Community industry maintained profits at the expense of market share). However, after 1995, the cumulated effect of the dumped imports led to an oversupply on the Community market forcing the Community industry to lower prices and profits in the investigation period, while losing further market share. This shows that in spite of fluctuations in prices, aimed at dealing with the pressure from the dumped imports concerned, the Community industry was unable to either retain market share or sustain reasonable levels of profit during the period considered.
- (98) It was furthermore alleged that the Community industry adopted anti-competitive behaviour and that there was collusion between the complaining Community producers concerned.
- (99) No evidence has been provided or found in support of these allegations. This submission could not, therefore, be accepted.
- ### 3. Conclusion on causation
- (100) Based on the findings as explained above, and in accordance with recitals 74 to 82 of the provisional duty Regulation, it is confirmed that the combined low-priced dumped imports originating in the People's Republic of China, India, Malaysia, the Republic of Korea, Taiwan and Thailand, taken in isolation, have caused material injury to the Community industry.
- ## G. COMMUNITY INTEREST
- ### 1. Impact of the measures
- (101) In the provisional duty Regulation the Commission indicated why the Community interest calls for intervention and why no compelling reasons existed for not imposing measures.
- (102) In particular, the Commission concluded that measures can be expected to afford the Community industry the opportunity to regain lost market share and restore profitability, with consequent beneficial effects on competitive conditions on the Community market.
- (103) In spite of the detailed analysis given in recitals 84 to 98 of the provisional duty Regulation it has been alleged that it is not in the Community interest to impose anti-dumping measures in the present proceeding. In particular, it was claimed that far more people are employed by importers/traders in the product concerned than by the Community producers, that importers/traders would be forced to buy at artificially high prices by

Community producers as a result of a foreseen reduction in the volume of imports and that importers/traders would be forced to cut back on employment.

- (104) In addition, it was alleged that the downstream industry would be affected if definitive measures were imposed, because it would suffer significant price increases and that the user industry would be deprived of certain products (i.e. nuts).
- (105) The investigation has shown that the Community industry is unable to cater for demand on the Community market and that there is a continuing need for imported products. Based on the results of the analysis and taking into account the past behaviour of the Community industry, it appears reasonable to conclude that the prices of SSFs will in all likelihood increase as a result of measures. However, given that the importers/traders have many options as regards sources of supply (including being supplied by the Community industry as seen during the investigation period) and that the margins of importers/traders have been good throughout the period, it is considered that the effect of measures could be minimised by a combination of a small reduction in profit margins and slight price increases to the user industry. Given the continued need for imported product and given that both imported and Community produced product is sold to users through a well established network of traders it is considered that employment of importers/traders will not be adversely affected by the imposition of measures.
- (106) As regards the users of the product concerned, it is considered, as stated in recitals 95 to 97 of the provisional duty Regulation, that the extent to which SSFs have an impact on the cost of finished product is negligible and that, therefore, any increase in these costs is unlikely to have a significant effect on users' costs. It is further noted that the imposition of an anti-dumping duty will still permit traders to import the product concerned (i.e. including nuts).
- (107) In the absence of further arguments with regard to the interests of raw material suppliers the conclusions as stated in recitals 86 and 87 of the provisional duty Regulation are confirmed.

2. Conclusion on Community interest

- (108) In summary, after an appreciation of all the various interests, and for the reasons given in recitals 84 to 98 of the provisional duty Regulation it is

concluded that, on balance, it is in the Community interest to impose definitive measures.

H. ANTI-DUMPING MEASURES

1. Injury elimination level

- (109) Based on the above conclusions on dumping, injury, causal link and Community interest, it was then considered what level and form the anti-dumping measures should take in order to remove the trade-distorting effects of injurious dumping and to restore effective competitive conditions on the Community market.
- (110) After publication of the provisional duty Regulation, new information (as previously stated) on export sales and prices was supplied by representatives of three exporters (two Indian and one Taiwanese). Revised injury elimination levels were established on the basis of this new data.
- (111) In addition, as a consequence of individual treatment being granted to a second cooperating exporter in China an individual injury elimination level was calculated for the exporter concerned and a revised injury elimination margin calculated for the other five exporters in China.
- (112) Furthermore, adjustments to the cif export price granted to all exporters (to take account of post-importation expenses incurred) were recalculated and resulted in changes to the margins provisionally established. Otherwise, the basis of calculation of the injury elimination level is as set out in recital 99 of the provisional duty Regulation.
- (113) The revised injury elimination levels are expressed, as in the provisional duty Regulation, as a percentage of the weighted average free-at-Community-frontier price of the imported product.
- (114) The injury elimination levels established were greater or equal to the following:

The People's Republic of China	74,7 %
India:	
cooperating producers	41,3 %
non-cooperating producers	54,0 %
Malaysia	37,7 %
Republic of Korea	38,6 %
Taiwan	34,1 %
Thailand	48,3 %.

2. Duty

- (115) The injury elimination margin established for non-cooperating producers in India and for companies in the People's Republic of China which were not granted individual treatment were, in each case, less than the dumping margins established. The duty should, therefore, be based on the injury margins, in accordance with the provisions of Article 9(4) of the Basic Regulation.
- (116) Since the injury elimination levels established were, in all other cases, in excess of the dumping margins the duty should be based on the dumping margins pursuant to Article 9(4) of the Basic Regulation.
- (117) The definitive anti-dumping duties, applicable to the net, free-at-Community-frontier price, before duty should therefore be as follows:

Country	Company	Rate of duty
China	Ningbo Shyechang Metal Products	24,2 %
	Power Van Industrial Co. Ltd	13,6 %
	All other companies	74,7 %
India	Lakshmi Precision Screws Ltd	19,8 %
	Kundan Industries Ltd/Tata Export Ltd, Mumbai	47,4 %
	Audler Fasteners	11,2 %
	All other companies	54,0 %
Malaysia	Tigges Stainless Fasteners (M) Sdn. Bhd.	5,7 %
	Tong Heer Fasteners Co. Sdn. Bhd.	7,0 %
	All other companies	7,0 %
Republic of Korea	Daegil Trading Co. Ltd	24,0 %
	All other companies	26,7 %
Taiwan	Arrow Fastener Co. Ltd	5,3 %
	Sen Chang Industrial Co. Ltd	11,1 %
	Tong Hwei Enterprise Co. Ltd	10,2 %
	Rodex Fasteners Corp.	8,8 %
	CLC Industrial Co. Ltd	5,4 %
	Min Hwei Enterprise Co. Ltd	10,2 %
	All other companies	23,1 %
Thailand	A.B.P. Stainless Fastener Co. Ltd	8,4 %
	Dura Fasteners Co. Ltd	2,7 %
	All other companies	8,4 %

I. COLLECTION OF THE PROVISIONAL DUTY

- (118) In view of the magnitude of the dumping margins found for the exporting producers and in the light of the seriousness of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duty pursuant to Regulation (EC) No 1732/97 be definitively collected. Amounts secured by way of provisional anti-dumping duty shall be definitively collected at the rate of duty definitively imposed,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports into the Community of stainless steel fasteners and parts thereof falling within CN codes 7318 12 10, 7318 14 10, 7318 15 30, 7318 15 51, 7318 15 61, 7318 15 70 and 7318 16 30 originating in the People's Republic of China, India, Malaysia, the Republic of Korea, Taiwan and Thailand.

2. The rate of the definitive anti-dumping duty applicable to the net free-at-Community-frontier price, before duty, shall be as follows:

Country	Company	Rate of duty	Taric additional code
China	Ningbo Shyechang Metal Products	24,2 %	8757
	Power Van Industrial Co. Ltd	13,6 %	8333
	All other companies	74,7 %	8900
India	Lakshmi Precision Screws Ltd	19,8 %	8415
	Kundan Industries Ltd/Tata Export Ltd, Mumbai	47,4 %	8416
	Audler Fasteners	11,2 %	8417
	All other companies	54,0 %	8900
Malaysia	Tigges Stainless Fasteners (M) Sdn. Bhd.	5,7 %	8334
	Tong Heer Fasteners Co. Sdn. Bhd.	7,0 %	8335
	All other companies	7,0 %	8900
Republic of Korea	Daegil Trading Co. Ltd	24,0 %	8418
	All other companies	26,7 %	8900
Taiwan	Arrow Fastener Co. Ltd	5,3 %	8336
	Sen Chang Industrial Co. Ltd	11,1 %	8337
	Tong Hwei Enterprise Co. Ltd	10,2 %	8338
	Rodex Fasteners Corp.	8,8 %	8408
	CLC Industrial Co. Ltd	5,4 %	8409
	Min Hwei Enterprise Co. Ltd	10,2 %	8414
	All other companies	23,1 %	8900
Thailand	A.B.P. Stainless Fastener Co. Ltd	8,4 %	8419
	Dura Fasteners Co. Ltd	2,7 %	8420
	All other companies	8,4 %	8900

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

Article 2

1. The amounts secured by way of provisional anti-dumping duty pursuant to Regulation (EC) No 1732/97 shall be definitively collected at the rate of the duty definitively imposed.

2. Amounts secured in excess of the definitive rate of anti-dumping duty shall be released.

Article 3

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

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

Done at Brussels, 16 February 1998.

For the Council

The President

G. BROWN

COMMISSION REGULATION (EC) No 394/98
of 19 February 1998
establishing the standard import values for determining the entry price of
certain fruit and vegetables

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

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

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

Whereas Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third

countries, in respect of the products and periods stipulated in the Annex thereto;

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 20 February 1998.

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

Done at Brussels, 19 February 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ L 325, 14. 12. 1996, p. 5.

⁽³⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 19 February 1998 establishing the standard import values for determining the entry price of certain fruit and vegetables

(ECU/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	204	48,7
	212	106,3
	999	77,5
0707 00 05	052	135,8
	053	168,5
	068	108,0
	999	137,4
0709 90 70	052	139,2
	204	131,1
	999	135,2
0805 10 10, 0805 10 30, 0805 10 50	052	38,9
	204	37,1
	212	39,4
	220	45,9
	600	57,4
	624	52,3
	999	45,2
0805 20 10	204	78,1
	999	78,1
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	58,9
	204	67,0
	600	79,0
	624	79,2
	662	41,0
	999	65,0
	052	43,2
0805 30 10	204	53,5
	400	53,3
	600	79,8
	999	57,5
0808 10 20, 0808 10 50, 0808 10 90	060	48,0
	064	42,6
	400	88,5
	404	86,7
	528	111,5
	720	79,8
	728	82,0
	999	77,0
0808 20 50	064	97,4
	388	94,8
	400	111,9
	512	67,7
	528	90,8
	999	92,5

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2317/97 (OJ L 321, 22. 11. 1997, p. 19). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 395/98

of 19 February 1998

amending Regulation (EEC) No 2807/83 laying down detailed rules for recording information on Member States' catches of fish

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

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy⁽¹⁾, as last amended by Regulation (EC) No 2635/97⁽²⁾, and in particular Article 19e(5) thereof,

Whereas Council Regulation (EC) No 779/97⁽³⁾ introduces arrangements for the management of fishing effort in the Baltic Sea with effect from 1 January 1998;

Whereas Regulation (EC) No 2635/97 amended Regulation (EEC) No 2847/93 to ensure compliance with the arrangements for the management of fishing effort in the Baltic Sea;

Whereas the amendments relate to, *inter alia*, the provisions for recording data on fishing effort in the logbook;

Whereas Commission Regulation (EEC) No 2807/83⁽⁴⁾, as last amended by Regulation (EC) No 2945/95⁽⁵⁾, lays down rules for recording information on Member States' catches of fish;

Whereas pursuant to Article 19e(5) of Regulation (EEC) No 2847/93 detailed rules for recording information on fishing effort in the logbook should be laid down in order to implement the arrangements for the management of fishing effort referred to in Regulation (EC) No 779/97;

Whereas Regulation (EEC) No 2807/83 should be amended accordingly;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2807/83 is hereby amended as follows:

1. in Article 1a(1) the following is added after 'Council Regulation (EC) No 685/95': 'and in Article 1 of Council Regulation (EC) No 779/97^(*),

^(*) OJ L 113, 30.4.1997, p. 1.;

2. in Annex VIa:

— in the column 'Group of target species', the following is added:

'ANADROMOUS AND Salmon, sea trout and
FRESHWATER freshwater fish';

— in the column 'Effort zones', the following is added:

T: IBSFC areas (subdivisions 22 to 32)

U: Management Unit 3^(*)

^(*) Comprising subdivisions 29, 30 and 31 north of latitude 59°30' N.'

Article 2

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

It shall apply from 1 July 1998.

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

Done at Brussels, 19 February 1998.

For the Commission

Emma BONINO

Member of the Commission

⁽¹⁾ OJ L 261, 20. 10. 1993, p. 1.

⁽²⁾ OJ L 356, 31. 12. 1997, p. 14.

⁽³⁾ OJ L 113, 30. 4. 1997, p. 1.

⁽⁴⁾ OJ L 276, 10. 10. 1983, p. 1.

⁽⁵⁾ OJ L 308, 21. 12. 1995, p. 18.

COMMISSION REGULATION (EC) No 396/98

of 19 February 1998

setting export refunds on products processed from fruit and vegetables other than those granted for added sugar

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

limits resulting from agreements concluded in accordance with Article 228 of the Treaty;

Having regard to the Treaty establishing the European Community,

Whereas Article 17 (3) of Regulation (EC) No 2201/96 states that prices on the Community market are to be determined taking account of those most favourable from the exportation standpoint; whereas international trade prices are to be determined account taken of the prices indicated in the second subparagraph of that paragraph;

Having regard to Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organization of the market in products processed from fruit and vegetables⁽¹⁾, as amended by Regulation (EC) No 2199/97⁽²⁾, and in particular Article 16 (3),

Whereas the international trade situation or the special requirements of certain markets may make it necessary to vary the refund on a given product depending on the destination of that product;

Whereas Commission Regulation (EC) No 1429/95⁽³⁾, as last amended by Regulation (EC) No 1007/97⁽⁴⁾, sets implementing rules for export refunds on products processed from fruit and vegetables;

Whereas economically significant exports can be made at the present time of provisionally preserved cherries, peeled tomatoes, preserved cherries, prepared hazelnuts and some orange juices;

Whereas Article 16 (1) of Regulation (EC) No 2201/96 states that, to the extent necessary to permit exports in economically significant quantities of the products referred to in Article 1 (1) (a) of that Regulation, on the basis of prices for those products in international trade, the difference between those prices and prices in the Community may be covered by export refunds; whereas Article 18 (4) of Regulation (EC) No 2201/96 provides that, if the refund on sugar incorporated into the products listed in Article 1 (1) is insufficient to allow export of the products, the refund fixed in accordance with Article 17 is to be applicable to those products;

Whereas the representative market rates as defined in Article 1 of Council Regulation (EEC) No 3813/92⁽⁵⁾, as last amended by Regulation (EC) No 150/95⁽⁶⁾, are used to convert amounts in third-country currencies and are the basis for determining the agricultural conversion rates of the Member States' currencies; whereas rules for determining and applying these conversion rates were set by Commission Regulation (EEC) No 1068/93⁽⁷⁾, as last amended by Regulation (EC) No 1482/96⁽⁸⁾;

Whereas Article 17 (2) of Regulation (EC) No 2201/96 states that refunds must be fixed with regard to the existing situation and outlook for prices for products processed from fruit and vegetables on the Community market and supply availability, on the one hand, and prices in international trade on the other hand; whereas account must also be taken of the costs indicated at (b) in that paragraph and of the economic aspect of the envisaged exports;

Whereas application of the rules mentioned above to the present and forecast market situation, in particular to prices of products processed from fruit and vegetables in the Community and in international trade, leads to the refund rates set in the Annex hereto;

Whereas refunds are, pursuant to Article 16 (1) of Regulation (EC) No 2201/96, to be set with due regard to the

Whereas, pursuant to Article 16 (2) of Regulation (EC) No 2201/96, the most efficient possible use should be made of the resources available without creating discrimination between traders; whereas, therefore, care should be taken not to disturb the trade flows previously induced by the refund arrangements;

⁽¹⁾ OJ L 297, 21. 11. 1996, p. 29.

⁽²⁾ OJ L 303, 6. 11. 1997, p. 1.

⁽³⁾ OJ L 141, 24. 6. 1995, p. 28.

⁽⁴⁾ OJ L 145, 5. 6. 1997, p. 16.

⁽⁵⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁶⁾ OJ L 22, 31. 1. 1995, p. 1.

⁽⁷⁾ OJ L 108, 1. 5. 1993, p. 106.

⁽⁸⁾ OJ L 188, 27. 7. 1996, p. 22.

Whereas Commission Regulation (EEC) No 3846/87 ⁽¹⁾, as last amended by Regulation (EC) No 382/98 ⁽²⁾, establishes an agricultural product nomenclature for export refunds;

Whereas Commission Regulation (EEC) No 3719/88 ⁽³⁾, as last amended by Regulation (EC) No 1404/97 ⁽⁴⁾, lays down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. The export refund rates in the processed fruit and vegetables sector shall be those fixed in the Annex hereto.
2. Quantities for which licences are issued in the context of food aid, as referred to in Article 14a of Regulation (EEC) No 3719/88 shall not count against the eligible quantities referred to in the first paragraph.

Article 2

This Regulation shall enter into force on 24 February 1998.

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

Done at Brussels, 19 February 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 366, 24. 12. 1987, p. 1.

⁽²⁾ OJ L 48, 19. 2. 1998, p. 28.

⁽³⁾ OJ L 331, 2. 12. 1988, p. 1.

⁽⁴⁾ OJ L 194, 23. 7. 1997, p. 5.

ANNEX

Product (The full definitions of the eligible products are given in the 'processed fruit and vegetables' sector of Commission Regulation (EEC) No 3846/87, as amended)		Product code	Destination code ⁽¹⁾	Licence issuing period March to June 1998	
				Period for submission of applications: from 24 February to 23 June 1998	
				Refund rate (ECU/tonne net)	Quantities provided (in tonnes)
Provisionally preserved cherries		0812 10 00 9100	A	55	3 694
Peeled tomatoes		2002 10 10 9100	B	50	44 375
Preserved cherries		2006 00 31 9000 2006 00 99 9100	A	170	372
Prepared hazelnuts		2008 19 19 9100 2008 19 99 9100	C	66	445
Orange juice	With a sugar content of not less than 10° Brix, but less than 22° Brix	2009 11 99 9110 2009 19 99 9110	C	6	389
	With a sugar content of not less than 55° Brix	2009 11 99 9150 2009 19 99 9150	C	32	390

⁽¹⁾ The destination codes are defined as follows:

A: All destinations except the countries of North America,

B: All destinations except the United States of America,

C: All destinations.

COMMISSION REGULATION (EC) No 397/98

of 19 February 1998

fixing the export refunds on cereals and on wheat or rye flour, groats and meal

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

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals⁽¹⁾, as last amended by Commission Regulation (EC) No 923/96⁽²⁾, and in particular Article 13 (2) thereof,

Whereas Article 13 of Regulation (EEC) No 1766/92 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products in the Community may be covered by an export refund;

Whereas the refunds must be fixed taking into account the factors referred to in Article 1 of Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals⁽³⁾, as last amended by Regulation (EC) No 2052/97⁽⁴⁾;

Whereas possibilities exist for a quantity of 100 000 tonnes of maize to be exported to certain destinations under invitations to tender issued by the World Food Programme; whereas the procedure laid down in Article 7 (4) of Commission Regulation (EC) No 1162/95⁽⁵⁾, as last amended by Regulation (EC) No 932/97⁽⁶⁾, should be used; whereas account should be taken of this when the refunds are fixed;

Whereas, as far as wheat and rye flour, groats and meal are concerned, when the refund on these products is being calculated, account must be taken of the quantities

of cereals required for their manufacture; whereas these quantities were fixed in Regulation (EC) No 1501/95;

Whereas the world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination;

Whereas the refund must be fixed once a month; whereas it may be altered in the intervening period;

Whereas it follows from applying the detailed rules set out above to the present situation on the market in cereals, and in particular to quotations or prices for these products within the Community and on the world market, that the refunds should be as set out in the Annex hereto;

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

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 (a), (b) and (c) of Regulation (EEC) No 1766/92, excluding malt, exported in the natural state, shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 20 February 1998.

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

Done at Brussels, 19 February 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 147, 30. 6. 1995, p. 7.

⁽⁴⁾ OJ L 287, 21. 10. 1997, p. 14.

⁽⁵⁾ OJ L 117, 24. 5. 1995, p. 2.

⁽⁶⁾ OJ L 135, 27. 5. 1997, p. 2.

ANNEX

**to the Commission Regulation of 19 February 1998 fixing the export refunds on cereals and on
wheat or rye flour, groats and meal**

<i>(ECU / tonne)</i>			<i>(ECU / tonne)</i>		
Product code	Destination ⁽¹⁾	Amount of refund	Product code	Destination ⁽¹⁾	Amount of refund
1001 10 00 9200	—	—	1101 00 11 9000	—	—
1001 10 00 9400	—	—	1101 00 15 9100	01	26,00
1001 90 91 9000	—	—	1101 00 15 9130	01	24,25
1001 90 99 9000	03	9,00	1101 00 15 9150	01	22,50
	02	0	1101 00 15 9170	01	20,75
1002 00 00 9000	03	25,00	1101 00 15 9180	01	19,50
	02	0	1101 00 15 9190	—	—
1003 00 10 9000	—	—	1101 00 90 9000	—	—
1003 00 90 9000	03	21,00	1102 10 00 9500	01	47,50
	02	0	1102 10 00 9700	—	—
1004 00 00 9200	—	—	1102 10 00 9900	—	—
1004 00 00 9400	—	—	1103 11 10 9200	—	— ⁽²⁾
1005 10 90 9000	—	—	1103 11 10 9400	—	— ⁽²⁾
1005 90 00 9000	04	29,00 ⁽³⁾	1103 11 10 9900	—	—
	03	19,00	1103 11 90 9200	01	0 ⁽²⁾
	02	—	1103 11 90 9800	—	—
1007 00 90 9000	—	—			
1008 20 00 9000	—	—			

⁽¹⁾ The destinations are identified as follows:

- 01 All third countries,
- 02 Other third countries,
- 03 Switzerland, Liechtenstein,
- 04 Tanzania, Burundi, Republic of Congo (Brazzaville), Democratic Republic of Congo.

⁽²⁾ No refund is granted when this product contains compressed meal.

⁽³⁾ Refund fixed under the procedure laid down in Article 7 (4) of amended Regulation (EC) No 1162/95 in respect of a quantity of 100 000 tonnes of maize to be exported to Tanzania, Burundi, the Republic of Congo (Brazzaville) and the Democratic Republic of Congo, under invitations to tender issued by the World Food Programme.

NB: The zones are those defined in amended Commission Regulation (EEC) No 2145/92 (OJ L 214, 30. 7. 1992, p. 20).

COMMISSION REGULATION (EC) No 398/98

of 19 February 1998

fixing the maximum export refund on common wheat in connection with the invitation to tender issued in Regulation (EC) No 1339/97

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

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

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 2052/97 ⁽⁴⁾, and in particular Article 7 thereof,

Whereas an invitation to tender for the refund and/or the tax for the export of common wheat to all third countries except Ceuta, Melilla and certain ACP States was opened pursuant to Commission Regulation (EC) No 1339/97 ⁽⁵⁾, as amended by Regulation (EC) No 1884/97 ⁽⁶⁾;

Whereas Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to fix a maximum export refund taking account of the criteria referred to in Article 1 of Regulation (EC) No

1501/95; whereas in that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund, as well as to any tenderer whose bid relates to an export tax;

Whereas the application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund being fixed at the amount specified in Article 1;

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 13 to 19 February 1998, pursuant to the invitation to tender issued in amended Regulation (EC) No 1339/97, the maximum refund on exportation of common wheat shall be ECU 18,97 per tonne.

Article 2

This Regulation shall enter into force on 20 February 1998.

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

Done at Brussels, 19 February 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 147, 30. 6. 1995, p. 7.

⁽⁴⁾ OJ L 287, 21. 10. 1997, p. 14.

⁽⁵⁾ OJ L 184, 12. 7. 1997, p. 7.

⁽⁶⁾ OJ L 265, 27. 9. 1997, p. 73.

COMMISSION REGULATION (EC) No 399/98

of 19 February 1998

fixing the maximum export refund on common wheat in connection with the invitation to tender issued in Regulation (EC) No 1883/97

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

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

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 2052/97 ⁽⁴⁾, and in particular Article 7 thereof,

Whereas an invitation to tender for the refund and/or the tax for the export of common wheat to Ceuta, Melilla and certain ACP States was opened pursuant to Commission Regulation (EC) No 1883/97 ⁽⁵⁾, as amended by Regulation (EC) No 2545/97 ⁽⁶⁾;

Whereas Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to fix a maximum export refund taking account of the criteria referred to in Article 1 of Regulation (EC) No

1501/95; whereas in that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund, as well as to any tenderer whose bid relates to an export tax;

Whereas the application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund being fixed at the amount specified in Article 1;

Whereas the Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 13 to 19 February 1998, pursuant to the invitation to tender issued in Regulation (EC) No 1883/97, the maximum refund on exportation of common wheat shall be ECU 24,00 per tonne.

Article 2

This Regulation shall enter into force on 20 February 1998.

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

Done at Brussels, 19 February 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 147, 30. 6. 1995, p. 7.

⁽⁴⁾ OJ L 287, 21. 10. 1997, p. 14.

⁽⁵⁾ OJ L 265, 27. 9. 1997, p. 69.

⁽⁶⁾ OJ L 347, 18. 12. 1997, p. 33.

COMMISSION REGULATION (EC) No 400/98

of 19 February 1998

fixing the maximum export refund on oats in connection with the invitation to tender issued in Regulation (EC) No 1773/97

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

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

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 2052/97 ⁽⁴⁾,

Having regard to Commission Regulation (EC) No 1773/97 of 12 September 1997 on a special intervention measure for cereals in Finland and Sweden ⁽⁵⁾, as last amended by Regulation (EC) No 366/98 ⁽⁶⁾, and in particular Article 8 thereof,

Whereas an invitation to tender for the refund for the export of oats produced in Finland and Sweden for export from Finland or Sweden to all third countries was opened pursuant to Regulation (EC) No 1773/97;

Whereas Article 8 of Regulation (EC) No 1773/97 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid

down in Article 23 of Regulation (EEC) No 1766/92, decide to fix a maximum export refund taking account of the criteria referred to in Article 1 of Regulation (EC) No 1501/95; whereas in that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund;

Whereas the application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund being fixed at the amount specified in Article 1;

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 13 to 19 February 1998, pursuant to the invitation to tender issued in Regulation (EC) No 1773/97, the maximum refund on exportation of oats shall be ECU 32,80 per tonne.

Article 2

This Regulation shall enter into force on 20 February 1998.

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

Done at Brussels, 19 February 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 147, 30. 6. 1995, p. 7.

⁽⁴⁾ OJ L 287, 21. 10. 1997, p. 14.

⁽⁵⁾ OJ L 250, 13. 9. 1997, p. 1.

⁽⁶⁾ OJ L 46, 17. 2. 1998, p. 3.

COMMISSION REGULATION (EC) No 401/98

of 19 February 1998

fixing the maximum export refund on barley in connection with the invitation
to tender issued in Regulation (EC) No 1337/97

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

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

Having regard to Commission Regulation (EC) No 1501/
95 of 29 June 1995 laying down certain detailed rules for
the application of Council Regulation (EEC) No 1766/92
on the granting of export refunds on cereals and the
measures to be taken in the event of disturbance on the
market for cereals ⁽³⁾, as last amended by Regulation (EC)
No 2052/97 ⁽⁴⁾, and in particular Article 7 thereof,

Whereas an invitation to tender for the refund and/or the
tax for the export of barley to all third countries was
opened pursuant to Commission Regulation (EC) No
1337/97 ⁽⁵⁾;

Whereas Article 7 of Regulation (EC) No 1501/95
provides that the Commission may, on the basis of the
tenders notified, in accordance with the procedure laid
down in Article 23 of Regulation (EEC) No 1766/92,
decide to fix a maximum export refund taking account of
the criteria referred to in Article 1 of Regulation (EC) No

1501/95; whereas in that case a contract is awarded to any
tenderer whose bid is equal to or lower than the
maximum refund, as well as to any tenderer whose bid
relates to an export tax;

Whereas the application of the abovementioned criteria
to the current market situation for the cereal in question
results in the maximum export refund being fixed at the
amount specified in Article 1;

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 13 to 19 February 1998,
pursuant to the invitation to tender issued in Regulation
(EC) No 1337/97, the maximum refund on exportation of
barley shall be ECU 30,87 per tonne.

Article 2

This Regulation shall enter into force on 20 February
1998.

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

Done at Brussels, 19 February 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 147, 30. 6. 1995, p. 7.

⁽⁴⁾ OJ L 287, 21. 10. 1997, p. 14.

⁽⁵⁾ OJ L 184, 12. 7. 1997, p. 1.

COMMISSION REGULATION (EC) No 402/98
of 19 February 1998
concerning tenders notified in response to the invitation to tender for the export
of maize issued in Regulation (EC) No 180/98

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

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

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals⁽³⁾, as last amended by Regulation (EC) No 2052/97⁽⁴⁾, and in particular Article 7 thereof,

Whereas an invitation to tender for the refund for the export of maize from Greece to all third countries was opened pursuant to Commission Regulation (EC) No 180/98⁽⁵⁾;

Whereas Article 7 of Regulation (EC) No 1501/95, allows the Commission to decide, in accordance with the procedure laid down in Article 23 of Regulation (EEC)

No 1766/92 and on the basis of the tenders notified, to make no award;

Whereas on the basis of the criteria laid down in Article 1 of Regulation (EC) No 1501/95 a maximum refund should not be fixed;

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

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders notified from 13 to 19 February 1998 in response to the invitation to tender for the refund for the export of maize issued in Regulation (EC) No 180/98.

Article 2

This Regulation shall enter into force on 20 February 1998.

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

Done at Brussels, 19 February 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 147, 30. 6. 1995, p. 7.

⁽⁴⁾ OJ L 287, 21. 10. 1997, p. 14.

⁽⁵⁾ OJ L 19, 24. 1. 1998, p. 47.

COMMISSION REGULATION (EC) No 403/98

of 19 February 1998

fixing the maximum reduction in the duty on maize imported in connection
with the invitation to tender issued in Regulation (EC) No 2505/97

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

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals⁽¹⁾, as last amended by Commission Regulation (EC) No 923/96⁽²⁾, and in particular Article 12(1) thereof,

Whereas an invitation to tender for the maximum reduction in the duty on maize imported into Spain was opened pursuant to Commission Regulation (EC) No 2505/97⁽³⁾;

Whereas, pursuant to Article 5 of Commission Regulation (EC) No 1839/95⁽⁴⁾, as amended by Regulation (EC) No 1963/95⁽⁵⁾, the Commission, acting under the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, may decide to fix a maximum reduction in the import duty; whereas in fixing this maximum the criteria provided for in Article 6 and 7 of Regulation (EC) No 1839/95 must be taken into account; whereas a contract is awarded to any tenderer whose tender is equal to or less than the maximum reduction in the duty;

Whereas the application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum reduction in the import duty being fixed at the amount specified in Article 1;

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 13 to 19 February 1998, pursuant to the invitation to tender issued in Regulation (EC) No 2505/97, the maximum reduction in the duty on maize imported shall be ECU 54,29 per tonne and be valid for a total maximum quantity of 19 000 tonnes.

Article 2

This Regulation shall enter into force on 20 February 1998.

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

Done at Brussels, 19 February 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 345, 16. 12. 1997, p. 27.

⁽⁴⁾ OJ L 177, 28. 7. 1995, p. 4.

⁽⁵⁾ OJ L 189, 10. 8. 1995, p. 22.

COMMISSION REGULATION (EC) No 404/98

of 19 February 1998

fixing the maximum reduction in the duty on maize imported in connection
with the invitation to tender issued in Regulation (EC) No 2506/97

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

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals⁽¹⁾, as last amended by Commission Regulation (EC) No 923/96⁽²⁾, and in particular Article 12(1) thereof,

Whereas an invitation to tender for the maximum reduction in the duty on maize imported into Portugal was opened pursuant to Commission Regulation (EC) No 2506/97⁽³⁾;

Whereas, pursuant to Article 5 of Commission Regulation (EC) No 1839/95⁽⁴⁾, as amended by Regulation (EC) No 1963/95⁽⁵⁾, the Commission, acting under the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, may decide to fix maximum reduction in the import duty; whereas in fixing this maximum the criteria provided for in Articles 6 and 7 of Regulation (EC) No 1839/95 must be taken into account; whereas a contract is awarded to any tenderer whose tender is equal to or less than the maximum reduction in the duty;

Whereas the application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum reduction in the import duty being fixed at the amount specified in Article 1;

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 13 to 19 February 1998, pursuant to the invitation to tender issued in Regulation (EC) No 2506/97, the maximum reduction in the duty on maize imported shall be ECU 55,70 per tonne and be valid for a total maximum quantity of 30 000 tonnes.

Article 2

This Regulation shall enter into force on 20 February 1998.

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

Done at Brussels, 19 February 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 345, 16. 12. 1997, p. 28.

⁽⁴⁾ OJ L 177, 28. 7. 1995, p. 4.

⁽⁵⁾ OJ L 189, 10. 8. 1995, p. 22.

COMMISSION REGULATION (EC) No 405/98
of 19 February 1998
concerning tenders notified in response to the invitation to tender for the
import of sorghum issued in Regulation (EC) No 2504/97

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

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992, on the common organization of the market in cereals⁽¹⁾, as last amended by Commission Regulation (EC) No 923/96⁽²⁾, and in particular Article 12(1) thereof,

Whereas an invitation to tender for the maximum reduction in the duty on sorghum imported into Spain was opened pursuant to Commission Regulation (EC) No 2504/97⁽³⁾;

Whereas Article 5 of Commission Regulation (EC) No 1839/95⁽⁴⁾, as amended by Regulation (EC) No 1963/95⁽⁵⁾, allows the Commission to decide, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92 and on the basis of the tenders notified to make no award;

Whereas on the basis of the criteria laid down in Articles 6 and 7 of Regulation (EC) No 1839/95 a maximum reduction in the duty should not be fixed;

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

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders notified from 13 to 19 February 1998 in response to the invitation to tender for the reduction in the duty on imported sorghum issued in Regulation (EC) No 2504/97.

Article 2

This Regulation shall enter into force on 20 February 1998.

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

Done at Brussels, 19 February 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 345, 16. 12. 1997, p. 25.

⁽⁴⁾ OJ L 177, 28. 7. 1995, p. 4.

⁽⁵⁾ OJ L 189, 10. 8. 1995, p. 22.

COMMISSION REGULATION (EC) No 406/98
of 19 February 1998
amending the import duties in the cereals sector

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

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

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

Whereas the import duties in the cereals sector are fixed by Commission Regulation (EC) No 364/98⁽⁵⁾;

Whereas Article 2 (1) of Regulation (EC) No 1249/96 provides that if during the period of application, the

average import duty calculated differs by ECU 5 per tonne from the duty fixed, a corresponding adjustment is to be made; whereas such a difference has arisen; whereas it is therefore necessary to adjust the import duties fixed in Regulation (EC) No 364/98,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EC) No 364/98 are hereby replaced by Annexes I and II to this Regulation.

Article 2

This Regulation shall enter into force on 20 February 1998.

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

Done at Brussels, 19 February 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 161, 29. 6. 1996, p. 125.

⁽⁴⁾ OJ L 292, 25. 10. 1997, p. 10.

⁽⁵⁾ OJ L 42, 14. 2. 1998, p. 37.

ANNEX I

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

CN code	Description	Import duty by land inland waterway or sea from Mediterranean, the Black Sea or Baltic Sea ports (ECU/tonne)	Import duty by air or by sea from other ports ⁽²⁾ (ECU/tonne)
1001 10 00	Durum wheat ⁽¹⁾	0,00	0,00
1001 90 91	Common wheat seed	41,15	31,15
1001 90 99	Common high quality wheat other than for sowing ⁽³⁾	41,15	31,15
	medium quality	57,19	47,19
	low quality	71,83	61,83
1002 00 00	Rye	72,45	62,45
1003 00 10	Barley, seed	72,45	62,45
1003 00 90	Barley, other ⁽³⁾	72,45	62,45
1005 10 90	Maize seed other than hybrid	83,62	73,62
1005 90 00	Maize other than seed ⁽³⁾	83,62	73,62
1007 00 90	Grain sorghum other than hybrids for sowing	72,45	62,45

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

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

- ECU 3 per tonne, where the port of unloading is on the Mediterranean Sea, or
- ECU 2 per tonne, where the port of unloading is in Ireland, the United Kingdom, Denmark, Sweden, Finland or the Atlantic Coasts of the Iberian Peninsula.

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

ANNEX II

Factors for calculating duties

(period from 13 February 1998 to 18 February 1998)

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

Exchange quotations	Minneapolis	Kansas City	Chicago	Chicago	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2. 14 %	HRW2. 11,5 %	SRW2	YC3	HAD2	US barley 2
Quotation (ECU/tonne)	126,75	118,05	110,03	98,45	208,33 ⁽¹⁾	116,44 ⁽¹⁾
Gulf premium (ECU/tonne)	20,98	13,64	7,32	6,82	—	—
Great Lakes premium (ECU/tonne)	—	—	—	—	—	—

⁽¹⁾ Fob Gulf.

2. Freight/cost: Gulf of Mexico — Rotterdam: ECU 11,76 per tonne; Great Lakes — Rotterdam: ECU 24,11 per tonne.

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

COMMISSION REGULATION (EC) No 407/98

of 19 February 1998

temporarily suspending the issuing of export licences for certain milk products
and determining what proportion of the amounts covered by pending
applications for export licences may be allocated

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EC) No 1587/96 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1466/95 of 27 June 1995 laying down special detailed rules of application for export refunds on milk and milk products ⁽³⁾, as last amended by Regulation (EC) No 2497/97 ⁽⁴⁾, and in particular Article 8 (3) thereof,

Whereas the market in certain milk products is currently subject to uncertainty; whereas licence applications of a speculative nature should be avoided which may lead to distortions of competition between operators and potentially disrupt the continuity of exports of these products for the remainder of the period in question; whereas the issue of export licences for the products involved should be temporarily suspended, and licences for some of these products should not be issued in respect of applications pending,

HAS ADOPTED THIS REGULATION:

Article 1

1. The issue of export licences for milk products referred to in the Annex is hereby suspended for the period 20 to 26 February 1998.
2. Licences shall be issued for milk products falling within CN codes 0402 21 and 0402 29 for which applications submitted from 13 to 17 February 1998 are still pending and against which licences would have been issued from 20 February 1998.
3. No licences shall be issued for milk products referred to in the Annex for which applications submitted on 18 February 1998 are still pending and against which licences would have been issued from 25 February 1998.

Article 2

This Regulation shall enter into force on 20 February 1998.

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

Done at Brussels, 19 February 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 21.

⁽³⁾ OJ L 144, 28. 6. 1995, p. 22.

⁽⁴⁾ OJ L 345, 16. 12. 1997, p. 12.

ANNEX

Product code	Product code	Product code	Product code
0401 10 10 9000	0402 21 99 9600	0402 99 39 9110	0404 90 23 9913
0401 10 90 9000	0402 21 99 9700	0402 99 39 9150	0404 90 23 9915
0401 20 11 9100	0402 21 99 9900	0402 99 39 9300	0404 90 23 9917
0401 20 11 9500	0402 29 15 9200	0402 99 39 9500	0404 90 23 9919
0401 20 19 9100	0402 29 15 9300	0402 99 91 9000	0404 90 23 9931
0401 20 19 9500	0402 29 15 9500	0402 99 99 9000	0404 90 23 9933
0401 20 91 9100	0402 29 15 9900	0403 10 11 9400	0404 90 23 9935
0401 20 91 9500	0402 29 19 9200	0403 10 11 9800	0404 90 23 9937
0401 20 99 9100	0402 29 19 9300	0403 10 13 9800	0404 90 23 9939
0401 20 99 9500	0402 29 19 9500	0403 10 19 9800	0404 90 29 9110
0401 30 11 9100	0402 29 19 9900	0403 10 31 9400	0404 90 29 9115
0401 30 11 9400	0402 29 91 9100	0403 10 31 9800	0404 90 29 9120
0401 30 11 9700	0402 29 91 9500	0403 10 33 9800	0404 90 29 9130
0401 30 19 9100	0402 29 99 9100	0403 10 39 9800	0404 90 29 9135
0401 30 19 9400	0402 29 99 9500	0403 90 11 9000	0404 90 29 9150
0401 30 19 9700	0402 91 11 9110	0403 90 13 9200	0404 90 29 9160
0401 30 31 9100	0402 91 11 9120	0403 90 13 9300	0404 90 29 9180
0401 30 31 9400	0402 91 11 9310	0403 90 13 9500	0404 90 81 9100
0401 30 31 9700	0402 91 11 9350	0403 90 13 9900	0404 90 81 9910
0401 30 39 9100	0402 91 11 9370	0403 90 19 9000	0404 90 81 9950
0401 30 39 9400	0402 91 19 9110	0403 90 31 9000	0404 90 83 9110
0401 30 39 9700	0402 91 19 9120	0403 90 33 9200	0404 90 83 9130
0401 30 91 9100	0402 91 19 9310	0403 90 33 9300	0404 90 83 9150
0401 30 91 9400	0402 91 19 9350	0403 90 33 9500	0404 90 83 9170
0401 30 91 9700	0402 91 19 9370	0403 90 33 9900	0404 90 83 9911
0401 30 99 9100	0402 91 31 9100	0403 90 39 9000	0404 90 83 9913
0401 30 99 9400	0402 91 31 9300	0403 90 51 9100	0404 90 83 9915
0401 30 99 9700	0402 91 39 9100	0403 90 51 9300	0404 90 83 9917
0402 21 11 9200	0402 91 39 9300	0403 90 53 9000	0404 90 83 9919
0402 21 11 9300	0402 91 51 9000	0403 90 59 9110	0404 90 83 9931
0402 21 11 9500	0402 91 59 9000	0403 90 59 9140	0404 90 83 9933
0402 21 11 9900	0402 91 91 9000	0403 90 59 9170	0404 90 83 9935
0402 21 17 9000	0402 91 99 9000	0403 90 59 9310	0404 90 83 9937
0402 21 19 9300	0402 99 11 9110	0403 90 59 9340	0404 90 89 9130
0402 21 19 9500	0402 99 11 9130	0403 90 59 9370	0404 90 89 9150
0402 21 19 9900	0402 99 11 9150	0403 90 59 9510	0404 90 89 9930
0402 21 91 9100	0402 99 11 9310	0403 90 59 9540	0404 90 89 9950
0402 21 91 9200	0402 99 11 9330	0403 90 59 9570	0404 90 89 9990
0402 21 91 9300	0402 99 11 9350	0403 90 61 9100	2309 10 70 9100
0402 21 91 9400	0402 99 19 9110	0403 90 61 9300	2309 10 70 9200
0402 21 91 9500	0402 99 19 9130	0403 90 63 9000	2309 10 70 9300
0402 21 91 9600	0402 99 19 9150	0403 90 69 9000	2309 10 70 9500
0402 21 91 9700	0402 99 19 9310	0404 90 21 9100	2309 10 70 9600
0402 21 91 9900	0402 99 19 9330	0404 90 21 9910	2309 10 70 9700
0402 21 99 9100	0402 99 19 9350	0404 90 21 9950	2309 90 70 9100
0402 21 99 9200	0402 99 31 9110	0404 90 23 9120	2309 90 70 9200
0402 21 99 9300	0402 99 31 9150	0404 90 23 9130	2309 90 70 9300
0402 21 99 9400	0402 99 31 9300	0404 90 23 9140	2309 90 70 9500
0402 21 99 9500	0402 99 31 9500	0404 90 23 9150	2309 90 70 9600
		0404 90 23 9911	2309 90 70 9700
			2309 90 70 9800

COMMISSION REGULATION (EC) No 408/98
of 19 February 1998
fixing the export refunds on rice and broken rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice⁽¹⁾, as amended by Regulation (EC) No 192/98⁽²⁾, and in particular the second subparagraph of Article 13 (3) thereof,

Whereas Article 13 of Regulation (EC) No 3072/95 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund;

Whereas Article 13 (4) of Regulation (EC) No 3072/95, provides that when refunds are being fixed account must be taken of the existing situation and the future trend with regard to prices and availabilities of rice and broken rice on the Community market on the one hand and prices for rice and broken rice on the world market on the other; whereas the same Article provides that it is also important to ensure equilibrium and the natural development of prices and trade on the rice market and, furthermore, to take into account the economic aspect of the proposed exports and the need to avoid disturbances of the Community market with limits resulting from agreements concluded in accordance with Article 228 of the Treaty;

Whereas Commission Regulation (EEC) No 1361/76⁽³⁾ lays down the maximum percentage of broken rice allowed in rice for which an export refund is fixed and specifies the percentage by which that refund is to be reduced where the proportion of broken rice in the rice exported exceeds that maximum;

Whereas export possibilities exist for a quantity of 5 000 tonnes of rice to certain destinations; whereas the procedure laid down in Article 7 (4) of Commission Regulation (EC) No 1162/95⁽⁴⁾, as last amended by Regulation

(EC) No 932/97⁽⁵⁾ should be used; whereas account should be taken of this when the refunds are fixed;

Whereas Article 13 (5) of Regulation (EC) No 3072/95 defines the specific criteria to be taken into account when the export refund on rice and broken rice is being calculated;

Whereas the world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination;

Whereas a separate refund should be fixed for packaged long grain rice to accommodate current demand for the product on certain markets;

Whereas the refund must be fixed at least once a month; whereas it may be altered in the intervening period;

Whereas it follows from applying these rules and criteria to the present situation on the market in rice and in particular to quotations or prices for rice and broken rice within the Community and on the world market, that the refund should be fixed as set out in the Annex hereto;

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

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 of Regulation (EC) No 3072/95 with the exception of those listed in paragraph 1 (c) of that Article, exported in the natural state, shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 20 February 1998.

⁽¹⁾ OJ L 329, 30. 12. 1995, p. 18.

⁽²⁾ OJ L 20, 27. 1. 1998, p. 16.

⁽³⁾ OJ L 154, 15. 6. 1976, p. 11.

⁽⁴⁾ OJ L 117, 24. 5. 1995, p. 2.

⁽⁵⁾ OJ L 135, 27. 5. 1997, p. 2.

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

Done at Brussels, 19 February 1998.

For the Commission
 Franz FISCHLER
Member of the Commission

ANNEX

to the Commission Regulation of 19 February 1998 fixing the export refunds on rice and broken rice

(ECU/tonne)			(ECU/tonne)		
Product code	Destination ⁽¹⁾	Amount of refunds ⁽²⁾	Product code	Destination ⁽¹⁾	Amount of refunds ⁽²⁾
1006 20 11 9000	01	63,00	1006 30 65 9900	01	79,00
1006 20 13 9000	01	63,00		04	79,00
1006 20 15 9000	01	63,00	1006 30 67 9100	05	85,00
1006 20 17 9000	—	—	1006 30 67 9900	—	—
1006 20 92 9000	01	63,00	1006 30 92 9100	01	79,00
1006 20 94 9000	01	63,00		02	85,00
1006 20 96 9000	01	63,00		03	90,00
1006 20 98 9000	—	—		04	79,00
1006 30 21 9000	01	63,00	1006 30 92 9900	01	79,00
1006 30 23 9000	01	63,00		04	79,00
1006 30 25 9000	01	63,00		—	—
1006 30 27 9000	—	—	1006 30 94 9100	01	79,00
1006 30 42 9000	01	63,00		02	85,00
1006 30 44 9000	01	63,00		03	90,00
1006 30 46 9000	01	63,00		04	79,00
1006 30 48 9000	—	—	1006 30 94 9900	01	79,00
1006 30 61 9100	01	79,00		04	79,00
	02	85,00	1006 30 96 9100	01	79,00
	03	90,00		02	85,00
	04	79,00		03	90,00
1006 30 61 9900	01	79,00		04	79,00
	04	79,00	1006 30 96 9900	01	79,00
1006 30 63 9100	01	79,00		04	79,00
	02	85,00		—	—
	03	90,00	1006 30 98 9100	05	85,00
	04	79,00	1006 30 98 9900	—	—
1006 30 63 9900	01	79,00		—	—
	04	79,00	1006 40 00 9000	—	—
1006 30 65 9100	01	79,00			
	02	85,00			
	03	90,00			
	04	79,00			

⁽¹⁾ The destinations are identified as follows:

- 01 Liechtenstein, Switzerland, the communes of Livigno and Campione d'Italia,
- 02 Zones I, II, III, VI, Ceuta and Melilla,
- 03 Zones IV, V, VII (c), Canada and Zone VIII excluding Surinam, Guyana and Madagascar,
- 04 Destinations mentioned in Article 34 of amended Commission Regulation (EEC) No 3665/87,
- 05 Ceuta and Melilla.

⁽²⁾ Refund fixed under the procedure laid down in Article 7 (4) of amended Regulation (EC) No 1162/95 in respect of a quantity of 5 000 tonnes.

NB: The zones are those defined in the Annex to amended Commission Regulation (EEC) No 2145/92.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 5 November 1997

concerning aid Spain proposes to grant to Astilleros Zamacona SA in respect of five tugboats

(Only the Spanish text is authentic)

(Text with EEA relevance)

(98/157/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 Directive 90/684/EEC of 21 December 1990 on aid to shipbuilding ⁽¹⁾, as amended by Directive 94/73/EC ⁽²⁾, and in particular Article 4(3) thereof,

Having given the parties concerned notice to submit their comments in accordance with Article 93(2) and having regard to their comments,

Whereas:

I

On 20 November 1996 the Commission decided to open a procedure pursuant to Article 93(2) of the Treaty to investigate a request by the Spanish authorities to extend the three-year delivery limit pursuant to Article 4(3) of Directive 90/684/EEC in respect of five tugboats contracted in December 1991 by Astilleros Zamacona SA (hereinafter referred to as 'Zamacona'), a small shipyard in Bilbao. If this request were accepted the yard would be allowed to receive 9 % aid per contract for the vessels in

question (that is to say, up to the aid ceiling applicable in 1991).

Pursuant to Article 4(3) of the shipbuilding aid Directive the aid ceiling applicable to a contract is that in force when the contract is signed, except where the ship is delivered more than three years after the signing of the final contract. In such cases the ceiling is that in force three years before the date of delivery of the ship. Since the vessels in this case were not delivered until 1995/96 the applicable aid ceiling in this case would therefore normally be 4,5 %.

The second paragraph of Article 4(3) of the Directive, however, states that the Commission may grant an extension of the three-year delivery limit when this is found justified by the technical complexity of the project or by delays resulting from unexpected disruptions of a substantial and defensible nature in the working programme of a yard.

Since the Commission had doubts whether these conditions were fulfilled it decided to open the procedure.

The decision to initiate the Article 93(2) procedure was communicated to the Spanish Government by the Commission's letter SG(96) D/10713 dated 6 December 1996. That letter was published in the *Official Journal of the European Communities* ⁽³⁾ as notice to other Member States and interested third parties to submit their comments.

⁽¹⁾ OJ L 380, 31. 12. 1990, p. 27.

⁽²⁾ OJ L 351, 31. 12. 1994, p. 10.

⁽³⁾ OJ C 58, 25. 2. 1997, p. 8.

II

Within the framework of the procedure the Spanish authorities submitted comments by letter dated 24 January 1997. This material was supplemented by further information supplied at two informal meetings between the Commission and the yard representatives, held on 10 April 1997 and 28 May 1997, and through subsequent bilateral contacts.

The Commission also received comments from the Governments of two Member States (Denmark and the United Kingdom), both of which shared the Commission's doubts that the proposed extension of the delivery date was compatible with Directive 90/684/EEC, the United Kingdom in particular pointing out that it has a number of yards located in sensitive regional areas that are engaged in the construction of tugs and are in direct competition with Spanish yards such as Zamacona. The comments were communicated to the Spanish Government by Commission letter dated 21 April 1997, inviting it to submit observations. Those observations were received by letter dated 12 May 1997.

III

In their comments the Spanish authorities reiterated their view that, on the basis of the information previously supplied, the circumstances affecting Zamacona should be regarded as constituting 'unexpected disruptions of a substantial and defensible nature in the working programme of the yard'. In particular, various points were made setting out the grounds in support of this contention, which can be summarised as follows.

(a) Changes to port legislation

Law 27/1992 of 24 November 1992 on State ports and the merchant navy, which introduced a new regulatory framework which altered the arrangements for port services including pilotage, had not been foreseen when the five tug contracts were signed in December 1991.

The spirit of the new law took precedence over the commercial decisions taken by the owners a year before its entry into force. This resulted in changes of ownership of four of the vessels, joint operating arrangements, etc. In addition, since the legislation placed emphasis on safety, changes were made to vessel specifications as follows: building cavity walls in the engine rooms, new

layout for fuel tanks, increased power in auxiliary engines, improved firefighting capability and changes to funnels and bridges to improve visibility.

According to the Spanish authorities the disruption arising from the entry into force of the law was of a substantial and defensible nature.

(b) Construction of a new fitting-out wharf

According to the Spanish authorities, the construction of the new wharf by the Port of Bilbao Authority (the owner of the land on which Zamacona operates) caused an unexpected disruption of Zamacona's work programme. The yard maintains that although the provisions of an agreement with the authority dated 10 October 1991 did not include precise deadlines for the completion of the works or the full extent of their nature, it received verbal assurances that the work would be completed by 30 April 1992; yet, in the event, the work did not start until 19 May 1992 and was not completed until 4 May 1993. Moreover, the new wharf was not ready to be put into full use until June 1994, once the yard had carried out further works and commissioned the necessary facilities (power, water, gas tanks, crane, firefighting facilities, workshops, etc.).

As regards the impact of the work on Zamacona's programme, the work entailed building containing walls around an area adjoining Zamacona's facilities; after completion filling in the area; demolishing a breakwater within whose perimeter the yard's fitting-out area was previously situated; and constructing the new wharf. The construction of the containing walls and filling-in meant that 40 to 50 lorries a day had to go through the yard, thereby slowing down shipbuilding work. In addition, the old fitting-out wharf and main slipway had to be manned until the new wharf was built, since they gave access to the worksite and were part of the working area. According to Zamacona this meant that two vessels already under construction had to be built in difficult conditions, the remaining vessels having to be built on dry land, in the repair shed.

The adverse effect on the productivity of Zamacona is, in the view of the Spanish authorities demonstrated by an analysis of the main features of Zamacona's activities since 1988 as shown in the following table:

	Previous period	1988	1989	1990	1991	1992	1993	1994	1995
Contracts entered into force		6	4	3	15	3	1	11	8
Cumulative total	5	11	15	18	33	36	37	48	56
Keels laid		4	5	5	6	4	5	8	12
Cumulative total		4	9	14	20	24	29	37	49
Launches		4	6	6	4	5	6	6	11
Cumulative total		4	10	16	20	25	31	37	48
Deliveries		4	5	5	3	7	4	7	12
Cumulative total		4	9	14	17	24	28	35	47
Workforce					54	50	74	76	82
Turnover (ESP million)					1 695	2 176	2 013	2 840	3 941
Turnover per person (ESP million)					31,39	43,52	27,20	37,37	48,06

According to the Spanish authorities, these data show that:

- the lowest number of contracts was in 1993,
- work represented by the order books for 1992 and 1993 could not be completed satisfactorily, keel-laying and deliveries suffering a fall in both absolute and relative terms,
- in 1994 once the work had been completed output rose to a satisfactory level.

Similarly, the data provided on the basis of turnover, workforce and turnover per person are said to show that growth recorded in 1991 and 1992 slowed down in 1993 (notwithstanding the takeover of the Ardeag yard — on which see point (c) below) but resumed in 1994.

(c) *Takeover of the Ardeag yard*

The Spanish authorities have explained that Zamacona's action programme for 1991 to 1993 was approved by the Ministry of Industry on 18 March 1992. Subsequently within the framework of the wider restructuring of the Spanish shipbuilding industry Zamacona took over the Ardeag yard including its order book and workforce as from 1 January 1993. As a result, Zamacona submitted a revised plan in December 1992 which obtained Ministry approval on 10 March 1993.

The Spanish authorities acknowledge that the takeover does not *per se* justify the delay in delivery of the five tugs but they maintain that when seen in conjunction

with all the other circumstances at that time the situation led to unexpected disruption of a substantial and defensible nature. The disruption was unexpected since the takeover was not foreseen when the five tug contracts were signed, and defensible since the takeover resulted in a net capacity reduction in the two yards, thus contributing towards the necessary structural adjustment of the sector. So far as the extent of the disruption is concerned, according to the Spanish authorities this was substantial since the transfer of Ardeag's order book, including work in progress, resulted in extra work causing delays to Zamacona's original production programme. Zamacona maintains that it was obliged to give the Ardeag contracts priority and that the extra workload represented, according to its estimates, a total of 78 846 man/hours of work (two completions, two new buildings from scratch, and assorted repair and conversion work to be carried out in 1993 and 1994), which Zamacona had calculated as equivalent to just over 10 months' work on the basis of the monthly average level of effective man/hours in the period 1993 to 1995.

According to the Spanish authorities, the fact that the takeover was a voluntary decision is irrelevant for the purposes of determining whether there was an unexpected, substantial and defensible disruption in the Zamacona work programme, since the second subparagraph of Article 4(3) of Directive 90/684/EEC does not stipulate that the circumstances of the disruption must be external to the yard concerned.

IV

It should be recalled that the first subparagraph of Article 4(3) of Directive 90/684/EEC states that the aid ceiling applicable to a contract is to be that in force at the date of signature of the final contract. However, this rule does not apply in respect of any ship delivered more than three years from the date of signing of the final contract; in such cases, the ceiling applicable to that contract is that in force three years before the date of delivery of the ship. The aim of the latter provision is to prevent yards from circumventing the effect of the progressive reduction in the aid ceiling by taking on orders at a higher aid level at the end of the calendar year just prior to commencement of a reduction, with no realistic prospect of the ships being completed within a reasonable time-frame.

In this case, the vessels had a contract value of less than ECU 10 million. In December 1991, when the contracts were signed, the aid ceiling applicable was 9 %. However, as will be seen below, the vessels were not delivered until the second half of 1995 or early 1996, so that the three-year delivery limit was exceeded by periods ranging from seven to 14 months. Accordingly, the aid ceiling applicable to these contracts should be that in force three years before the date of delivery of the tugs, namely that prevailing in 1992/93, which was 4,5 %.

The second subparagraph of Article 4(3) of the Directive, however, provides that the Commission may grant an extension of the three-year delivery limit when this is found justified by the technical complexity of the shipbuilding project or by delays resulting from unexpected disruptions of a substantial and defensible nature in the working programme of a yard. The request of the Spanish authorities is based on the latter grounds. The Spanish authorities maintain that granting this request would not breach conditions of completion in the shipbuilding sector. However, this would allow Zamacona to receive a higher level of aid than it would otherwise have been entitled to receive and thus to obtain an advantage over other yards. Furthermore, granting the request would set an important precedent, since to date the Commission has interpreted the second subparagraph of Article 4(3) of the Directive restrictively and has only approved one

application for an extension, which was allowed on the grounds of the technical complexity of the shipbuilding project.

V

On the basis of an analysis of the contract documentation, the facts in this case appear to be as follows. The five contracts were signed in December 1991 (together with 11 other contracts, only one of which ever came into effect). The deadline for entry into force (clause 18 of the contracts) was deferred until various dates ranging from 30 April 1992 to 30 December 1992 and was contingent on a first down-payment by the owner. Clause 10 of the contracts specified that the construction period would be 14 months from the date of entry into force (except in the case of contract No 300, where the construction deadline was 14 to 16 months), unless the yard informed the owners that these dates could not be met for reasons outside Zamacona's control (*force majeure*). Clause 18 of all the contracts apart from contract No 300 also specified that if the contracts had not entered into force by the due date they would be void.

On 25 November 1992 two contracts (Nos 318 and 319) were amended so as to extend the deadline for entry into force until 31 July 1994 at the latest (prolonging the original deadline by a further 19 months). Addenda to contracts Nos 318 and 319 were signed on 20 December 1993 to amend the vessels' specifications (in both cases resulting in a small decrease in the contract price), and on 5 March 1994 to put the contracts into force. Addenda to contracts Nos 300 and 301 were signed on 10 May 1994 to revise the vessels' specifications (increasing the contract price by nearly 30 %) and to put the contracts into force. (A further addendum to contract No 301 was apparently signed on 28 April 1995; details are not known). An addendum to contract No 320 was signed on 20 March 1994 revising the vessel specifications (slightly increasing the contract price) and putting the contract into effect.

Finally, in 1994, after the entry into force, four of the five contracts were transferred to other shipowners.

These developments can be summarised in the following table:

No	Date of contract	Original entry into force	Modification of contract	Addendum No 1	New entry into force	Addendum No 2	Date of actual entry into force	Transfer of contract	Deadline for construction	Actual date of delivery
300	16.12.91	30.4.92 subject to first payment by owner		10.5.94	10.5.94		10.5.94	12.5.94	14 to 16 months	19.10.95

No	Date of contract	Original entry into force	Modification of contract	Addendum No 1	New entry into force	Addendum No 2	Date of actual entry into force	Transfer of contract	Deadline for construction	Actual date of delivery
301	30.12.91	30.11.92, subject to first payment and written confirmation by owner		10.5.94	10.5.94	28.4.95	10.5.94	22.12.94	14 months	14.5.96
318	27.12.91	30.12.92, subject to first payment and written confirmation by owner	25.11.92	20.12.93	31.7.94, subject to written confirmation and first payment by owner	5.3.94	5.3.94		14 months	11.7.95
319	27.12.91	30.12.92, subject to first payment and written confirmation by owner	25.11.92	20.12.93	31.7.94	5.3.94	5.3.94, with Addendum No 2	6.3.94	14 months	26.7.95
320	27.12.91	30.12.92, subject to first payment and written confirmation by owner		20.3.94	20.3.94, with payment on signature of addendum		20.3.94	12.4.94	14 months	19.10.95

It will be seen from this that the three-year delivery limit pursuant to Article 4(3) of Directive 90/684/EEC was exceeded by periods ranging from seven to 14 months; moreover, the originally forecast delivery dates under the contracts were exceeded as follows:

- No 300: 2 years and 2 months,
- No 301: 2 years and 4 months,
- No 318: 1 year and 4 months,
- No 319: 1 year and 5 months,
- No 320: 1 year and 7 months.

In view of the delays in the entry into force and the other substantial amendments, it is highly questionable whether any of the 1991 contracts can be regarded as definitive and thus qualifying as final contracts for the purposes of the first subparagraph of Article 4(3) of the Directive, which refers to the applicable aid ceiling being that 'in force at the date of signature of the final contract' (emphasis added). These doubts apply particularly to contracts Nos 301 and 320, which it appears should have become void under the terms of the original contracts when the owners failed to fulfil their obligations under clause 18 relating to entry into force; and to contracts Nos 300 and 301, which increased significantly in price.

The above facts alone provide sufficient grounds for concluding that the relevant conditions for an extension of the delivery date pursuant to Article 4(3) of the Directive have not been met.

VI

Turning now to the arguments put forward by the Spanish authorities in support of the requested extension, the wording of the second subparagraph of Article 4(3) of Directive 90/684/EEC requires the Commission to determine whether or not the delay in delivery of the vessels at issue was caused by an unexpected disruption in the working programme of the yard that was substantial and defensible. None of the arguments put forward by the Spanish authorities show that this condition has been fulfilled.

The changes to port legislation seem to have been an unexpected development that was unforeseen when the contracts were signed in December 1991. However, no evidence has been presented to show that this unexpected event constituted a disruption to the working programme of Zamacona that led to the delivery of the vessels being delayed. The new legislation served only to create uncertainty for the shipowners, causing them themselves to delay putting the contracts into effect. The owners also decided to make significant modifications to the vessel design and specifications, not only to take account of the new legal framework, but also (as was noted in the opening of the procedure) to take account of the devaluation of the peseta (which had increased the costs, such as those of the German propulsion engines originally specified, which were replaced with cheaper

engines), which, together with the need to arrange the necessary financing, further added to the delays in the owners' final implementation of the contracts. It is clear that it was this that delayed the delivery of the vessels, not a disruption in Zamacona's work programme.

As regards the construction of the new fitting-out wharf, this does not seem to have been an unexpected event at the time when the contracts were signed in December 1991, since it appears that prior to that date the Port of Bilbao had approved a project to remodel its facilities that would have involved the disappearance of Zamacona's wharfage line, used for the fitting-out and repair of vessels. This raised serious doubts about the very existence of the yard until an agreement was signed in October of that year when the Port of Bilbao authority and Zamacona agreed that the demolished wharf should be replaced with a new one.

So far as the extent of the disruption is concerned, the works clearly had an adverse effect on Zamacona's activities throughout 1992 and until May 1993, although it should be noted that keel laying, launches and deliveries do not appear to have been significantly below previous levels despite the yard's assertions to the contrary.

However there is no evidence that the disruption caused any delay in the delivery of the tugs. In particular, there is no evidence that Zamacona, for example pursuant to clause 10 of the contracts, informed the owners that it had to postpone delivery of the vessels because of the disruption to its work programme. This is not surprising, since the contracts did not enter into force until March or May 1994 — nearly one year after the work had been completed and just before Zamacona completed the commissioning of the new wharf.

Finally, as regards the takeover of the Ardeag yard as from 1 January 1993, this was not foreseeable when the contracts were signed in December 1991 and was therefore an unexpected development. The effect on Zamacona, in terms of absorbing the extra workforce and taking over the Ardeag order book, was also substantial. However, despite the Spanish arguments to the contrary, it is relevant to note that the takeover was a commercial decision taken by the yard (which also allowed it to benefit from investment aids totalling ESP 559 million) and the consequences in terms of increasing and possibly disrupting Zamacona's existing work programme would not be unexpected in the circumstances.

As regards the extent of that impact, the Spanish authorities themselves appear to recognise that this was not such as to justify the delay in the delivery of the five tugs. According to the yard, extra work generated by the takeover amounted to 78 846 man/hours (of which work

on the two complete new buildings represented over 41 000 hours, or over 50 %). Zamacona estimates that this corresponded to about 10 months' work for the yard. However, it is difficult to follow these calculations since there are inconsistencies with the data provided in relation to the effects of the construction of the new fitting-out wharf (which appear to include data for ex-Ardeag workforce and contracts and show that only one new building contract came into force in 1993). Even if the estimated figure of 10 months extra work is accepted, this would not justify the delay in the original delivery dates for the vessels at issue, which greatly exceeded 10 months. More importantly, as with the new fitting-out wharf, no evidence has been put forward to substantiate Zamacona's claims that the disruption arising from the takeover caused it to delay delivery of the vessels in question. This serves to underline the point that the reason for the delay in the delivery of the vessels was the owners' decision to delay the entry into force of the contracts.

VII

In the light of the above it must be concluded that there are serious doubts whether contracts Nos 300, 301, 318, 319 and 320 signed in December 1991 were final contracts. It must also be concluded that the delay in the delivery of the five tugs covered by these contracts was not due to any unexpected disruption in Zamacona's working programme of a substantial and defensible nature. Accordingly, the conditions of the second subparagraph of Article 4(3) of Directive 90/684/EEC have not been fulfilled and the level of aid granted for these five tugs must not exceed the level of the aid ceiling prevailing three years prior to actual delivery of the vessels, namely 4,5 %. To decide otherwise would create a dangerous precedent with serious implications for the inspection of State aid in the shipbuilding sector.

Since the Spanish authorities have given assurances that no aid above 4,5 % has yet been granted for the contracts in question there is no need to order reimbursement,

HAS ADOPTED THIS DECISION:

Article 1

The proposal of Spain to grant aid in the form of a direct grant to Astilleros Zamacona SA of up to 9 % of the contract value before aid for five tugboat contracts (Nos 300, 301, 318, 319 and 320) signed in December 1991 is incompatible with the common market, since the aid does not comply with Article 4(3) of Directive 90/684/EEC.

Article 2

Spain shall reduce the level of aid proposed for the five contracts in question so as to ensure that the level of aid in respect of each vessel does not exceed 4,5 % of the contract value before aid, in accordance with the common maximum ceiling for 1992 and 1993 as fixed by the Commission in accordance with the provisions of Article 4(2), (3) and (4) of Directive 90/684/EEC.

Article 3

Spain shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply therewith.

Article 4

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 5 November 1997.

For the Commission

Karel VAN MIERT

Member of the Commission
