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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1506/98**of 13 July 1998****establishing a concession in the form of a Community tariff quota for Turkey in 1998 in respect of hazelnuts and suspending certain concessions**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof,

Having regard to the 1994 Act of Accession,

Having regard to the proposal from the Commission,

Whereas under the Agreement establishing an Association between the European Economic Community and Turkey⁽¹⁾, hereinafter referred to as 'the Agreement', concessions were granted to that country in respect of certain agricultural products;

Whereas, following the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, the concession for hazelnuts should be adjusted to take account of the trade arrangements for that product which existed between Austria, Finland and Sweden, on the one hand, and Turkey, on the other;

Whereas, in accordance with Articles 76, 102 and 128 of the 1994 Act of Accession, the Community is required to adopt the necessary measures to remedy this situation; whereas those measures should take the form of autonomous Community tariff quotas covering the conventional preferential tariff concessions applied by Austria, Finland and Sweden;

Whereas Decision No 1/98 of the EC-Turkey Association Council of 25 February 1998 concerning trade arrangements for agricultural products provides for the improvement and consolidation of trade preferences relating to the import into the Community of agricultural products originating in Turkey and establishes a series of preferen-

tial concessions for Community exports of meat and live animals to Turkey;

Whereas Turkey has since 1996 been applying a ban on the import of live animals of the bovine species (CN code 0102) and restrictions on the import of beef (CN codes 0201-0202); whereas those measures, being quantitative restrictions, are incompatible with the Agreement and prevent the Community from benefiting from the concessions granted to it under Decision No 1/98; whereas, despite talks from November 1997 to February 1998 intended to achieve a negotiated solution with Turkey to the problem, the quantitative restrictions are still in place;

Whereas, as a result of these measures, exports to Turkey of the products in question originating in the Community are blocked; whereas, in order to protect the Community's commercial interests, the situation should be counter-balanced by means of equivalent measures; whereas the concessions set out in the Annexes to this Regulation should therefore be suspended,

HAS ADOPTED THIS REGULATION:

Article 1

The autonomous tariff quota appearing in Annex I is hereby opened for 1998. Articles 4 to 8 of Regulation (EC) No 1981/94⁽²⁾, by which the Council opened Community tariff quotas for certain products originating in, *inter alia*, Turkey, shall apply.

Article 2

The autonomous tariff quota laid down in Annex I and the two tariff quotas laid down in Annex II are hereby suspended.

⁽¹⁾ OJ 217, 29. 12. 1964, p. 3687/64.

⁽²⁾ OJ L 199, 2. 8. 1994, p. 1. Regulation as last amended by Commission Regulation (EC) No 650/98 (OJ L 88, 24. 3. 1998, p. 8).

Article 3

In accordance with the procedure laid down in Article 29 of Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables⁽¹⁾ or, as the case may be, in the corresponding Articles of the other Regulations on the common organisation of markets in agricultural products, or in Articles 6 and 7 of Regulation (EC) No 1981/94, the

Commission shall repeal the measures referred to in Article 2 once the barriers to preferential exports from the Community to Turkey have been lifted.

Article 4

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

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

Done at Brussels, 13 July 1998.

For the Council

The President

W. SCHÜSSEL

⁽¹⁾ OJ L 297, 21. 11. 1996, p. 1.

ANNEX I

Serial No	CN code	Description of goods	Size of autonomous quota (in tonnes)	Rate of duty applicable
09.0201	0802 21 00 0802 22 00	Hazelnuts (<i>Corylus</i> spp.), fresh or dried, in shell or shelled	9 060	Free

ANNEX II

Serial No	CN code	Description of goods	Size of quota per year or per period indicated (tonnes)	Rate of duty applicable
09.0217	ex 0807 11 00	Watermelons, fresh: from 16 June to 31 March	14 000	Free
09.0207 09.0209	2002 90 31 2002 90 39 2002 90 91 2002 90 99	Tomatoes prepared or preserved otherwise than by vinegar or acetic acid, other than whole or in pieces, with a dry matter content of 12 % or more by weight:	30 000 with a dry matter content of 28-30 % by weight	Free

**COUNCIL REGULATION (EC) No 1507/98
of 13 July 1998**

**imposing a definitive anti-dumping duty on imports of potassium permanganate
originating in India and the Ukraine and collecting definitively the provisional
duty imposed**

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 178/98⁽²⁾ (hereinafter referred to as 'the provisional duty Regulation') a provisional anti-dumping duty was imposed on imports into the Community of potassium permanganate falling within CN code 2841 61 00 originating in India and the Ukraine.

B. SUBSEQUENT PROCEDURE

- (2) Following the imposition of the provisional anti-dumping measures, the complaining Community industry and both the Indian and Ukrainian cooperating exporting producers submitted comments in writing.
- (3) The Ukrainian cooperating exporting producer, who was the only interested party to have so requested, was granted a hearing.
- (4) The Commission continued to seek and verify all information it 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 UNDER CONSIDERATION AND
LIKE PRODUCT**

- (7) As no comments or new facts were submitted by any interested party with regard to the definition of the product concerned and the like product, the findings made on these issues, as set out in recitals 8 and 9 of the provisional duty Regulation, are confirmed.

D. DUMPING

1. Normal value and export price

- (8) In the absence of further arguments concerning the establishment of normal value and export price, the provisional findings as set out in recitals 10 to 17 of the provisional duty Regulation, are hereby confirmed.

2. Comparison

- (9) The Ukrainian and Indian exporting producers claimed that no deduction to the export price for certain ancillary costs and credit costs respectively should have been made. These issues were examined and since it was found that indeed no such deductions should have been made, corrections to the export price were made accordingly.
- (10) In the absence of any other new arguments concerning comparison, the remaining provisional findings, as set out in recitals 18 to 23 of the provisional duty Regulation, are hereby confirmed.

3. Dumping margin

General

- (11) In the absence of new arguments concerning the determination of the dumping margin, the methodology set out in recitals 24 to 26 of the provisional duty Regulation is hereby confirmed.

India

- (12) The dumping margin definitively established for India, expressed as a percentage of the cif price at Community frontier level, is as follows:

Universal Chemicals and Industries Pvt. Ltd.,
Mumbai: 5,6 %.

As this company is deemed to represent 100 % of the Indian production of the product concerned, the residual dumping margin definitively established is also 5,6 %.

⁽¹⁾ OJ L 56, 6. 3. 1996, p. 1. Regulation as amended by Regulations (EC) Nos 2331/96 (OJ L 317, 6. 12. 1996, p. 1) and 905/98 (OJ L 128, 30. 4. 1998, p. 18).

⁽²⁾ OJ L 19, 24. 1. 1998, p. 23.

Ukraine

- (13) The dumping margin definitively established for the Ukraine, expressed as a percentage of the cif price at Community frontier level, is 36,2 %.

E. COMMUNITY INDUSTRY

- (14) As no comments or new facts were submitted by any interested party with regard to the definition of the Community industry, the findings made as set out in recital 27 of the provisional duty Regulation, are hereby confirmed.

F. INJURY**1. General**

- (15) Comments were made by the exporting producers in respect of the provisional findings regarding the following injury factors: prices of the dumped imports, price undercutting and the situation of the Community industry. No other interested party expressed any contradicting view.

2. Prices of the dumped imports and price undercutting

- (16) The Indian and Ukrainian exporting producers both contested the provisional findings concerning price undercutting and claimed in particular that information they had previously submitted (in the form of 'offers' or invoices) had been disregarded without sufficient detailed explanations. They again submitted information concerning resales of the product concerned in the Community (in the form, *inter alia*, of invoices) obtained from a number of unrelated importers allegedly showing the absence of price undercutting.

It should be noted, however, that the previously and newly submitted information concerned importers who either did not cooperate or only insufficiently cooperated with the Commission's investigation. This information could not, therefore, be verified during on-the-spot verifications (in particular as regards the existence of possible credit notes reducing actual sales prices or, in the case of 'offers', as regards the question whether such offers led to actual sales transactions or not). In any case it covers a very small part of the imports concerned and examined by the Commission. Moreover, in support of their contention that the Commission's price undercutting findings were not correct, the Indian and Ukrainian exporting producers had submitted calculations based on figures concerning their export price on the Community market which did not match the corresponding verified figures they themselves reported in the course of

the investigation. The information submitted cannot therefore invalidate the findings of clear price undercutting as set out in recitals 36 to 38 of the provisional duty Regulation.

- (17) The Ukrainian exporting producer again claimed that its 'special relationship' with its sole importer in the Community, allegedly consisting of the importer financing the purchase of the raw materials as well as granting pre-payment for deliveries, would have necessitated certain adjustments to the export price.

In this respect, it has to be stressed that this relationship, interrupted in 1997, could not be investigated due to the lack of cooperation from the sole importer in question. Indeed, despite repeated requests from the Commission, the company in question failed to submit relevant data. Therefore, adjustments claimed by the Ukrainian exporting producer could not be granted.

- (18) As regards the Community industry's selling price used in order to determine the price undercutting margin, it was alleged that data reported by the German producer (Chemie GmbH Bitterfeld-Wolfen) had been disregarded.

In this respect it should be recalled that, as indicated in the provisional duty Regulation, the calculation of price undercutting was made by comparing the prices of the Community industry as a whole, i.e. its weighted average prices, including those of the Community producer in question, with prices of the Indian and Ukrainian exporting producers.

Moreover, it should be stressed that, as noted in recital 37 of the provisional duty Regulation, the Commission based the price undercutting calculation on import sales figures adjusted for post-importation costs, i.e. for customs duty, loading and warehousing costs and credit costs (prices were adjusted to a cash payment level), in conformity with the Community Institutions' established practice and as requested by the exporting producers in their submissions.

- (19) The undercutting margins of 26 % for the Ukraine and 8,4 % for India as set out in recital 38 of the provisional duty Regulation, are accordingly hereby confirmed.

3. Situation of the Community industry

- (20) The exporting producers alleged that, in the assessment of the situation of the Community industry, data relating to the German producer's situation had been fully excluded from the analysis.

Again, this allegation is not correct as the provisional findings were based on an overall assessment of the situation of the entire Community industry. Only the costs of production of the German producer were disregarded in the calculation of the injury elimination level (see recital 31 of the present Regulation), and its profitability data were not included when determining the injury indicator 'profitability of the Community industry'. Indeed, it was found that these figures were likely to be influenced by the current restructuring of its operations. This is in conformity with the usual practice of the Community Institutions, consisting of disregarding extraordinary items in accounts. In any event, had the German producer's data relating to these two items been taken into consideration, the situation of the Community industry would have been found to be even worse.

All other injury indicators were examined taking into consideration the verified information given by both the German producer and the Spanish producer (Industrial Química del Nalón) constituting the Community industry.

- (21) It was also alleged that, on balance, the injury indicators did not show that the Community industry was experiencing material injury. The exporting producers based this allegation on an improvement of the situation of the industry following the previous imposition of anti-dumping measures on Chinese imports by Council Regulation (EC) No 2819/94 ⁽¹⁾ and the data relating to the exceptional year 1995 where demand for the product concerned increased substantially because of climatic circumstances.

It is considered that these considerations should not detract from the weak overall situation of the Community industry. Indeed, prices of the Community industry decreased by 10 % from 1992 to the investigation period (April 1996 to March 1997), in a very price-sensitive market, and the Spanish producer recorded losses for the same period, while the Indian and Ukrainian exporting producers undercut the Community industry's prices significantly and doubled their market share of potassium permanganate on the Community market.

It should also be recalled that the injury indicators have to be seen in the context of an industry recovering from past dumping. Accordingly, the injury indicators should be assessed bearing in mind the overall historical situation of the market, which had been affected by Chinese dumped imports, with a consecutive impact on the Community industry's state and with certain positive consequences for the situation of the Community industry after the

imposition of anti-dumping measures concerning Chinese imports.

4. Conclusion on injury

- (22) In the light of the above and in the absence of other arguments concerning the determination of injury, the provisional findings laid down in recitals 28 to 50 of the provisional duty Regulation, according to which the Community industry has suffered material injury, are hereby confirmed.

G. CAUSATION

- (23) In order to show that the injury suffered had not been caused by the dumped imports subject to the current investigation, the exporting producers brought forward three main other potential causes of injury: pressure of Chinese imports, the particular situation of the German producer and certain alleged changes in the pattern of consumption.

1. Impact of Chinese imports

- (24) The exporting producers argued that the overwhelming cause of injury was Chinese imports.

In this respect, it should be noted that the Chinese imports have been countered by a definitive anti-dumping measure imposed in November 1994 and virtually ceased after 1994. The Chinese imports could not, since then, be regarded as a cause of the injury experienced by the Community industry, particularly noticeable at the end of the five year period examined for the assessment of injury, i.e. during the period 1 April 1996 to 31 March 1997.

2. Competitiveness of the Community industry/self-inflicted injury

- (25) It was alleged that one of the complainants, the German producer, is inefficient and undercuts its competitor's prices on the Community market.

In this respect it should be noted that the findings of substantial undercutting by Ukrainian and Indian exports were based on data including sales prices of the German producer. It was therefore confirmed by the investigation that, contrary to the allegation made, the Indian and Ukrainian exporting producers' prices undercut in fact the average Community industry's price.

In addition, while it is a mere assumption that the current restructuring is in itself a proof of inefficiency of the Community producer concerned, it was established that the dumped imports weakened the position of this producer and, in fact, impeded the improvement of its economic situation.

⁽¹⁾ OJ L 298, 19. 11. 1994, p. 32.

3. Changes in the pattern of consumption

- (26) The exporting producers argued that the injury suffered was also due to a change in the pattern of consumption resulting from competition from emergent substitute products.

As regards substitute products, it should be recalled that potassium permanganate is mainly used for potable water treatment, waste-water treatment, chemical and pharmaceutical manufacture, metal refining and disinfectant. Four substances were put forward as emergent substitute products to potassium permanganate: sodium dichromate, mono potassium persulphate, ozone and hydrogen peroxide. The first three products mentioned above, even if sold in significant quantities on the Indian market, are still marginal on the Community market. Sodium dichromate is not in use in the Community due to its cancerogenic characteristics. Mono-potassium persulphate is a chemical product totally unknown in the water-treatment sector in the Community and only marginally used in other applications. Ozone can be potentially seen as a substitute product to potassium permanganate in water treatment. However, use of this product is, for the moment, limited, and cannot be considered to have had a significant impact on the Community potassium permanganate market and the situation of the Community industry. Finally, hydrogen peroxide cannot be considered as an emergent product because it has been used as an industrial oxidiser for as long as potassium permanganate and did not gain importance at the expense of potassium permanganate.

It is therefore considered that none of these alleged substitute products have significantly affected the pattern of consumption of the product concerned. Accordingly, the alleged emergence of such products cannot be construed as a significant alternative source of injury to the Community industry.

4. Conclusion on causation

- (27) None of the above factors can be considered to have an impact such as to break the causal link between the dumped imports and the injury suffered by the Community industry in this case. Therefore, the provisional findings concerning causation, as set out in recitals 51 to 72 of the provisional duty Regulation, are hereby confirmed.

H. COMMUNITY INTEREST

- (28) The only comments submitted on this issue were in respect of the Community industry's interest in seeing the dumping practices counteracted.

1. Interest of the Community industry

- (29) In this respect, it was argued that the imposition of anti-dumping duties would be against the interests of the German producer, which was allegedly reluctant to support the current anti-dumping proceeding as anti-dumping measures would serve only the Spanish producer because of its allegedly dominating position.

This argument was not supported by any evidence. The German producer is a complainant, which cooperated fully in the investigation and did not make any indication that it would no longer support the current anti-dumping proceeding.

Furthermore, as noted in the provisional duty Regulation, in the absence of measures, the existence of the Community industry as a whole would ultimately be at risk. Moreover, given the price sensitivity of the product, it is likely that the measure would, to a large extent, equally help the German producer to obtain a more favourable market position. In any event, anti-dumping measures are not designed to prevent competition on the Community market. Rather, their purpose is to allow Community producers to compete on a level playing field with imports in the Community.

2. Conclusion on Community interest

- (30) It is therefore confirmed that there are no compelling reasons not to take action against the injurious dumping found. Accordingly, the findings concerning Community interest, as set out in recitals 73 to 86 of the provisional duty Regulation, are hereby confirmed.

I. DEFINITIVE MEASURES

1. Injury elimination level

- (31) As no comments, other than those concerning the need for adjustment to the export price, requested by the Ukrainian exporting producer in order to take into account its special relationship with its sole importer in the Community (see recital 17 of the present Regulation), were received with regard to the methodology used in calculating the injury elimination level, the findings, as set out in recitals 88 to 90 of the provisional duty Regulation, are hereby confirmed.

2. Form of duty

- (32) The provisional measures were imposed in the form of a variable duty based on minimum prices. The Ukrainian exporting producer requested that the minimum price concerning the Ukraine should be set at the same level as the minimum price applicable to imports from India.

As indicated in recitals 11, 14 and 93 of the provisional duty Regulation, this situation arose from the following:

Although both minimum prices were based on the domestic prices of the Indian producer, the Indian minimum price was the weighted average of the lower price for potassium permanganate with a purity below 99 % and the higher price for potassium permanganate with a minimum purity of 99 % while the Ukrainian minimum price equalled the price for potassium permanganate with a minimum purity of 99 % since this country only exports this grade.

Given this factual background, the request made by the Ukrainian exporting producer could not be granted as the difference in minimum prices reflected a difference in the exported product types concerned. However, in view of the different existing product types it was examined whether the use of different minimum prices for India and the Ukraine might result in a discriminatory treatment. It was also examined whether the use of this form of anti-dumping measure was appropriate with a view to removing the injurious effect of dumping for all the different types in which the product concerned exists.

In this respect it is clear that if in the future both countries were to export potassium permanganate with a minimum purity of 99 % exclusively, the Indian exporting producer would benefit without justification from a lower minimum price compared to the minimum price established for the Ukrainian exporting producer and that the anti-dumping measure imposed would not ensure that the effect of dumping would be removed.

Such non desirable potential effects outweigh the arguments which motivated at the provisional stage the decision to depart from the usual form of anti-dumping duties. Accordingly, the definitive anti-dumping duty should take the form of an *ad valorem* duty.

3. Level of duty

- (33) Since, for each country concerned, the injury elimination margin established is higher than the dumping margin, the definitive anti-dumping duty should be based on the respective dumping

margins, namely 5,6 % and 36,2 % for India and the Ukraine respectively.

J. COLLECTION OF THE PROVISIONAL DUTY

- (34) Given the magnitude of the injury suffered, the amounts secured by way of provisional anti-dumping duty, under Regulation (EC) No 178/98, should be definitively collected to the extent of the amount of the definitive duties imposed,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of potassium permanganate falling within CN code 2841 61 00 originating in India and the Ukraine.
2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, shall be:
 - 5,6 % for potassium permanganate originating in India,
 - 36,2 % for potassium permanganate originating in the Ukraine.
3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

The amounts secured by way of the provisional anti-dumping duty imposed pursuant to Regulation (EC) No 178/98 shall be definitively collected at the level of the duties definitively imposed on imports of potassium permanganate originating in India and the Ukraine.

The collection shall be limited to the amounts secured. In addition, the amounts secured in excess of the definitive anti-dumping duties shall be released.

Article 3

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

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

Done at Brussels, 13 July 1998.

For the Council
The President
W. SCHÜSSEL

COUNCIL REGULATION (EC) No 1508/98

of 13 July 1998

amending Regulation (EC) No 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan

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⁾,Having regard to Article 3 of Council Regulation (EC) No 2398/97 of 28 November 1997 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan⁽²⁾,

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

Whereas:

A. PREVIOUS PROCEDURE

- (1) By Regulation (EC) No 2398/97 the Council imposed a definitive anti-dumping duty on imports into the Community of cotton-type bed linen falling within CN codes ex 6302 21 00, ex 6302 22 90, ex 6302 31 10, ex 6302 31 90 and ex 6302 32 90 originating *inter alia* in India. Sampling was applied to Indian exporting producers and individual duty rates ranging from 2,6 to 24,7 % were imposed on the companies in the sample, while other cooperating companies not included in the sample were attributed a weighted average duty rate of 11,6 %. A duty rate of 24,7 % was imposed on companies which either did not make themselves known or did not cooperate in the investigation.
- (2) Article 3 of Regulation (EC) No 2398/97 stipulates that where any exporting producer provides sufficient evidence that:
 - it did not export to the Community the products described in Article 1(1) of that Regulation during the investigation period (1 July 1995 to 30 June 1996),
 - it is not related to any of the exporters or producers in the exporting country which are subject to the anti-dumping measures imposed by that Regulation,
 - it has actually exported to the Community the products concerned after the investigation period on which the measures are based, or it

has entered into an irrevocable contractual obligation to export a significant quantity to the Community,

then Article 1(3) of that Regulation can be amended by granting that exporting producer the duty rate applicable to cooperating producers which were not included in the sample, i.e. 11,6 %.

B. NEW EXPORTING PRODUCERS' REQUESTS

- (3) Seven new Indian exporting producers, after having applied not to be treated differently from the companies which cooperated in the original investigation but were not included in the sample, have provided, on request, evidence showing that they meet the requirements set out in Article 3 of Regulation (EC) No 2398/97. The evidence provided by these applicant companies is considered sufficient to allow that Regulation to be amended by adding these seven new exporting producers to Annex I thereto. Annex I specifies the Indian exporting producers which are subject to the weighted average duty rate of 11,6 %,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1 of Regulation (EC) No 2398/97 is hereby amended as follows:

the following companies shall be added to the list of exporting producers in Annex I mentioned in Article 1(3) of that Regulation:

INDIA

- Aditya International, Mumbai (Bombay),
- Chevron Garments (P) Limited, Coimbatore,
- Euro Pacific Textiles, Mumbai (Bombay),
- Lalit & Co., Mumbai (Bombay),
- Radiant Exports, New Delhi,
- Redial Exim Pvt. Ltd, Mumbai (Bombay),
- Shades of India Pvt. Ltd, New Delhi.

*Article 2*This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

⁽¹⁾ OJ L 56, 6. 3. 1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 128, 30. 4. 1998, p. 18).

⁽²⁾ OJ L 332, 4. 12. 1997, p. 1.

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

Done at Brussels, 13 July 1998.

For the Council
The President
W. SCHÜSSEL

COMMISSION REGULATION (EC) No 1509/98
of 15 July 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 Commis-

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 16 July 1998.

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

Done at Brussels, 15 July 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 15 July 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	066	42,2
	999	42,2
0709 90 70	052	41,2
	999	41,2
0805 30 10	382	63,4
	388	63,6
	524	39,4
	528	63,3
	999	57,4
0808 10 20, 0808 10 50, 0808 10 90	064	89,8
	388	77,2
	400	85,2
	508	96,3
	512	73,2
	524	88,6
	528	57,3
	804	112,5
	999	85,0
	388	107,8
0808 20 50	512	89,2
	528	92,4
	804	181,6
	999	117,8
0809 10 00	052	224,8
	064	113,6
	066	89,3
	999	142,6
0809 20 95	052	332,7
	060	147,0
	064	223,2
	400	283,2
	404	426,5
	616	155,9
0809 40 05	999	261,4
	064	118,8
	624	270,8
	999	194,8

⁽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 1510/98**of 15 July 1998****amending Regulation (EC) No 1261/96 establishing the forecast supply balance for the Canary Islands as regards wine products qualifying under the specific arrangements provided for in Articles 2 to 5 of Council Regulation (EEC) No 1601/92**

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

Having regard to Council Regulation (EEC) No 1601/92 of 15 June 1992 concerning specific measures for the Canary Islands with regard to certain agricultural products ⁽¹⁾, as last amended by Regulation (EC) No 2348/96 ⁽²⁾, and in particular Articles 2, 3(4) and 4(4) thereof,
Whereas Commission Regulation (EC) No 1261/96 ⁽³⁾, as last amended by Regulation (EC) No 2042/97 ⁽⁴⁾, fixes the quantities of the forecast supply balance for wine products qualifying for Community aid for the period 1 July 1997 to 30 June 1998;

Whereas the quantities of the forecast supply balance fixed for the period 1 July 1998 to 30 June 1999 should be renewed to continue supplies, taking account of the special situation of production in the Canary Islands; whereas the aid for the supply to the Canary Islands should also be fixed at the amounts given in Annex II, taking account of the quotations or prices for the said

wine products in the European part of the Community and on the world market;

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

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EC) No 1261/96 are hereby replaced by Annexes I and II to this Regulation.

Article 2

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

It shall apply with effect from 1 July 1998.

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

Done at Brussels, 15 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 173, 27. 6. 1992, p. 13.

⁽²⁾ OJ L 320, 11. 12. 1996, p. 1.

⁽³⁾ OJ L 163, 2. 7. 1996, p. 15.

⁽⁴⁾ OJ L 286, 18. 10. 1997, p. 3.

ANNEX I

WINE PRODUCTS

Forecast supply balance for the Canary Islands

(1 July 1998 to 30 June 1999)

CN code	Description	Quantity (hectolitres)
ex 2204 21 79	Wines:	} 115 500
ex 2204 21 80	— originating in third countries: wines bearing only the name	
ex 2204 21 83	of the country of origin with no other indication or	
ex 2204 21 84	geographical designation	
	— originating in the Community: table wine within the	} 129 500
	meaning of point 13 of Annex I to Regulation (EEC) No	
	822/87	
ex 2204 29 62	Wines:	} 129 500
ex 2204 29 64	— originating in third countries: wines bearing only the name	
ex 2204 29 65	of the country of origin with no other indication or	
ex 2204 29 71	geographical designation	
ex 2204 29 72	— originating in the Community: table wine within the	} 129 500
ex 2204 29 75	meaning of point 13 of Annex I to Regulation (EEC) No	
ex 2204 29 83	822/87	
ex 2204 29 84		
Total		245 000

ANNEX II

Aid granted in respect of the products listed in Annex I

(ECU/bl)

Product code	Aid applicable to products coming from the Community
2204 21 79 9120	4,782
2204 21 79 9220	4,782
2204 21 79 9180	8,964
2204 21 79 9280	10,494
2204 21 79 9910	4,782
2204 21 80 9180	10,595
2204 21 80 9280	12,405
2204 21 83 9120	4,782
2204 21 83 9180	12,243
2204 21 84 9180	14,473
2204 29 62 9120	4,782
2204 29 62 9220	4,782
2204 29 62 9180	8,964
2204 29 62 9280	10,494
2204 29 62 9910	4,782
2204 29 64 9120	4,782
2204 29 64 9220	4,782
2204 29 64 9180	8,964
2204 29 64 9280	10,494
2204 29 64 9910	4,782
2204 29 65 9120	4,782
2204 29 65 9220	4,782
2204 29 65 9180	8,964
2204 29 65 9280	10,494
2204 29 65 9910	4,782
2204 29 71 9180	10,595
2204 29 71 9280	12,405
2204 29 72 9180	10,595
2204 29 72 9280	12,405
2204 29 75 9180	10,595
2204 29 75 9280	12,405
2204 29 83 9120	4,782
2204 29 83 9180	12,243
2204 29 84 9180	14,473

COMMISSION REGULATION (EC) No 1511/98**of 15 July 1998****fixing for the 1997/98 marketing year supplementary aid for tomato concentrates and their derivatives**

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

Having regard to Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organisation of the markets in processed fruit and vegetable products ⁽¹⁾, as last amended by Regulation (EC) No 2199/97 ⁽²⁾, and in particular Article 4(9) thereof,

Whereas Commission Regulation (EC) No 1346/97 ⁽³⁾ fixes for the 1997/98 marketing year the minimum price and the amount of aid for processed tomato products;

Whereas Article 4(10) of Regulation (EC) No 2201/96 stipulates that the aid fixed for tomato concentrates and their derivatives is to be reduced by 5,37 % so as not to exceed the overall expenditure resulting from the increase in the French and Portuguese quotas for concentrates; whereas a supplement to the aid for tomato concentrates and their derivatives may be paid after the marketing year if the increase in French and Portuguese quotas is not entirely used up;

Whereas the Member States have communicated the quantities of processed tomatoes covered by the quota and those not covered by the quota, pursuant to Article 17(2) of Commission Regulation (EC) No 504/97 ⁽⁴⁾, as amended by Regulation (EC) No 1491/97 ⁽⁵⁾; whereas the French and Portuguese quotas for concentrates for the 1997/98 marketing year have not been entirely used up;

whereas, as a result, a supplement to the aid fixed for tomato concentrates and their derivatives in Regulation (EC) No 1346/97 must be paid to processors who submitted aid applications pursuant to Article 11(4) of Regulation (EC) No 504/97;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. For the 1997/98 marketing year the supplementary aid for tomato concentrate, juice and flakes referred to in the second subparagraph of Article 4(10) of Regulation (EC) No 2201/96 shall be as set out in the Annex.

2. The agencies referred to in Article 11(1) of Regulation (EC) No 504/97 shall pay the supplement to the aid fixed in this Regulation to processors on the basis of aid applications submitted pursuant to that Article.

Article 2

This Regulation shall enter into force on the third 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, 15 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 297, 21. 11. 1996, p. 29.

⁽²⁾ OJ L 303, 6. 11. 1997, p. 1.

⁽³⁾ OJ L 185, 15. 7. 1997, p. 7.

⁽⁴⁾ OJ L 78, 20. 3. 1997, p. 14.

⁽⁵⁾ OJ L 202, 30. 7. 1997, p. 27.

ANNEX

SUPPLEMENT TO PRODUCTION AID

1997/98 marketing year

Product	ECU/100 kg net
1. Tomato concentrates with a dry weight content of 28 % or more but less than 30 %	0,986
2. Tomato flakes	3,282
3. Tomato juice with a dry weight content of 7 % or more but less than 12 %:	
(a) with a dry weight content of 7 % or more but less than 8 %	0,255
(b) with a dry weight content of 8 % or more but less than 10 %	0,306
(c) with a dry weight content of 10 % or more	0,374
4. Tomato juice with a dry weight content of less than 7 %:	
(a) with a dry weight content of 5 % or more	0,205
(b) with a dry weight content of 4,5 % or more but less than 5 %	0,161

COMMISSION REGULATION (EC) No 1512/98
of 15 July 1998
fixing 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 Article 10 of Regulation (EEC) No 1766/92 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation; whereas, however, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by 55 %, minus the cif import price applicable to the consignment in question;

Whereas, pursuant to Article 10 (3) of Regulation (EEC) No 1766/92, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market;

Whereas Regulation (EC) No 1249/96 lays down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector;

Whereas the import duties are applicable until new duties are fixed and enter into force; whereas they also remain in force in cases where no quotation is available for the reference exchange referred to in Annex II to Regulation (EC) No 1249/96 during the two weeks preceding the next periodical fixing;

Whereas, in order to allow the import duty system to function normally, the representative market rates recorded during a reference period should be used for calculating the duties;

Whereas application of Regulation (EC) No 1249/96 results in import duties being fixed as set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import duties in the cereals sector referred to in Article 10 (2) of Regulation (EEC) No 1766/92 shall be those fixed in Annex I to this Regulation on the basis of the information given in Annex II.

Article 2

This Regulation shall enter into force on 16 July 1998.

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

Done at Brussels, 15 July 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.

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⁾	0,84	0,00
1001 90 91	Common wheat seed	41,39	31,39
1001 90 99	Common high quality wheat other than for sowing ⁽³⁾	41,39	31,39
	medium quality	71,45	61,45
	low quality	89,25	79,25
1002 00 00	Rye	97,25	87,25
1003 00 10	Barley, seed	97,25	87,25
1003 00 90	Barley, other ⁽³⁾	97,25	87,25
1005 10 90	Maize seed other than hybrid	98,41	88,41
1005 90 00	Maize other than seed ⁽³⁾	98,41	88,41
1007 00 90	Grain sorghum other than hybrids for sowing	108,10	98,10

⁽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 30 June 1998 to 14 July 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)	118,88	101,04	93,37	86,96	173,46 ⁽¹⁾	77,06 ⁽¹⁾
Gulf premium (ECU/tonne)	—	10,99	0,87	8,97	—	—
Great Lakes premium (ECU/tonne)	14,04	—	—	—	—	—

⁽¹⁾ Fob Duluth.

2. Freight/cost: Gulf of Mexico — Rotterdam: ECU 11,25 per tonne; Great Lakes — Rotterdam: ECU 20,43 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 1513/98
of 15 July 1998

fixing the maximum export refunds for olive oil for the 16th partial invitation to tender under the standing invitation to tender issued by Regulation (EC) No 1978/97

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

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organisation of the market in oils and fats⁽¹⁾, as last amended by Regulation (EC) No 1581/96⁽²⁾, and in particular Article 3 thereof,

Whereas Commission Regulation (EC) No 1978/97⁽³⁾ issued a standing invitation to tender with a view to determining the export refunds on olive oil;

Whereas Article 6 of Regulation (EC) No 1978/97 provides that maximum amounts are to be fixed for the export refunds in the light in particular of the current situation and foreseeable developments on the Community and world olive-oil markets and on the basis of the tenders received; whereas contracts are awarded to any tenderer who submits a tender at the level of the maximum refund or at a lower level;

Whereas, for the purposes of applying the abovementioned provisions, the maximum export refunds should be set at the levels specified in the Annex;

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refunds for olive oil for the 16th partial invitation to tender under the standing invitation to tender issued by Regulation (EC) No 1978/97 are hereby fixed in the Annex, on the basis of the tenders submitted by 9 July 1998.

Article 2

This Regulation shall enter into force on 16 July 1998.

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

Done at Brussels, 15 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ 172, 30. 9. 1966, p. 3025/66.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 11.

⁽³⁾ OJ L 278, 11. 10. 1997, p. 7.

ANNEX

to the Commission Regulation of 15 July 1998 fixing the maximum export refunds for olive oil for the 16th partial invitation to tender under the standing invitation to tender issued by Regulation (EC) No 1978/97

(ECU/100 kg)

Product code	Amount of refund
1509 10 90 9100	—
1509 10 90 9900	—
1509 90 00 9100	—
1509 90 00 9900	—
1510 00 90 9100	—
1510 00 90 9900	—

NB: The product codes and the footnotes are defined in amended Commission Regulation (EEC) No 3846/87.

COMMISSION REGULATION (EC) No 1514/98
of 15 July 1998

laying down to what extent applications for issue of export licences submitted during July 1998 for beef and veal products which may benefit from special import treatment in Canada may be accepted

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

Having regard to Commission Regulation (EC) No 1445/95 of 26 June 1995 on rules of application for import and export licences in the beef and veal sector and repealing Regulation (EEC) No 2377/80 ⁽¹⁾, as last amended by Regulation (EC) No 759/98 ⁽²⁾, and in particular Article 12a(8) thereof,

Whereas Regulation (EC) No 1445/95 lays down, in Article 12a, detailed rules for export licence applications for the products referred to in Article 1 of Commission Regulation (EC) No 2051/96 ⁽³⁾, laying down certain detailed rules for granting of assistance for the export of beef and veal which may benefit from a special import treatment in Canada, as amended by Regulation (EC) No 2333/96 ⁽⁴⁾;

Whereas Regulation (EC) No 2051/96 fixed the quantities of meat which might be exported on special terms per calendar year; whereas no applications were submitted for

export licences for beef and veal for the month of July 1998,

HAS ADOPTED THIS REGULATION:

Article 1

No applications for export licences were lodged for the beef and veal referred to in Regulation (EC) No 2051/96 for the month of July 1998.

Article 2

Applications for licences in respect of the meat referred to in Article 1 may be entered in accordance with Article 12a of Regulation (EC) No 1445/95 during the first five days of the month of August 1998 the total quantity available being 5 000 tonnes.

Article 3

This Regulation shall enter into force on 16 July 1998.

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

Done at Brussels, 15 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 143, 27. 6. 1995, p. 35.

⁽²⁾ OJ L 105, 4. 4. 1998, p. 7.

⁽³⁾ OJ L 274, 26. 10. 1996, p. 18.

⁽⁴⁾ OJ L 317, 6. 12. 1996, p. 13.

COMMISSION REGULATION (EC) No 1515/98
of 15 July 1998

fixing representative prices and additional import duties in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95

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

Having regard to Council Regulation (EEC) No 2771/75 of 29 October 1975 on the common organization of the market in eggs ⁽¹⁾, as last amended by Commission Regulation (EC) No 1516/96 ⁽²⁾, and in particular Article 5 (4) thereof,

Having regard to Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organization of the market in poultrymeat ⁽³⁾, as last amended by Commission Regulation (EC) No 2916/95 ⁽⁴⁾, and in particular Article 5 (4) thereof,

Having regard to Council Regulation (EEC) No 2783/75 of 29 October 1975 on the common system of trade for ovalbumin and lactalbumin ⁽⁵⁾, as last amended by Commission Regulation (EC) No 2916/95, and in particular Article 3 (4) thereof,

Whereas Commission Regulation (EC) No 1484/95 ⁽⁶⁾, as last amended by Regulation (EC) No 1354/98 ⁽⁷⁾, fixes detailed rules for implementing the system of additional import duties and fixes additional import duties in the poultrymeat and egg sectors and for egg albumin;

Whereas it results from regular monitoring of the information providing the basis for the verification of the import prices in the poultrymeat and egg sectors and for egg albumin that the representative prices and additional duties for imports of certain products should be amended taking into account variations of prices according to origin; whereas, therefore, representative prices and corresponding additional duties should be published;

Whereas it is necessary to apply this amendment as soon as possible, given the situation on the market;

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

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 1484/95 is hereby replaced by the Annex hereto.

Article 2

This Regulation shall enter into force on 16 July 1998.

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

Done at Brussels, 15 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 282, 1. 11. 1975, p. 49.

⁽²⁾ OJ L 189, 30. 7. 1996, p. 99.

⁽³⁾ OJ L 282, 1. 11. 1975, p. 77.

⁽⁴⁾ OJ L 305, 19. 12. 1995, p. 49.

⁽⁵⁾ OJ L 282, 1. 11. 1975, p. 104.

⁽⁶⁾ OJ L 145, 29. 6. 1995, p. 47.

⁽⁷⁾ OJ L 184, 27. 6. 1998, p. 33.

ANNEX

'ANNEX I

CN code	Description	Representative price ECU/100 kg	Additional duty ECU/100 kg	Origin (¹)
0207 14 10	Boneless cuts of fowls of the species <i>gallus domesticus</i> , frozen	216,6	25	01
		249,6	15	02
		246,1	16	03
		273,3	8	04
		282,4	5	05
1602 32 11	Preparations uncooked of the species <i>gallus domesticus</i>	221,6	20	01
		266,8	6	02
		259,9	8	03
1602 39 21	Preparations uncooked other than turkeys and of the species <i>gallus domesticus</i>	221,6	20	01

(¹) Origin of imports:

- 01 China
- 02 Brazil
- 03 Thailand
- 04 Chile
- 05 Argentina.

COMMISSION REGULATION (EC) No 1516/98
of 15 July 1998
fixing the export refunds on poultrymeat

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

Having regard to Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organization of the market in poultrymeat⁽¹⁾, as last amended by Commission Regulation (EC) No 2916/95⁽²⁾, and in particular Article 8 (3) thereof,

Whereas Article 8 of Regulation (EEC) No 2777/75 provides that the difference between prices on the world market for the products listed in Article 1 (1) of that Regulation and prices for those products within the Community may be covered by an export refund;

Whereas it follows from applying these rules and criteria to the present situation on the market in poultrymeat that the refund should be fixed at an amount which would permit Community participation in world trade and

would also take account of the nature of these exports and their importance at the present time;

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

HAS ADOPTED THIS REGULATION:

Article 1

The list of product codes for which, when they are exported, the export refund referred to in Article 8 of Regulation (EEC) No 2777/75 is granted, and the amount of that refund shall be as shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 16 July 1998.

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

Done at Brussels, 15 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 282, 1. 11. 1975, p. 77.

⁽²⁾ OJ L 305, 19. 12. 1995, p. 49.

ANNEX

to the Commission Regulation of 15 July 1998 fixing the export refunds on poultrymeat

Product code	Destination of refund ⁽¹⁾	Amount of refund	Product code	Destination of refund ⁽¹⁾	Amount of refund
		ECU/100 units			ECU/100 kg
0105 11 11 9000	01	1,40	0207 12 90 9190	02	28,00
0105 11 19 9000	01	1,40		03	13,00
0105 11 91 9000	01	1,40			
0105 11 99 9000	01	1,40	0207 14 20 9900	04	7,00
0105 12 00 9000	01	3,30			
0105 19 20 9000	01	3,30	0207 14 60 9900	04	7,00
		ECU/100 kg			
0207 12 10 9900	02	28,00	0207 14 70 9190	04	7,00
	03	13,00	0207 14 70 9290	04	7,00

⁽¹⁾ The destinations are as follows:

- 01 All destinations except the United States of America,
- 02 Angola, Saudi Arabia, Kuwait, Bahrain, Qatar, Oman, the United Arab Emirates, Jordan, Yemen, Lebanon, Iraq and Iran,
- 03 Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan, Ukraine, Lithuania, Estonia and Latvia,
- 04 All destinations except the United States of America, Bulgaria, Poland, Hungary, Romania, Slovakia, the Czech Republic, Switzerland and those of 03 above.

NB: The product codes and the footnotes are defined in amended Commission Regulation (EEC) No 3846/87.

COMMISSION REGULATION (EC) No 1517/98
of 15 July 1998
amending Regulation (EEC) No 1164/89 laying down detailed rules concerning
the aid for fibre flax and hemp

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1308/70 of 29 June 1970 on the common organisation of the market in flax and hemp ⁽¹⁾, as last amended by the Act of Accession of Austria, Finland and Sweden and by Regulation (EC) No 3290/94 ⁽²⁾, and in particular Article 4(5) thereof,

Whereas Article 5(1) of Commission Regulation (EEC) No 1164/89 ⁽³⁾, as last amended by Regulation (EC) No 1368/98 ⁽⁴⁾, sets a time limit for the submission of declarations of areas sown and provides for a progressive reduction in aid where that limit is passed; whereas this same progressiveness should also apply to the reduction in aid where the final date for the submission of aid applications pursuant to Article 8(1) of Regulation (EEC) No 1164/89 is passed;

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

HAS ADOPTED THIS REGULATION:

Article 1

Article 8(1) of Regulation (EEC) No 1164/89 is replaced by the following:

‘1. All growers of fibre flax and/or hemp shall lodge an annual aid application no later than 30 November for flax and 31 December for hemp.

If an aid application is lodged in the 25 days after the respective time limits, the aid referred to in Article 4 of Regulation (EEC) No 1308/70 shall be reduced by 1 % for each working day it is late. No aid shall be granted in respect of applications lodged after those 25 days.’

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 August 1998.

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

Done at Brussels, 15 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 146, 4. 7. 1970, p. 1.

⁽²⁾ OJ L 349, 31. 12. 1994, p. 105.

⁽³⁾ OJ L 121, 29. 4. 1989, p. 4.

⁽⁴⁾ OJ L 185, 30. 6. 1998, p. 13.

COMMISSION REGULATION (EC) No 1518/98**of 15 July 1998****setting for the 1998/99 marketing year the minimum price and the amount of
production aid for processed tomato products**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

volume and prices of imports must be taken into consideration;

Having regard to the Treaty establishing the European Community,

Whereas Article 4(10) of Regulation (EC) No 2201/96 stipulates that the aid set for tomato concentrates and their derivatives is to be reduced by 5,37 %; whereas a supplement to the reduced aid is to be paid on the basis of the quantities of tomato concentrate produced for France and Portugal;

Having regard to Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organisation of the markets in processed fruit and vegetable products⁽¹⁾, as last amended by Regulation (EC) No 2199/97⁽²⁾, and in particular Article 3(3) and Article 4(9) thereof,

Whereas the Management Committee for Products Processed from Fruit and Vegetables has not delivered an opinion within the time limit set by its chairman,

Whereas pursuant to Article 3(1) of Regulation (EC) No 2201/96 the minimum price to be paid to producers is to be determined on the basis of the minimum price applying during the previous marketing year, changes in prices in the fruit and vegetable sector and the need to ensure the normal marketing of fresh products for the various uses, including supply to the processing industry;

HAS ADOPTED THIS REGULATION:

Article 1

For the 1998/99 marketing year the minimum price referred to in Article 3 of Regulation (EC) No 2201/96 to be paid to producers shall be as set out in Annex I.

Whereas Commission Regulation (EEC) No 2022/92⁽³⁾, which lays down detailed rules of application for the minimum price to be paid to producers for certain tomatoes used in the production of tomato concentrate, juice and flakes on the basis of the soluble dry weight content, should continue to apply;

Article 2

1. For the 1998/99 marketing year the level of production aid referred to in Article 4 of that Regulation shall be as set out in Annex II.

Whereas Article 4 of Regulation (EC) No 2201/96 lays down the criteria for fixing the amount of production aid; whereas account must, in particular, be taken of the aid fixed or calculated before the reduction provided for in paragraph 10 of that Article for the previous marketing year, adjusted to take account of changes in the minimum price to be paid to producers and the difference between the cost of the raw material in the Community and in the major competing third countries; whereas, in respect of tomato concentrates, preserved whole peeled and unpeeled tomatoes and tomato juices, changes in the

2. The additional aid for tomato concentrate, juice and flakes as referred to in the second subparagraph of Article 4(10) of Regulation (EC) No 2201/96 shall be set by the Commission if the condition provided for in that subparagraph is met.

Article 3

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

⁽¹⁾ OJ L 297, 21. 11. 1996, p. 29.

⁽²⁾ OJ L 303, 6. 11. 1997, p. 1.

⁽³⁾ OJ L 207, 23. 7. 1992, p. 9.

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

Done at Brussels, 15 July 1998.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX I

Minimum price to be paid to producers

Product	ECU/100 kg net, ex-producer or producer organisation
Tomatoes intended for the manufacture of:	
(a) tomato concentrate and juice with a soluble dry weight content of between 4,8 and 5,4 %	9,077 ⁽¹⁾
(b) preserved whole peeled and unpeeled tomatoes or frozen whole peeled tomatoes:	
— the San Marzano variety	15,026
— the Roma and similar varieties	11,559
(c) preserved non-whole peeled and unpeeled tomatoes and non-whole frozen peeled tomatoes	9,077
(d) tomato flakes with a soluble dry weight content of between 4,8 and 5,4 %	11,559 ⁽¹⁾

⁽¹⁾ These prices are rectified by:

- 5 % if the soluble dry weight content is less than 4,8 % but is 4 % or more,
- + 5 % if the soluble dry weight content is more than 5,4 %.

ANNEX II

Production aid

Product	ECU/100 kg net
1. Tomato concentrates with a dry weight content of 28 % or more but less than 30 %	24,412
2. Preserved whole peeled tomatoes in tomato juice:	
(a) of the San Marzano variety	9,276
(b) of the Roma and similar varieties	6,542
3. Preserved whole peeled tomatoes of the Roma and similar varieties in water	5,561
4. Preserved whole unpeeled tomatoes of the Roma and similar varieties	4,579
5. Frozen whole peeled tomatoes	
(a) of the San Marzano variety	9,276
(b) of the Roma and similar varieties	6,542
6. Preserved peeled tomatoes, non-whole or in pieces	}
7. Preserved unpeeled tomatoes, non-whole or in pieces	
8. Non-whole frozen peeled tomatoes	
9. Tomato flakes	81,232
10. Tomato juice with a dry weight content of 7 % or more but less than 12 %:	
(a) with a dry weight content of 7 % or more but less than 8 %	6,314
(b) with a dry weight content of 8 % or more but less than 10 %	7,576
(c) with a dry weight content of 10 % or more	9,260
11. Tomato juice with a dry weight content of less than 7 %:	
(a) with a dry weight content of 5 % or more	5,050
(b) with a dry weight content of 4,5 % or more but less than 5 %	3,998

COMMISSION REGULATION (EC) No 1519/98
of 15 July 1998
fixing the export refunds on olive oil

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by Regulation (EC) No 1581/96⁽²⁾, and in particular Article 3 (3) thereof,

Whereas Article 3 of Regulation No 136/66/EEC provides that, where prices within the Community are higher than world market prices, the difference between these prices may be covered by a refund when olive oil is exported to third countries;

Whereas the detailed rules for fixing and granting export refunds on olive oil are contained in Commission Regulation (EEC) No 616/72⁽³⁾, as last amended by Regulation (EEC) No 2962/77⁽⁴⁾;

Whereas Article 3 (3) of Regulation No 136/66/EEC provides that the refund must be the same for the whole Community;

Whereas, in accordance with Article 3 (4) of Regulation No 136/66/EEC, the refund for olive oil must be fixed in the light of the existing situation and outlook in relation to olive oil prices and availability on the Community market and olive oil prices on the world market; whereas, however, where the world market situation is such that the most favourable olive oil prices cannot be determined, account may be taken of the price of the main competing vegetable oils on the world market and the difference recorded between that price and the price of olive oil during a representative period; whereas the amount of the refund may not exceed the difference between the price of olive oil in the Community and that on the world market, adjusted, where appropriate, to take account of export costs for the products on the world market;

Whereas, in accordance with Article 3 (3) third indent, point (b) of Regulation No 136/66/EEC, it may be decided that the refund shall be fixed by tender; whereas the tendering procedure should cover the amount of the

refund and may be limited to certain countries of destination, quantities, qualities and presentations;

Whereas the second indent of Article 3 (3) of Regulation No 136/66/EEC provides that the refund on olive oil may be varied according to destination where the world market situation or the specific requirements of certain markets make this necessary;

Whereas the refund must be fixed at least once every month; whereas it may, if necessary, be altered in the intervening period;

Whereas it follows from applying these detailed rules to the present situation on the market in olive oil and in particular to olive oil prices within the Community and on the markets of third countries that the refund should be as set out in the Annex hereto;

Whereas the representative market rates 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 expressed in third country currencies and are used as the basis for determining the agricultural conversion rates of the Member States' currencies; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93⁽⁷⁾, as last amended by Regulation (EC) No 961/98⁽⁸⁾;

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

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 (2) (c) of Regulation No 136/66/EEC shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 16 July 1998.

⁽¹⁾ OJ 172, 30. 9. 1966, p. 3025/66.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 11.

⁽³⁾ OJ L 78, 31. 3. 1972, p. 1.

⁽⁴⁾ OJ L 348, 30. 12. 1977, p. 53.

⁽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 135, 8. 5. 1998, p. 5.

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

Done at Brussels, 15 July 1998.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX

to the Commission Regulation of 15 July 1998 fixing the export refunds on olive oil
(*ECU/100 kg*)

Product code	Amount of refund ⁽¹⁾
1509 10 90 9100	5,00
1509 10 90 9900	0,00
1509 90 00 9100	5,00
1509 90 00 9900	0,00
1510 00 90 9100	0,00
1510 00 90 9900	0,00

⁽¹⁾ For destinations mentioned in Article 34 of amended Commission Regulation (EEC) No 3665/87 (OJ L 351, 14. 12. 1987, p 1), as well as for exports to third countries.

NB: The product codes and the footnotes are defined in amended Commission Regulation (EEC) No 3846/87.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL RECOMMENDATION

of 6 July 1998

on the broad guidelines of the economic policies of the Member States and of the Community

(98/454/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 103(2) thereof,

Having regard to the recommendation from the Commission,

Having regard to the conclusions of the European Council in Cardiff of 15 and 16 June 1998,

Whereas a resolution on the recommendation from the Commission was adopted by the European Parliament,

HEREBY RECOMMENDS:

1. MAIN PRIORITIES: A SUCCESSFUL EMU, PROSPERITY AND JOBS

The introduction of the euro on 1 January 1999 marks a new phase in the process of European integration and in the conduct of the economic policies of the Member States and of the Community.

The vigorous and credible implementation by the Member States, especially over the last two years, of policies aimed at achieving a high degree of sustainable economic convergence in the Community has yielded tangible results.

Firstly, reflecting these remarkable convergence efforts and results, the Council of the European Union, meeting in the composition of Heads of State or Government, decided on 3 May 1998 that eleven Member States fulfilled the necessary conditions for the adoption of the euro.

Secondly, these efforts are fostering the development of a macroeconomic policy mix conducive to growth and employment.

However, until now, insufficient progress has been made in reducing unemployment in many Member States.

Since the summer of 1997, when the previous Broad Economic Policy Guidelines were adopted, an increasingly robust and more broadly based economic recovery has taken hold in the Community, in a context of historically low inflation. With spare capacity currently available in most Member States and with prospects for subsequent healthy growth in investment, especially in equipment, solid growth should be able to take place without encountering capacity constraints or generating inflationary tensions, if, as expected, wage developments continue to be appropriate. In addition, the underlying economic fundamentals are sound and improving continuously, demand prospects are brightening and confidence is strengthening further. The impact on Community growth prospects from the financial and economic events in Asia appears limited, provided that the crisis neither deepens nor spreads to other countries in the region.

Against the background of a further strengthening recovery, employment could increase moderately, leading to a slight reduction in the unemployment rate up to 1999 in the Community as a whole. This would constitute a first, albeit modest, step in the direction of the objective of a high level of employment aimed for in Article 2 of the Treaty of Amsterdam.

The present level of employment in the Community is the result not only of high unemployment (about 18 million people in 1997) but also of poor employ-

ment prospects over long periods which have discouraged many people from seeking a job, many of whom are beneficiaries of other social security provisions. Thus, the creation of new jobs will have to absorb not only the unemployed but also a rising participation rate and still some demographic increase in the population of working age.

The increase in employment over the medium and longer term would greatly alleviate the burden on Member States' public finances and social security systems. Moreover, it would help to fight efficiently against poverty and social exclusion.

For economic policy, the tasks are to set the conditions for (i) a further strengthening of the recovery, and (ii) its extension into a self-sustaining, non-inflationary economic growth process over the medium and longer term — a pre-requisite for substantially and durably higher employment. This will require a strengthened programme of macroeconomic and structural policies and a determined implementation of the 1998 employment guidelines to address a number of key challenges while allowing the Community's economies to adapt better to changing circumstances in the years ahead.

The introduction of the euro will not in itself solve the Community's unemployment problem. But in fulfilling the abovementioned tasks, the stability framework of economic and monetary union (EMU) will contribute to the maintenance of a policy mix that is favourable to growth and employment.

In the macroeconomic area, governments and, in their respective field, the social partners should each make all the required efforts to support the stability objective of the single monetary policy.

Simultaneously, structural policies and reforms of the product, service and labour markets are required to facilitate a tension-free growth process, to reinforce competitiveness, to translate growth into employment and to make growth more respectful of the environment.

More generally, there is a need for a better functioning of the single market for which all Member States are responsible.

Only if this policy strategy is pursued with resolve by all actors and if its implementation is well coordinated in line with the Luxembourg European Council resolution, will EMU — as called for in Article 2 of the Treaty — reap its full benefits and

contribute to achieving the overall objectives of the Community, including the promotion of sustained and non-inflationary growth respectful of the environment, a high level of employment and rising living standards.

2. GROWTH- AND STABILITY-ORIENTED MACRO-ECONOMIC POLICY MIX

In order to achieve the objectives mentioned above, it is essential that, in the macroeconomic area, Member States remain committed to pursuing the growth- and stability-oriented strategy recommended in the previous guidelines, which has started to bear fruit.

The strategy contains three essential ingredients:

- a monetary policy oriented to price stability,
- sustained efforts to achieve and maintain sound budgetary positions consistent with the Stability and Growth Pact,
- nominal wage trends consistent with the price stability objective; at the same time, real wage developments should be consistent with increases in productivity and should take into account the need to strengthen the profitability of investment in order to create more jobs.

The more the task of monetary policy to maintain price stability is supported by appropriate budgetary policies and wage developments, the more likely it is that monetary conditions will be favourable to growth and employment.

The overall macroeconomic policy mix of the euro-area will result essentially from the interaction of the single monetary policy on the one hand and the specific budgetary developments and wage trends in the participating countries on the other. The latter will be subject to the closer surveillance and coordination of economic policies in order to achieve an appropriate policy mix in the whole euro area as well as in each participating country.

For the countries that do not initially adopt the single currency, the need for stability-oriented macroeconomic policies will be equally strong. The close and deep economic and monetary interdependence between the euro-area countries and the non-euro area Member States and the need to ensure further convergence and a smooth functioning of the single market will require that all Member States are included in the coordination of economic policies.

3. PRICE STABILITY

Price stability is an essential requirement for realising sustained medium-term economic growth. Following impressive progress in recent years, the Community as a whole has achieved a high degree of price stability. It is necessary that all policies aim at credibility and consistency with durable price stability.

In the prospective euro-area, where the average inflation rate, measured by the harmonised index of consumer prices, has fallen below 2 %, all participating Member States need to conduct their economic policies with a view to maintaining price stability, thereby allowing for monetary conditions favourable to growth. They also need to avoid too wide inflation differentials that would create competitiveness problems.

Average inflation has also fallen to below 2 % in Denmark, Sweden and the United Kingdom. The task is to maintain monetary and economic policies which continue to deliver price stability.

Greece has made substantial progress towards price stability in recent years. Together with the budgetary consolidation efforts implemented over recent years, this facilitated the entry of the drachma into the exchange rate mechanism (ERM) in March 1998. ERM membership will help to improve further its inflation performance. Reinforced efforts are needed, however, to contain the inflationary consequences of the devaluation of the drachma upon entry in the ERM and to achieve price stability as soon as possible.

4. THE TRANSITION TO THE EURO

A smooth transition to the euro on 1 January 1999 is required to ensure that EMU is launched in the most favourable circumstances. The primary objective of the monetary policies of the national central banks of participating Member States in the remaining months of 1998, during which they retain the responsibility for monetary policy, is to ensure that the current environment of a high degree of price stability is maintained at national level and thus for the euro area as a whole. Official interest rates will have converged to the common euro-area rate by the end of 1998. This will be consistent with a situation in which market exchange rates are equal to the pre-announced rates, i.e. the current ERM bilateral central rates.

From 1 January 1999, the single monetary policy in the euro area will be the responsibility of the independent European Central Bank (ECB) and European System of Central Banks (ESCB).

The Member States not adopting the single currency from the outset retain competence for their national monetary policies and are also committed to pursuing stability-oriented monetary policy. Under Article 109m of the Treaty, these Member States shall treat their exchange-rate policies as a matter of common interest. The ERM 2 will provide the framework for monetary relations between Member States participating in the mechanism and the euro area from 1999 onwards and will support their convergence efforts. While participation in the ERM 2 will be voluntary, it can be expected that Member States with a derogation will join.

5. SOUND PUBLIC FINANCES

5.1. General guidelines

Despite considerable consolidation efforts in virtually all Member States, additional progress is required in most countries in order to ensure compliance with the Stability and Growth Pact's medium-term objective of budgetary positions close to balance or in surplus. That will allow all Member States to deal with normal cyclical situations while keeping the government deficit within the reference value of 3 % of gross domestic product (GDP). In accordance with the Treaty, consolidation is also required in order to ensure that debt ratios above 60 % continue to diminish sufficiently and to approach the reference value at a satisfactory pace. These requirements hold for all Member States for the following reasons:

- (i) sound budgetary policies, by fostering low and stable inflationary expectations, will facilitate the task of the single monetary policy and the monetary policies of the non-euro Member States in maintaining price stability. In the present conjuncture, a further scaling back of government deficits will contribute to the sustainability of the economic recovery and might allow for continued favourable monetary conditions, thereby supporting investment;
- (ii) sound budgetary positions will help to keep long-term interest rates at a low level, thereby generating a crowding-in of private investment. If governments absorb a smaller part of private saving, or if they make a positive contribution to savings in the economy, an increase in the investment rate can — other things being equal — take place without pressures on the balance of payments and long-term interest rates;

(iii) in many countries, public finances have not yet regained the necessary room for manoeuvre to cope with adverse economic developments. Since, after the introduction of a single currency, the adjustment to adverse cyclical developments and country-specific disturbances will to an important extent rest with budgetary policy, it will be of paramount importance to ensure that the automatic stabilisers will be able fully to play their role. Furthermore, sound budgetary policies will in all likelihood also increase the effectiveness of those stabilisers. Proven budgetary discipline will strengthen the confidence of economic agents that a rising deficit during a recession will not permanently disrupt the public finances, thereby avoiding any adverse effects emanating from the financial markets;

(iv) finally, budgets close to balance or in surplus will allow a speedy reduction in the still relatively high public debt ratios in many countries. This will reduce the debt service burden and so facilitate the restructuring of government spending. It could also facilitate the lowering of the tax burden and make it possible to address all aspects of social security systems in view of ageing populations.

Against this background, it is essential that Member States provide assurances regarding the continuity of budgetary adjustment. To this end, Member States have committed themselves:

- (i) to ensure that the national budget objectives set for 1998 are fully met, if necessary by taking timely corrective action;
- (ii) if economic conditions develop better than expected, to use the opportunity to reinforce budgetary consolidation so as to reach the medium-term objective of government financial positions close to balance or in surplus, as embodied in the commitments of the Stability and Growth Pact;
- (iii) to submit their stability and convergence programmes at the latest by the end of 1998 with a view to enabling the Commission and the Council to assess all these programmes, including the overall budgetary stance and the policy mix in the euro area, at the start of stage 3 of EMU;
- (iv) to ensure, where appropriate, a further steady decline in public debt and an appropriate debt

management strategy with a view to reducing the vulnerability of the public finances.

The timing, scale and composition of budgetary adjustments are important in determining whether they will be successful in having a durable impact on the government's budgetary position and in improving economic dynamism, competitiveness and employment. Although they will need to be tailored to country-specific conditions, previous guidelines exercises identified a number of general principles. The present guidelines reaffirm and build upon these principles while respecting the competence of the Member States for the conduct of their budgetary policies:

- (i) budget deficit reductions in most Member States should be achieved through expenditure restraint rather than through tax increases;
- (ii) in order to improve economic efficiency and to promote economic dynamism, a reduction in the overall tax burden is desirable in most Member States. Tax reforms also enable markets to function more efficiently and by strengthening investment promote lastingly competitive jobs;
- (iii) in cases where government deficits or government debt-to-GDP ratios are still high, it is necessary that any tax reduction should not slow down the pace of deficit reduction;
- (iv) budgetary consolidation should be implemented in a fair and just way. It must be directed towards increasing the effectiveness and efficiency of government spending, thereby also enhancing the supply side of the economy. In this respect, measures should focus on controlling better or on reforming public consumption, public pension provision, health care, labour market measures and subsidies. Furthermore, in recent years, there has been a tendency for government investment to be reduced relative to GDP, although part of this reflects a shift towards the private financing and operation of public infrastructure investment. To the extent possible, and without threatening the necessary further reduction in government deficits, spending on productive investment as well as on other productive activities such as on human capital and active labour market initiatives should be favoured. Such a restructuring is likely to lead, through its positive effects on growth and employability, to an increase in the employment rate and/or to a reduction in the number of people of working age receiving social transfers, thereby helping to improve budgetary positions over the medium term.

In just the same way as the Member States, the Community also is called upon to continue to maintain strict budgetary discipline. Strict budgetary discipline must be applied to all categories of the financial perspectives, while respecting the inter-institutional Agreement on budget discipline and the improvement of the budget procedure.

5.2. Country-specific guidelines

(i) *Euro-area Member States*

In Belgium, favourable economic growth conditions have contributed to bringing forward by one year the budgetary targets set in its convergence programme. It is important to ensure that the government's commitment to maintain the primary surplus at 6 % of GDP over the medium term is realised, thereby securing a fast decline in the debt ratio, which is still at a very high level. A tighter control needs to be exerted on transfers to households and especially on health care spending.

Germany needs to continue its government deficit reduction in the coming years. Subsidies, transfers to households and government consumption need to be restrained further. Continued efforts to restrict spending are also needed if the government's aim of reducing the expenditure ratio by the year 2000 to its pre-unification level of 46 % of GDP is to be realised. Germany needs to step up its budgetary adjustment to put its debt ratio firmly on a declining path and to bring it back swiftly below the 60 % of GDP reference value in the near future.

In Spain, maintaining the current budgetary stance would allow the deficit to come down in the coming years, partially due to the favourable economic growth conditions. Spain would, however, still need to undertake efforts to accelerate the achievement of the medium-term target of a budget close to balance or in surplus. Indeed, the present cyclical position of the Spanish economy and the sustainability of the present expansion would call for the quick attainment of this objective. Spending needs to be controlled further if the government's aim of reducing the expenditure-to-GDP ratio to just below 42 % of GDP by the year 2000 is to be realised.

In France, further budgetary adjustment efforts should be pursued in 1999 and in particular beyond 1999, in order to respect the obligations

of the Stability and Growth Pact. These consolidation efforts are also needed to stabilise the debt ratio and to put it on a downward path. The control of transfers to households and government consumption should contribute to bringing about the deficit reduction.

In Ireland, the government budget is expected to show increasing surpluses in the coming years and the debt ratio is expected to fall below 60 % of GDP in 1998 and to continue declining thereafter. In view of the present strong growth of the economy and the possibility of overheating, any revenues received over and above those anticipated in the 1998 budget should be used to raise the budget surplus. Moreover, a tight fiscal stance is required in Ireland to reduce the risk of overheating. It is noted that the authorities are resolved to propose a budget for 1999 having as its primary objective the continuation of low inflation in Ireland.

After having successfully reduced its government deficit to below the 3 % of GDP reference value in 1997, Italy needs to step up further its budgetary consolidation efforts in order to respect the obligations of the Stability and Growth Pact. In order to secure a fast reduction in the debt ratio, it is important to ensure that high levels of primary surplus of 5,5 % of GDP should be kept, over the medium term as envisaged in the three-year plan approved by the Italian Parliament. This, reinforced by privatisation revenues, should secure a continued decline in the debt ratio.

Luxembourg is expected to keep a budget surplus in the coming years, while its debt ratio will remain at a very low level.

The Netherlands must not allow its present budgetary position to deteriorate. Given the favourable economic growth conditions expected in the coming years, the deficit should be brought down further in order to respect the obligations of the Stability and Growth Pact. The budgetary stance should therefore not be relaxed and the government deficit should not be allowed to start increasing again. Budgetary adjustment should be maintained to ensure a further continuous decline in the debt ratio.

Austria should continue its consolidation efforts in the coming years in order to achieve the target of a budgetary position close to balance or in surplus. Austria needs to exert a tight budget control and should obviate additional pressures on the budget. Due to the recent reform of

family taxation, which originated from a ruling of the Constitutional Court, and within the context of the envisaged tax reform, substantial additional budgetary consolidation efforts will be required. It is also recalled that the debt ratio has to be kept on a downward path.

Portugal should seize the opportunity presented by the favourable economic growth conditions in the coming years to improve its budgetary position further in order to respect the obligations under the Stability and Growth Pact. This would also help to prevent any risk of overheating. Budgetary adjustment should increasingly focus on primary expenditure. The debt ratio is expected to fall to 60 per cent of GDP in 1998 and to continue declining in the coming years.

In Finland, the government budget is expected to turn into surplus in 1998 and increasing surpluses are aimed for in the coming years. Finland plans to introduce an income tax reduction in 1999. This measure should be implemented in such a way that the process of further budgetary adjustment is continued.

(ii) *Member States not adopting the euro as of January 1999*

Denmark is expected to tighten its budgetary stance further and to increase its budget surpluses in the coming years. Tax revenues will remain buoyant, while government investment will be reduced further. Given the increasing budget surpluses the debt ratio is expected to fall below 60 % of GDP in 1998 and to continue declining in the coming years.

Greece has made substantial progress in reducing the large imbalances in its public finances over recent years. Its deficit declined to 4,0 % of GDP in 1997 and is projected to decline to below the Treaty reference value in 1998, while the government debt ratio, after remaining practically stable since 1993, started to decline in 1997. Greece should continue its budgetary consolidation efforts, notably through the rigorous implementation of the measures announced by the government when the drachma joined the ERM, in order to secure its smooth and orderly participation and to realise the government's intention to join the euro area by 2001. These measures include a further reduction in primary expend-

iture, extended privatisation plans, the extensive rationalisation of the public sector, and the reform of the social security system in the medium term.

In Sweden the government budget is expected to turn into surplus in 1998 and increasing surpluses are expected thereafter. Sweden is aiming for a budget surplus of 2 % of GDP over the cycle. Government expenditure should continue to be controlled tightly.

In the United Kingdom, the budget is projected to reach a position that is close to balance by the end of the decade. To achieve this position, the United Kingdom should rigorously implement the announced budgetary measures. Government expenditure should continue to be controlled tightly. The conduct of budgetary policy in the United Kingdom should also take into account the need to bring about the envisaged overall stability conditions for the UK economy.

6. WAGE DEVELOPMENTS

The evolution of aggregate wages and wage differentials has substantial implications for inflation, growth, employment and the employment-content of growth. In EMU, with the single monetary regime, the link between wages and employment will become more evident and stringent. On the other hand, the credible and stability-oriented macroeconomic framework will foster adequate wage behaviour.

Wage setting will remain the responsibility of the social partners at the national, regional, sectoral or even at a more decentralised level following their respective traditions. As underlined in the Amsterdam resolution on growth and employment, the social partners are responsible for reconciling high employment with appropriate wage settlements and for setting up a suitable institutional framework for the wage formation process.

For wage developments to contribute to an employment-friendly policy mix, the social partners should continue to pursue a responsible policy course and conclude wage agreements in Member States in line with the following general rules:

- (i) aggregate nominal wage increases must be consistent with price stability. Wage increases in the whole euro area that are incompatible with price stability will inevitably lead to a tightening of monetary conditions in the euro zone, with adverse effects on growth and employment. Excessive nominal wage increases in a country or region will not necessarily exert a significant impact on inflation in the entire monetary union but, through their effect on unit labour costs, they will worsen competitiveness and employment conditions in this country or region;
- (ii) real wage increases with respect to labour productivity growth should take into account the need to strengthen, where necessary, and subsequently maintain, the profitability of capacity-enhancing and employment-creating investment. This implies that in countries where overall labour productivity growth is slowing down, the scope for real wage increases will be reduced. More specifically, a reduction in working time should not lead to an increase in real unit labour costs. For improved profitability to result in higher investment in the Community, it is essential to forge an investment-supportive environment in terms of demand developments, labour market conditions, taxation and the regulatory framework;
- (iii) wage agreements should better take into account differentials in productivity levels according to qualifications, skills and geographical areas. In this context, and where appropriate, entry wage costs for the young, low-skilled or long-term unemployed should be such as to enhance their employability; the beneficial effects of lower entry wage costs could be enhanced further by measures to promote the adaptability of the labour force;
- (iv) 'wage imitation effects' need to be avoided, implying that labour cost differences between Member States should continue to reflect discrepancies in labour productivity. Due to the existence of a single currency, differences in wage levels between Member States will become more transparent. This may lead to a certain increase in labour mobility but may also give rise to wage claims in lower-wage countries to close the gap with higher-wage countries. An increase in wages faster than warranted by productivity levels in a country would lead to a deterioration in competitiveness and investment profitability and therefore to reduced attractiveness as a

production location. The country's trade performance would suffer, investment would be deterred and unemployment would increase.

Compliance with these requirements does not imply that wage developments should be uniform across the euro-area. There are likely to be differences in productivity growth and thus in the available room for real wage developments. Moreover, differences in labour market situations and economic conditions need to be taken into account. In EMU, wage adjustment will need to play a more important role in the adjustment to changing economic circumstances, especially in the case of country-specific disturbances, thereby requiring a higher degree of adaptability in the wage formation process.

Since, in general, the social partners are responsible for achieving wage developments compatible with the achievement and maintenance of high employment, thereby playing an important role in achieving an appropriate macroeconomic policy mix, it is essential to strengthen the social dialogue at all the appropriate levels. At the national level, governments may have to take a stronger interest in fostering dialogue and in promoting understanding of the policy strategy developed in the broad economic policy guidelines. At the Community level, the Commission will continue to develop the social dialogue, notably on macroeconomic policy issues. Furthermore, in the framework of the strengthened economic policy coordination, there is a need to establish credibility and a climate of confidence between the major policy actors which could be reinforced by a regular dialogue between the social partners on the one hand and the authorities responsible for economic policies on the other.

7. STRUCTURAL POLICIES FOR GROWTH AND EMPLOYMENT

Structural policies have a primary role to play in promoting economic welfare, improving productivity and raising employment levels. Their key role is to help ensure a tension-free macroeconomic growth process, to reinforce the Community's competitiveness, to increase the employment content of growth and to make growth more respectful of the environment. To reach their full effectiveness, structural policies must be coherent with the pursuit of sound macroeconomic policies.

Structural policies are about improving the functioning of markets; where they involve budgetary costs, it is essential that they are kept under control and do not jeopardise the achievement of sound budgetary positions. Their economic benefits also emerge only gradually over time.

Given insufficient progress in the implementation of structural reforms in product, service and, especially, labour markets in most Member States, continued and intensified efforts are required to remove often deeply seated structural deficiencies. Member States' adjustment to country-specific economic disturbances will have to rely to a considerable extent on the flexibility and adaptability of their markets for products, services and factors of production. EMU will also intensify competitive pressures on enterprises because of the elimination of exchange rate changes within the euro zone and of increased price transparency.

7.1. Product, service and capital markets

In order to safeguard and promote competitiveness, employment and living standards in a world of free trade and constant technological change, it is essential that Member States and the Community intensify their efforts to improve the efficiency of product, service and capital markets. These efforts should focus on four major areas:

(i) *Reforms to perfect the Single Market*

Improvement in the functioning of the Single Market is of paramount importance for a successful EMU. Despite considerable progress, a number of significant problems remain. The legislative framework of the Single Market remains incomplete, mainly due to the lack of full implementation of Community directives at national level. Efforts to reduce the degree of non-implementation of Single Market directives should be pursued forcefully in most Member States as identified by the Single Market scoreboard established by the Commission. Recognising this challenge, the Commission and the Member States agreed an action plan for the Single Market in June 1997 committing the Member States to clear away the most serious remaining legislative gaps by 1 January 1999. Among the areas requiring further action, public

procurement and mutual recognition deserve particular attention.

Efforts should now focus on ensuring the prompt implementation of the Action Plan and on monitoring the progress towards an effective Single Market. To this end, the Single Market scoreboard is being developed for regular six-monthly publication. Furthermore, in its conclusions, the Luxembourg European Council stressed both the importance of paying full attention to those national economic developments and policies which may hinder the smooth functioning of the Single Market and the need for policy coordination to aim also at fostering tax reform in order to raise efficiency and to discourage harmful tax competition. In this area, the treatment of tax incentives should be consistent with Community rules for State aids and Member States compliance with principles of fair tax competition should be monitored. This is one of the main tasks of the follow-up group, which was established on 1 December 1997.

The Single Market and overall globalisation exert a strong pressure to improve competitiveness, but the latter is also linked to national or Community policies in the field of research and development and, notably, the information society. To this end, it is essential to implement swiftly those actions programmed in the action plan which promote innovation and a wide diffusion of new technologies. The environment of firms in terms of communications also calls for a strengthening of efforts in infrastructure projects, both in keeping an adequate level of public investment and by searching for joint ventures with the private sector where appropriate. Efforts should also focus on encouraging an enterprise culture and promoting entrepreneurship, a key factor in stimulating growth, employment and competitiveness in the Community.

(ii) *Reforms to enhance competition*

In the area of competition policy, the Commission has recognised the need to streamline and decentralise anti-trust enforcement in order to enhance its effectiveness and reduce the costs imposed on enterprises. Member States should also make an important contribution towards

achieving the objective of a more efficient enforcement of anti-trust rules by revising their laws so that the national competition authorities can apply anti-trust policy effectively. For State aids, there is a need for the Commission to control them strictly and for the Member States to exercise rigorous self-discipline.

(iii) *Regulatory reforms*

An adequate regulatory framework is a precondition for boosting productivity growth and raising the competitiveness of European firms. Governments and the Commission therefore have the responsibility to review existing regulations continuously to assess their appropriateness and to reduce the costs of implementing and monitoring these regulations and to increase their transparency and enforceability. This also holds for environmental legislation and regulation, which should be incentive-based so as to allow economic agents to achieve well-defined environmental objectives in a cost-effective way. As there are still wide disparities in regulatory practices between countries, different benchmarking exercises have been initiated by international bodies to identify the best regulatory practices. Such exercises could lead to a significant improvement in the regulatory framework of enterprises. As regards the Community, the Commission could coordinate such initiatives on the basis of contributions from the Member States.

Administrative regulations and cumbersome procedures tend to weigh especially heavy on small and medium-sized enterprises, particularly during the start-up phase. Therefore, a first area where such benchmarking exercises could be launched is the administrative regulations for the start-up of business. Similarly, identifying and removing any remaining unjustified regulatory barriers to the development of venture capital and new financial products, particularly those that may assist in the financing of small and medium-sized enterprises (SMEs), should be a priority.

Special attention needs also to be paid to job creation at local level in the social economy and new activities linked to the needs not yet satisfied by the market, which have an important

spillover effect both in terms of economic activity and social cohesion. To exploit fully the opportunities offered in these areas, a more favourable regulatory and fiscal framework needs to be developed.

(iv) *Financial markets*

EMU will bring important changes to European financial markets. They will result in large and highly liquid euro markets. It is important that the national authorities take the necessary measures to remove legal and financial obstacles to market integration. As segmentation between Member States' financial markets diminishes in EMU, any inefficiency will become more apparent amid intensified competition between euro-area financial institutions. Moreover, the new euro financial markets are likely to prove attractive to financial institutions from outside Europe. It is essential, therefore, that operators should be fully prepared for EMU if the potential of the new euro financial markets is to be fully realised.

To improve the efficiency of these reforms, they need to be closely monitored and, if appropriate, coordinated at the Community level through a regular multilateral surveillance, thereby complementing the ongoing macroeconomic multilateral surveillance. To ensure steady progress with economic reform, Member States and the Commission should submit short annual reports setting out their policies aimed at making their product, service and capital markets more efficient. These reports will provide a basis for monitoring these reform efforts at the Community level and will provide an input to the broad economic policy guidelines, starting from next year. The Commission will also elaborate an extended scoreboard with indicators of effective market integration, including price differentials, and implementation of Single Market measures.

7.2. Labour markets

A durable reduction in the presently high levels of unemployment and an increase in the employment rate in the Community is possible. It requires however a vigorous and unremitting use of a broad range of mutually reinforcing policies with success often emerging only over the medium to longer term. Macroeconomic policies, in interaction with

structural policies, should ensure the realisation of a protracted period of strong, non-inflationary growth supported by capacity-enhancing investment. The required policies in this respect form the essence of the present and previous broad economic policy guidelines. But solving the Community's employment problems will require a simultaneous and comprehensive modernisation of the Community's labour markets with a view to increasing the employment-content of growth and ensuring the employability of the labour force. This second component of the Community's strategy for high employment was developed in the Luxembourg employment guidelines.

The employment guidelines — based on the four pillars of improving employability, developing entrepreneurship, encouraging adaptability of businesses and their employees and promoting equal opportunities — will be implemented via the national action plans (NAPs) for employment. Adapted to the specific national circumstances, these plans must integrate the employment measures in a strategy of sound macroeconomic policy including budgetary consolidation in conformity with the requirements of the Stability and Growth Pact. Furthermore, they must provide a vehicle for action aimed at both reducing mismatches in the labour market and at enhancing the responsiveness of firms to economic change. In this way, the NAPs will serve as an important policy tool directed towards reinforcing the Community's growth and employment potential and as such they will undoubtedly form an important ingredient of future broad economic policy guidelines.

Member States' actions should put the emphasis on a preventive strategy, which focuses on active policies to increase the supply of an adequate, educated and trained labour force. Such active measures need to be combined with efforts to increase incentives to seek and create jobs via a review of the structure and administration of tax and benefit systems.

(i) *Active labour market policies*

Over a five-year period, Member States must tackle youth unemployment and prevent long-term unemployment by offering every unemployed young person and adult a new start before they reach 6 and 12 months of unemployment respectively. This requires increased efforts for the employment services to perform efficient job searching and job matching services. Such measures should be combined with accom-

panying measures like training and, where appropriate, wage subsidies and reductions of social charges, especially for the low skilled. It will be important to concentrate the scarce resources of the employment services on those who most need help to find a job.

Long-term unemployment is particularly high in Belgium, Ireland, Italy and Spain, while youth unemployment is high in Finland, France, Greece, Italy and Spain. These Member States would have to make a special effort to respect the guidelines.

(ii) *Taxes and social security contributions*

For more than 15 years, the increase in the overall tax burden and the structural development of the taxation systems (tax and social security contributions) in the Member States has been unfavourable to employment. As a result of the increase in the overall burden of taxation and social security contributions, a growing wedge has developed between what workers receive and what firms pay. This larger wedge hampers economic efficiency, growth and, eventually, job creation. Its effects are especially harmful at the low end of the wage scale where it leads to the pricing-out of the market for low-skilled, low-pay jobs and an increase in 'black market' activities. In view of these harmful effects, it is important for the Member States to take the necessary action to reverse this trend, for example through reform of social security and taxation systems. Such measures should, however, not jeopardise budgetary consolidation. The employment effect of such measures would be increased if supported by active labour market measures in education, apprenticeship schemes, vocational training and retraining. In order to make the taxation system more employment-friendly, Member States should also examine, if appropriate, the desirability of introducing a tax on energy or on pollutant emissions or any other tax measure. Any such changes should take into account the impact on competition and any additional burdens on individual and corporate tax payers.

(iii) *Welfare reform*

Welfare systems need to be reformed with the aim of increasing incentives, opportunities and responsibilities to take up jobs and, more generally, improving the functioning of the labour market. This means moving from passive

income maintenance systems to welfare support through work. However, in some countries, taking up a job compared to receiving benefits offers little advantage, especially for low-income earners experiencing long unemployment spells: combined benefits for unemployment, housing and childcare can in some circumstances result in net replacement rates of over 80 % in Belgium, Denmark, Finland, France, Germany, the Netherlands, Sweden and the United Kingdom.

Making work pay requires a double strategy. Firstly, implementing reforms which boost take home pay. The United Kingdom 'welfare-to-work' reforms open an interesting policy avenue. Secondly, acting on the benefit side, by adjusting carefully eligibility criteria, job search and training requirements and, in some cases, revising the time profile of benefits. Many countries have had positive results in this field. However, the interaction between different benefit systems should be reviewed to ensure that it would always pay to take up a job compared to receiving benefits. More generally, benefit and tax systems should be viewed in relation to labour market regulations. Member States, especially those combining relatively generous benefit systems and high employment protection, should review their relevant legisla-

tion with a view to reconciling security and flexibility while making their benefit systems more efficient.

(iv) *Working time arrangements*

It is important that where there are arrangements to reduce working time, they should be implemented in ways which do not undermine adaptability and which do not result in the reduction of labour supply and output. Where appropriate, employment could be favoured by a greater flexibility of working time at the micro-economic level. In this context, some initiatives suggest that agreements combining a reduction of working time with job creation could entail positive results, provided unit labour costs do not increase. Another approach for increasing the labour content of growth would be to encourage the maximum use of voluntary, part-time and new forms of employment. The possibilities in that field are obviously very different in Member States given the very large differences in the proportion of part-time workers that one may observe at present. In these areas, the exchange, at Community level, of experiences and best practices needs to be encouraged.

Done at Brussels, 6 July 1998.

For the Council

The President

R. EDLINGER

Information on the date of entry into force of Protocol 1 laying down the conditions relating to joint enterprises provided for in the Agreement on Fisheries Relations between the European Community and the Republic of Latvia

As the internal procedures for application by both parties of Protocol 1 laying down the conditions relating to joint enterprises provided for in the Agreement on Fisheries Relations between the European Community and the Republic of Latvia, signed in Riga on 30 April 1998 ⁽¹⁾, have been completed, the Protocol entered into force on 25 May 1998.

⁽¹⁾ OJ L 48, 19. 2. 1998, p. 1.

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY

DECISION OF THE EFTA SURVEILLANCE AUTHORITY

No 46/98/COL

of 4 March 1998

on the issuing of two notices in the field of competition on the definition of the relevant market for the purpose of competition law within the European Economic Area (EEA), and on agreements of minor importance which do not fall under Article 53(1) of the EEA Agreement

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area ⁽¹⁾, in particular Article 55,

Having regard to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice ⁽²⁾, in particular Article 5(2)(b) and Article 25(1),

Having consulted the European Commission,

Whereas the European Commission has adopted a notice on the definition of the relevant market for the purpose of Community competition law ⁽³⁾ and a notice on agreements of minor importance which do not fall under Article 85(1) of the Treaty establishing the European Community ⁽⁴⁾;

Whereas these notices are of relevance also for the European Economic Area;

Whereas it is necessary to provide guidance for undertakings by indicating the principles and rules which will guide the EFTA Surveillance Authority when applying the concept of relevant product and geographic market and in assessing whether an agreement has an appreciable effect on trade and competition in relation to Articles 53 to 60 of the EEA Agreement;

Whereas a uniform application of the EEA competition rules is to be ensured throughout the European Economic Area;

Whereas according to point II under the heading 'General' at the end of Annex XIV to the EEA Agreement, the Surveillance Authority is to adopt, after consultation with the EC Commission, acts corresponding to those adopted by the EC Commission in order to maintain equal conditions of competition,

⁽¹⁾ Hereinafter referred to as the EEA Agreement.

⁽²⁾ Hereinafter referred to as the Surveillance and Court Agreement.

⁽³⁾ OJ C 372, 9. 12. 1997, p. 5.

⁽⁴⁾ OJ C 372, 9. 12. 1997, p. 13.

HAS ADOPTED THIS DECISION:

1. The following notices which are annexed to this Decision as Annexes I and II:
 - notice of the EFTA Surveillance Authority on the definition of the relevant market for the purpose of competition law within the European Economic Area (EEA),
 - notice of the EFTA Surveillance Authority on agreements of minor importance which do not fall under Article 53(1) of the EEA Agreement,shall be issued.
2. This decision and the attached notices shall be authentic in the English language and shall be published in the EEA section of and the EEA supplement to the *Official Journal of the European Communities*.

Done at Brussels, 4 March 1998.

For the EFTA Surveillance Authority
President
Knut ALMESTAD

ANNEX I

NOTICE OF THE EFTA SURVEILLANCE AUTHORITY ON THE DEFINITION OF RELEVANT MARKET FOR THE PURPOSE OF COMPETITION LAW WITHIN THE EUROPEAN ECONOMIC AREA (EEA)

- A. The present notice is issued pursuant to the rules of the Agreement on the European Economic Area (EEA Agreement) and the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice (Surveillance and Court Agreement).
- B. The European Commission has issued a notice on the definition of the relevant market for the purpose of Community competition law⁽¹⁾. This non-binding act contains principles and rules which the European Commission follows in the field of competition.
- C. The EFTA Surveillance Authority considers the abovementioned act to be EEA relevant. In order to maintain equal conditions of competition and to ensure a uniform application of the EEA competition rules throughout the European Economic Area, the EFTA Surveillance Authority adopts the present notice exercising the power conferred upon it by Article 5(2)(b) of the Surveillance and Court Agreement. It intends to follow the principles and rules laid down in this notice when applying the relevant EEA competition rules to a particular case.

I. INTRODUCTION

1. The purpose of this notice is to provide guidance as to how the EFTA Surveillance Authority applies the concept of relevant product and geographic market in its ongoing enforcement of the competition rules of the EEA Agreement, in particular the application of the provisions of Chapter II of Protocol 4 to the Surveillance and Court Agreement⁽²⁾ and of point 1 of Annex XIV to the EEA Agreement together with Chapter XIII of Protocol 4 to the Surveillance and Court Agreement⁽³⁾, and their equivalents in other sectoral applications such as transport, and coal and steel⁽⁴⁾.

2. Market definition is a tool to identify and define the boundaries of competition between firms. It serves to establish the framework within which competition policy is applied by the EFTA Surveillance Authority. The main purpose of market definition is to identify in a systematic way the competitive constraints that the undertakings involved⁽⁵⁾ face. The objective of defining a market in both its product and geographic dimension is to identify those actual competitors of the undertakings involved that are capable of constraining those undertakings' behaviour and of preventing them from behaving independently of effective competitive pressure. It is from this perspective that the market definition makes it possible, *inter alia*, to calculate market shares that would convey meaningful information regarding market power for the purposes of assessing dominance or for the purposes of applying Article 53 of the EEA Agreement.

3. It follows from the above, that the concept of 'relevant market' is different from other concepts of market often used in other contexts. For instance, companies often use the term

'market' to refer to the area where it sells its products or to refer broadly to the industry or sector where it belongs.

4. The definition of the relevant market in both its product and geographic dimensions often has a decisive influence on the assessment of a competition case. By rendering public the procedures the EFTA Surveillance Authority follows when considering market definition and by indicating the criteria and evidence on which it relies to reach a decision, the EFTA Surveillance Authority expects to increase the transparency of its policy and decision-making in the area of competition policy.

5. Increased transparency will also result in companies and their advisors being able to anticipate better the possibility that the EFTA Surveillance Authority may raise competition concerns in an individual case. Companies could, therefore, take such a possibility into account in their own internal decision-making when contemplating for instance, acquisitions, the creation of joint ventures or the establishment of certain agreements. It is also intended that companies should be in a better position to understand what sort of information the Authority considers relevant for the purposes of market definition.

6. The EFTA Surveillance Authority's interpretation of the notion of 'relevant market' is without prejudice to the interpretation which may be given by the EFTA Court, the Court of Justice or the Court of First Instance of the European Communities.

II. DEFINITION OF RELEVANT MARKET**Definition of relevant product and relevant geographic market**

7. Certain Acts relating to Articles 53 and 54 of the EEA Agreement, in particular the provisions in section 6 of Form A/B

⁽¹⁾ OJ C 372, 9. 12. 1997, p. 5.

⁽²⁾ Corresponds to Council Regulation (EEC) No 17/62 (General procedure).

⁽³⁾ Corresponds to Council Regulation (EEC) No 4064/89 (Control of concentrations).

⁽⁴⁾ The focus of assessment in State aid cases is the aid recipient and the industry/sector concerned rather than identification of competitive constraints faced by the aid recipient. When consideration of market power and therefore of the relevant market are raised in any particular case, elements of the approach outlined here might serve as a basis for the assessment of State aid cases.

⁽⁵⁾ For the purposes of this notice, the undertakings involved will be, in the case of a concentration, the parties to the concentration. In investigations under Articles 54 of the EEA Agreement, they will be the undertaking being investigated or the complainants. For investigations under Article 53, they will be the parties to the agreement.

with respect to Chapter II of Protocol 4 to the Surveillance and Court Agreement⁽¹⁾, as well as the provisions in section 6 of Form CO with respect to point 1 of Annex XIV to the EEA Agreement and Chapter XIII of Protocol 4 to the Surveillance and Court Agreement⁽²⁾ have laid down the following definitions. 'Relevant product markets' are defined as follows:

'A relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use.'

8. 'Relevant geographic markets' are defined as follows:

'The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas.'

9. The relevant market within which to assess a given competition issue is therefore established by the combination of the product and geographic markets. The EFTA Surveillance Authority interprets the definitions at paragraphs 7 and 8 (which reflect the jurisprudence of the Court of Justice and the Court of First Instance of the European Communities as well as its own decision-making practice) according to the orientations defined in this notice.

Concept of relevant market and objectives of EEA competition policy

10. The concept of relevant market is closely related to the objectives pursued under EEA competition policy. For example, under the EEA merger control, the objective in controlling structural changes in the supply of a product/service is to prevent the creation or reinforcement of a dominant position as a result of which effective competition would be significantly impeded in a substantial part of the territory covered by the EEA Agreement. Under the EEA competition rules, a dominant position is such that a firm or group of firms would be in a position to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers⁽³⁾. Such a position would usually arise when a firm or group of firms would account for a large share of the supply in any given market, provided that other factors analysed in the assessment (such as entry barriers, capacity of reaction of customers, etc.) point in the same direction.

11. The same approach is followed by the EFTA Surveillance Authority in its application of Article 54 of the EEA Agreement to firms that enjoy a single or collective dominant position. Under Chapter II of Protocol 4 to the Surveillance and Court Agreement⁽⁴⁾ the EFTA Surveillance Authority has the power to investigate and bring to an end abuses of such a dominant position, which must also be defined by reference to the relevant market. Markets may also need to be defined in the application of

Article 53 of the EEA Agreement, in particular, in determining whether an appreciable restriction of competition exists or in establishing if the condition under Article 53(3)(b) for an exemption from the application of Article 53(1) is met.

12. The criteria to define the relevant market are applied generally for the analysis of certain behaviours in the market and for the analysis of structural changes in the supply of products. This methodology, though, might lead to different results depending on the nature of the competition issue being examined. For instance, the scope of the geographic market might be different when analysing a concentration, where the analysis is essentially prospective, from an analysis of past behaviour. The different time horizon considered in each case might lead to the result that different geographic markets are defined for the same products depending on whether the EFTA Surveillance Authority is examining a change in the structure of supply, such as a concentration or a cooperative joint venture, or issues relating to certain past behaviour.

Basic principles for market definition

Competitive constraints

13. Firms are subject to three main sources of competitive constraints: demand substitutability, supply substitutability and potential competition. From an economic point of view, for the definition of the relevant market, demand substitution constitutes the most immediate and effective disciplinary force on the suppliers of a given product, in particular in relation to their pricing decisions. A firm or a group of firms cannot have a significant impact on the prevailing conditions of sale, such as prices, if its customers are in a position to switch easily to available substitute products or to suppliers located elsewhere. Basically, the exercise of market definition consists in identifying the effective alternative sources of supply for the customers of the undertakings involved, both in terms of products/services and geographic location of suppliers.

14. The competitive constraints arising from supply side substitutability other than those described in paragraphs 20 to 23 and from potential competition are in general less immediate and in any case require an analysis of additional factors. As a result such constraints are taken into account at the assessment stage of competition analysis.

Demand substitution

15. The assessment of demand substitution entails a determination of the range of products which are viewed as substitutes by the consumer. One way of determining this can be viewed as a speculative experiment, postulating a hypothetical small, lasting change in relative prices and evaluating the likely reactions of customers to that increase. The exercise of market definition focuses on prices for operational and practical purposes, and more precisely on demand substitution arising from small, permanent changes in relative prices. This concept can provide clear indications as to the evidence that is relevant to define markets.

⁽¹⁾ See footnote 2 of the Decision.

⁽²⁾ See footnote 3 of the Decision.

⁽³⁾ Definition given by the EC Court of Justice in its judgement of 13 February 1979 in Case 85/76 Hoffmann-La Roche [1979] ECR, p. 461, and confirmed in subsequent judgements.

⁽⁴⁾ See footnote 2 of the Decision.

16. Conceptually, this approach implies that starting from the type of products that the undertakings involved sell and the area in which they sell them, additional products and areas will be included in or excluded from the market definition, depending on whether competition from these other products and areas affect or restrain sufficiently the pricing of the parties' products in the short term.

17. The question to be answered is whether the parties' customers would switch to readily available substitutes or to suppliers located elsewhere in response to a hypothetical, small (in the 5 to 10 % range) but permanent relative price increase in the products and areas being considered. If substitution were enough to make the price increase unprofitable because of the resulting loss of sales, additional substitutes and areas would be included in the relevant market. This would be done until the set of products and geographic areas is such that small, permanent increases in relative prices would be profitable. The equivalent analysis is applicable in cases concerning the concentration of buying power, where the starting point would then be the supplier and the price test serves to identify the alternative distribution channels or outlets for the supplier's products. In the application of these principles, careful account should be taken of certain particular situations as described under paragraphs 56 and 58.

18. A practical example of this test can be provided by its application to a merger of, for instance, soft drink bottlers. An issue to examine in such a case would be to decide whether different flavours of soft drinks belong to the same market. In practice, the question to address would be whether consumers of flavour A switched to other flavours when confronted with a permanent price increase of 5 to 10 % for flavour A. If a sufficient number of consumers switched to say, flavour B, to such an extent that the price increase for flavour A was not profitable due to the resulting loss of sales, then the market would comprise at least flavours A and B. The process would have to be extended in addition to other available flavours until a set of products is identified for which a price rise would not induce a sufficient substitution in demand.

19. Generally, and in particular for the analysis of merger cases, the price to take into account will be the prevailing market price. This might not be the case where the prevailing price has been determined in the absence of sufficient competition. In particular for investigation of abuses of dominant positions, the fact that the prevailing price might already have been substantially increased will be taken into account.

Supply substitution

20. Supply-side substitutability may also be taken into account when defining markets in those situations in which its effects are equivalent to those of demand substitution in terms of effectiveness and immediacy. This means that suppliers are able to switch

production to the relevant products and market them in the short term⁽¹⁾ without incurring significant additional costs or risks in response to small and permanent changes in relative prices. When these conditions are met, the additional production that is put on the market will have a disciplinary effect on the competitive behaviour of the companies involved. Such an impact in terms of effectiveness and immediacy is equivalent to the demand substitution effect.

21. These situations typically arise when companies market a wide range of qualities or grades of one product; even if for a given final customer or group, of consumers, the different qualities are not substitutable, the different qualities will be grouped into one product market, provided that most of the suppliers are able to offer and sell the various qualities immediately and without the significant increases in costs described above. In such cases, the relevant product market will encompass all products that are substitutable in demand and supply, and the current sales of those products will be aggregated so as to give the total value or volume of the market. The same reasoning may lead to group different geographic areas.

22. A practical example of the approach to supply side substitutability when defining product markets is to be found in the case of paper. Paper is usually supplied in a range of different qualities, from standard writing paper to high quality papers to be used for instance, to publish art books. From a demand point of view, different qualities of paper cannot be used for any given use, i.e. an art book or a high quality publication cannot be based on lower quality papers. However, paper plants are prepared to manufacture the different qualities, and production can be adjusted with negligible costs and in a short time-frame. In the absence of particular difficulties in distribution, paper manufacturers are therefore able to compete for orders of the various qualities, in particular if orders are passed with a sufficient lead time to allow for modifying production plans. Under such circumstances, the EFTA Surveillance Authority would not define a separate market for each quality of paper and its respective usage. The various qualities of paper are included in the relevant market, and their sales added up to estimate total market value and volume.

23. When supply side substitutability entails the need to adjust significantly existing tangible and intangible assets, additional investments, strategic decisions or time delays, it will not be considered at the stage of market definition. Examples of where supply side substitution is not likely to lead the EFTA Surveillance Authority to enlarge the definition of the market may be found in the area of consumer products, for instance with respect to branded beverages. Although bottling plants may in principle bottle different beverages, there are costs and lead times involved (in terms of advertising, product testing and distribution) before the products can actually be sold. In these cases, the effects of supply side substitutability and other forms of potential competition would then be examined at a later stage.

Potential competition

24. The third source of competitive constraint, potential competition, is not taken into account when defining markets. Since the conditions under which potential competition will actually represent an effective competitive constraint depend on the analysis of specific factors and circumstances related to the

⁽¹⁾ That is, the period which does not imply a significant adjustment of existing tangible and intangible assets (see paragraph 23).

conditions of entry. If required, this analysis is only carried out at a subsequent stage, in general once the position of the companies involved in the relevant market has already been ascertained, and when such position is indicative of concerns from a competition point of view.

III. EVIDENCE RELIED UPON TO DEFINE RELEVANT MARKETS

The process of defining the relevant market in practice

Product dimension

25. There is a range of evidence permitting an assessment of the extent to which substitution would take place. In individual cases, certain types of evidence will be determined, depending very much on the characteristics and specificity of the industry and products or services that are being examined. The same type of evidence may be of no importance in other cases. In most cases, a decision will have to be based on the consideration of a number of criteria and different items of evidence. The EFTA Surveillance Authority follows an open approach to empirical evidence, aimed at making an effective use of all available information which may be relevant in individual cases. The Authority does not follow a rigid hierarchy of different sources of information or types of evidence.

26. The process of defining relevant markets may be summarised as follows: on the basis of the preliminary information available or information submitted by the undertakings involved, the EFTA Surveillance Authority will usually be in a position to broadly establish the possible relevant markets within which, for instance, a concentration or a restriction of competition has to be assessed. In general, and for all practical purposes when handling individual cases, the question will usually be to decide on a few alternative possible relevant markets. For instance, with respect to the product market, the issue will often be to establish whether product A and product B belong or do not belong to the same product market. It is often the case that the inclusion of product B would be enough to remove any competition concerns.

27. In such situations it is not necessary to consider whether the market includes additional products, or to reach a definitive conclusion on the precise product market. If under the conceivable alternative market definitions the operation in question does not raise competition concerns, the question of market definition will be left open, reducing thereby the burden on companies to supply information.

Geographical dimension

28. The EFTA Surveillance Authority's approach to geographic market definition might be summarised as follows: it will take a preliminary view of the scope of the geographic market on the basis of broad indications regarding the distribution of market shares of the parties and their competitors, as well as a preliminary analysis of pricing and price differences at national and

EEA levels. This initial view is used basically as a working hypothesis to focus the Authority's enquiries for the purposes of arriving at a precise geographic market definition.

29. The reasons behind any particular configuration of prices and market shares need to be explored. Companies might enjoy high market shares in their domestic markets just because of the weight of the past, and conversely, a homogenous presence of companies throughout the EEA might be consistent with national or regional geographic markets. The initial working hypothesis will therefore be checked against an analysis of demand characteristics (importance of national or local preferences, current patterns of purchases of customers, product differentiation/brands, etc.) in order to establish whether companies in different areas do indeed constitute a real alternative source of supply for consumers. The theoretical experiment is again based on substitution arising from changes in relative prices, and the question to answer is again whether the customers of the parties would switch their orders to companies located elsewhere in the short term and at a negligible cost.

30. If necessary, a further check on supply factors will be carried out to ensure that those companies located in differing areas do not face impediments in developing their sales on competitive terms throughout the whole geographic market. This analysis will include an examination of requirements for a local presence in order to sell in that area, the conditions of access to distribution channels, costs associated with setting up a distribution network, and the presence or absence of regulatory barriers arising from public procurement, price regulations, quotas and tariffs limiting trade or production, technical standards, monopolies, freedom of establishment, requirements for administrative authorisations, packaging regulations, etc. In short, the EFTA Surveillance Authority will identify possible regulations, etc. In short, the EFTA Surveillance Authority will identify possible obstacles and barriers isolating companies, located in a given area from the competitive pressure of companies located outside that area, so as to determine the precise degree of market interpenetration at national, European or global level.

31. The actual pattern and evolution of trade flow offers useful supplementary indications as to the economic importance of each demand or supply factor mentioned above, and the extent to which they may or may not constitute actual barriers creating different geographic markets. The analysis of trade flow will generally address the question of transport costs and the extent to which these may hinder trade between different areas, having regard to plant location, costs of production and relative price levels.

Market integration in the European Economic Area

32. Finally, the EFTA Surveillance Authority also takes into account the continuing process of market integration in the EEA when defining geographic markets. Within the scope of the EEA Agreement⁽¹⁾, the measures adopted and implemented to remove barriers to trade and further integrate the EEA markets cannot be ignored when assessing the effects on competition of, for example a concentration or a structural joint venture. A situation where national markets have been artificially isolated from each other because of the existence of legislative barriers that have now been removed, will generally lead to a cautious assessment of past evidence regarding prices, market shares or trade patterns. A process of market integration that would, in the short term, lead to wider geographic markets may therefore be taken into consideration when defining the geographic market for the purposes of assessing concentrations and joint ventures.

⁽¹⁾ It should be noted that the EEA Agreement is limited in scope compared to the EC Treaty. For instance, the absence of a customs union and limited application to certain products may affect the assessment of market integration between the EFTA States and between the EFTA States and the Community.

The process of gathering evidence

33. When a precise market definition is deemed necessary, the EFTA Surveillance Authority will often contact the main customers and the main companies in the industry to enquire into their views about the boundaries of product and geographic markets, and to obtain the necessary factual evidence to reach a conclusion. The Authority might also contact the relevant professional associations, and companies active in upstream markets, so as to be able to define, insofar as necessary, separate product and geographic markets, for different levels of production or distribution of the products/services in question. It might also request additional information from the undertakings involved.

34. Where appropriate, the EFTA Surveillance Authority will address written requests for information to the market players mentioned above. These requests will usually include questions relating to the perceptions of companies about reactions to hypothetical price increases and their views on the boundaries of the relevant market. They will also include requests to provide the factual information the Authority deems necessary to reach a conclusion on the extent of the relevant market. The Authority might also discuss with marketing directors or other officers of those companies to gain a better understanding on how negotiations between suppliers and customers take place and to understand better issues relating to the definition of the relevant market. Where appropriate, it might also carry out visits or inspections to the premises of the parties, their customers and/or their competitors, in order to understand better how products are manufactured and sold.

35. The type of evidence relevant to reach a conclusion as to the product market can be categorised as follows:

Evidence to define markets — product dimension

36. An analysis of the product characteristics and its intended use allows the EFTA Surveillance Authority, as a first step, to limit the field of investigation of possible substitutes. However, product characteristics and intended use are insufficient to conclude whether two products are demand substitutes. Functional interchangeability or similarity in characteristics may not provide in themselves sufficient criteria, because the responsiveness of customers to relative price changes may be determined by other considerations as well. For example, there may be different competitive constraints in the original equipment market for car components and in spare parts, thereby leading to a separate delineation of two relevant markets. Conversely, differences in product characteristics are not in themselves sufficient to exclude demand substitutability, since this will depend to a large extent on how customers value different characteristics.

37. The type of evidence the EFTA Surveillance Authority considers relevant to assess whether two products are demand substitutes can be categorised as follows:

38. Evidence of substitution in the recent past

In certain cases, it is possible to analyse evidence relating to recent past events or shocks in the market that offer actual examples of substitution between two products. When available, this sort of information will normally be fundamental for market definition. If there have been changes in relative prices in the past (all else being equal), the reactions in terms of quantities demanded will be determinant in establishing substitutability. Launches of new products in the past can also offer useful information, when it is possible to precisely analyse which products have lost sales to the new product.

39. There are a number of quantitative tests that have specifically been designed for the purpose of delineating markets. These tests consist of various econometric and statistical approaches: estimates of elasticities and cross-price elasticities⁽¹⁾ for the demand of a product, tests based on similarity of price movements over time, the analysis of causality between price series and similarity of price levels and/or their convergence. The EFTA Surveillance Authority will take into account the available quantitative evidence capable of withstanding rigorous scrutiny for the purposes of establishing patterns of substitution in the past.

40. Views of customers and competitors

The EFTA Surveillance Authority may contact the main customers and competitors of the companies involved in its enquiries, to gather their views on the boundaries of the product market as well as most of the factual information it requires to reach a conclusion on the scope of the market. Reasoned answers of customers and competitors as to what would happen if relative prices for the candidate products were to increase in the candidate geographic area by a small amount (for instance 5 to 10 %) are taken into account when they are sufficiently backed by factual evidence.

41. Consumer preferences

In cases of consumer goods, it might be difficult for the EFTA Surveillance Authority to gather the direct views of end consumers about substitute products. Marketing studies that companies have commissioned in the past and that are used by companies in their own decision making as to pricing of their products and/or marketing actions, may provide useful information for the Authority's delineation of the relevant market. Consumer surveys on usage patterns and attitudes, data from consumer's purchasing patterns, the views expressed by retailers and more generally, market research studies submitted by the

⁽¹⁾ Own price elasticity of demand for product X is a measure of the responsiveness of demand for X to a percentage change in its own price. Cross-price elasticity between products X and Y is the responsiveness of demand for product X to a percentage change in the price of product Y.

parties and their competitors will be taken into account to establish whether an economically significant proportion of consumers consider two products as substitutable, also taking into account the importance of brands for the products in question. The methodology followed in consumer surveys carried out ad hoc by the undertakings involved or their competitors for the purposes of a merger procedure or a procedure pursuant to Chapter II of Protocol 4 to the Surveillance and Court Agreement⁽¹⁾ will usually be scrutinised with utmost care. Unlike pre-existing studies, they have not been prepared in the normal course of business for the adoption of business decisions.

42. Barriers and costs associated with switching demand to potential substitutes

There are a number of barriers and costs that might prevent the EFTA Surveillance Authority from considering two *prima facie* demand substitutes as belonging to one single product market. It is not possible to provide an exhaustive list of all the possible barriers to substitution and of switching costs. These barriers or obstacles might have a wide range of origins, and in its decisions, the authority may be confronted with regulatory barriers or other forms of State intervention, constraints arising in downstream markets, need to incur specific capital investment or loss in current output in order to switch to alternative inputs, the location of customers, specific investment in production process, learning and human capital investment, retooling costs or other investments, uncertainty about quality and reputation of unknown suppliers, and others.

43. Different categories of customers and price discrimination

The extent of the product market might be narrowed in the presence of distinct groups of customers. A distinct group of customers for the relevant product may constitute a narrower, distinct market when such a group could be subject to price discrimination. This will usually be the case when two conditions are met: (a) it is possible to identify clearly which group an individual customer belongs to at the moment of selling the relevant products to him; and (b) trade among customers or arbitrage by third parties should not be feasible.

Evidence to define markets — geographic dimension

44. The type of evidence the EFTA Surveillance Authority considers relevant to reach a conclusion as to the geographic market can be categorised as follows:

45. Past evidence of diversion of orders to other areas

In certain cases, evidence on changes in prices between different areas and consequent reactions by customers might be available. Generally, the same quantitative tests used for product market

definition might be used in geographic market definition, bearing in mind that international comparisons of prices might be more complex due to a number of factors such as exchange rate movements, taxation and product differentiation.

46. Basic demand characteristics

The nature of demand for the relevant product may in itself determine the scope of the geographical market. Factors such as national preferences or preferences for national brands, language, culture and life style, and the need for a local presence have a strong potential to limit the geographic scope of competition.

47. Views of customers and competitors

Where appropriate, the EFTA Surveillance Authority will contact the main customers and competitors of the parties in its enquiries, to gather their views on the boundaries of the geographic market, as well as most of the factual information it requires to reach a conclusion on the scope of the market, when they are sufficiently backed by factual evidence.

48. Current geographic pattern of purchases

An examination of the customers' current geographic pattern of purchases provides useful evidence as to the possible scope of the geographic market. When customers purchase from companies located anywhere in the EEA on similar terms, or they procure their supplies through effective tendering procedures in which companies from anywhere in the EEA submit bids, the geographic market will usually be considered to be EEA-wide.

49. Trade flows/pattern of shipments

When the number of customers is so large that it is not possible to obtain through them a clear picture of geographic purchasing patterns, information on trade flows might be used alternatively, provided that the trade statistics are available with a sufficient degree of detail for the relevant products. Trade flows, and above all, the rationale behind trade flows provide useful insights and information for the purpose of establishing the scope of the geographic market but are not in themselves conclusive.

50. Barriers and switching costs associated to divert orders to companies located in other areas

The absence of cross-border purchases or trade flows, for instance, does not necessarily mean that the market is at most national in scope. Still, barriers isolating the national market have to be identified before it is concluded that the relevant geographic market in such a case is national. Perhaps the clearest obstacle for a customer to divert its orders to other areas is the impact of transport costs and transport restrictions arising from legislation or from the nature of the relevant products. The impact of transport costs will usually limit the scope of the geographical market

⁽¹⁾ See footnote 2 of this Decision.

for bulky, low-value products, bearing in mind that a transport disadvantage might also be compensated by a comparative advantage in other costs (labour costs or raw materials). Access to distribution in a given area, regulatory barriers still existing in certain sectors, quotas and custom tariffs might also constitute barriers isolating a geographic area from the competitive pressure of companies located outside that area. Significant switching costs in procuring supplies from companies located in other countries constitute additional sources of such barriers.

51. On the basis of the evidence gathered, the EFTA Surveillance Authority will then define a geographic market that could range from a local dimension to a global one.

52. The paragraphs above describe the different factors which might be relevant to define markets. This does not imply that in each individual case it will be necessary to obtain evidence on and assess each of these factors. Often in practice the evidence provided by a subset of these factors will be sufficient to reach a conclusion.

IV. CALCULATION OF MARKET SHARES

53. The definition of the relevant market in both its product and geographic dimensions allows the identification of the suppliers and the customers/consumers active on that market. On that basis, a total market size and market shares for each supplier can be calculated on the basis of their sales of the relevant products in the relevant area. In practice, the total market size and market shares are often available from market sources, i. e. companies' estimates, studies commissioned from industry consultants and/or trade associations. When this is not the case, or when available estimates are not reliable, the EFTA Surveillance Authority will usually ask each supplier in the relevant market to provide its own sales in order to calculate total market size and market shares.

54. If sales are usually the reference to calculate market shares, there are nevertheless other indications that, depending on the specific products or industry in question, can offer useful information such as, in particular, capacity, the number of players in bidding markets units of fleet as in aerospace, or the reserves held in the case of sectors such as mining.

55. As a rule of thumb, both volume sales and value sales provide useful information. In cases of differentiated products, sales in value and their associated market share will usually be

considered to reflect better the relative position and strength of each supplier.

V. ADDITIONAL CONSIDERATIONS

56. There are certain areas where the application of the principles above has to be undertaken with care. This is the case when considering primary and secondary markets, in particular, when the behaviour of undertakings at a point in time has to be analysed pursuant to Article 54 of the EEA Agreement. The method of defining markets in these cases is the same, i.e. assessing the responses of customers based on their purchasing decisions to relative price changes, but taking into account constraints on substitution imposed by conditions in the connected markets. A narrow definition of market for secondary products, for instance, spare parts, may result when compatibility with the primary product is important. Problems of finding compatible secondary products together with the existence of high prices and a long lifetime of the primary products may render relative price increases of secondary products profitable. A different market definition may result if significant substitution between secondary products is possible or if the characteristics of the primary products make quick and direct consumer responses to relative price increases of the secondary products feasible.

57. In certain cases, the existence of chains of substitution might lead to the definition of a relevant market where products or areas at the extreme of the market are not directly substitutable. An example might be provided by the geographic dimension of a product with significant transport costs. In such cases, deliveries from a given plant are limited to a certain area around each plant by the impact of transport costs. In principle, such area could constitute the relevant geographic market. However, if the distribution of plants is such that there are considerable overlaps between the areas around different plants, it is possible that the pricing of those products will be constrained by a chain substitution effect, and lead to the definition of a broader geographic market. The same reasoning may apply if product B is a demand substitute for products A and C. Even if products A and C are not direct demand substitutes, they might be found to be in the same relevant product market since their respective pricing might be constrained by substitution to B.

58. From a practical perspective, the concept of chains of substitution has to be corroborated by actual evidence, for instance related to price interdependence at the extremes of the chains of substitution, in order to lead to an extension of the relevant market in an individual case. Price levels on extreme ends of the chains would have to be of the same magnitude as well.

ANNEX II

NOTICE OF THE EFTA SURVEILLANCE AUTHORITY ON AGREEMENTS OF MINOR IMPORTANCE WHICH DO NOT FALL UNDER ARTICLE 53(1) OF THE EEA AGREEMENT

- A. The present notice is issued pursuant to the rules of the Agreement on the European Economic Area (EEA Agreement) and the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice (Surveillance and Court Agreement).
- B. The European Commission has issued a notice on agreements of minor importance which do not fall under Article 85(1) of the Treaty establishing the European Community ⁽¹⁾. This non-binding act contains principles and rules which the European Commission follows in the field of competition.
- C. The EFTA Surveillance Authority considers the above-mentioned act to be EEA relevant. In order to maintain equal conditions of competition and to ensure a uniform application of the EEA competition rules throughout the European Economic Area, the EFTA Surveillance Authority adopts the present notice exercising the power conferred to it in Article 5(2)(b) of the Surveillance and Court Agreement. It intends to follow the principles and rules laid down in this notice when applying the relevant EEA competition rules to a particular case.
- D. The present Notice replaces the Authority's Notice adopted as Annex IX to the Authority's Decision of 12 January 1994, as amended by Decision of 15 May 1996 ⁽²⁾.

1

1. The EFTA Surveillance Authority considers it important to facilitate cooperation between undertakings where such cooperation is economically desirable without presenting difficulties from the point of view of competition policy. To this end, it published the "Notice concerning agreements, decisions and concerted practices in the field of cooperation between enterprises" ⁽³⁾ listing a number of agreements which by their nature cannot be regarded as being in restraint of competition. Furthermore, in the "Notice concerning its assessment of certain subcontracting agreements" ⁽⁴⁾, the EFTA Surveillance Authority considered that that type of contract, which offers all undertakings opportunities for development, does not automatically fall within the scope of Article 53(1) of the EEA Agreement. The "Notice concerning the assessment of cooperative joint ventures pursuant to Article 53 of the EEA Agreement" ⁽⁵⁾ describes in detail the conditions under which the agreements in question do not fall under the prohibition of restrictive agreements. By issuing this notice, the EFTA Surveillance Authority is taking a further step towards defining the scope of Article 53(1) in order to facilitate cooperation between undertakings.

2. Article 53(1) EEA prohibits agreements which may affect trade between the Contracting Parties to the EEA Agreement and which have as their object or effect the prevention, restriction or distortion of competition within the territory covered by the EEA Agreement. The Court of Justice of the European Communities has clarified that the corresponding Article 85(1) of the Treaty establishing the European Community is not applicable where the impact of the agreement on intra-Community trade or on competition is not appreciable. This principle should also be applied to the interpretation of Article 53(1) EEA, so that this provision is not applicable where the impact on trade between

Contracting Parties to the EEA Agreement or on competition is not appreciable. Agreements which are not capable of significantly affecting trade between the Contracting Parties are not caught by Article 53. They should therefore be examined on the basis, and within the framework, of national legislation alone. This is also the case for agreements whose actual or potential effect remains limited to the territory of only one Contracting Party or of one or more third countries. Likewise, agreements which do not have as their object or their effect an appreciable restriction of competition are not caught by the prohibition contained in Article 53(1).

3. In this notice the EFTA Surveillance Authority, by setting quantitative criteria and by explaining their application, has given a sufficiently concrete meaning to the term "appreciable" for undertakings to be able to judge for themselves whether their agreements do not fall within the prohibition under Article 53(1) EEA by virtue of their minor importance. The quantitative definition of appreciability, however, serves only as a guideline: in individual cases even agreements between undertakings which exceed the threshold set out below may still have only a negligible effect on trade between the Contracting Parties or on competition within the area covered by the EEA Agreement, and are therefore not caught by Article 53(1). This notice does not contain an exhaustive description of restrictions which fall outside Article 53(1). It is generally recognised that even agreements which are not of minor importance can escape the prohibition on agreements, on account of their exclusively favourable impact on competition.

4. The benchmarks provided by the EFTA Surveillance Authority in this notice should eliminate the need to have the legal status of agreements covered by it established through individual EFTA Surveillance Authority decisions; notification for this purpose will no longer be necessary for such agreements. However, if it is doubtful whether, in an individual case, an

⁽¹⁾ OJ C 372, 9. 12. 1997, p. 13.

⁽²⁾ OJ L 153, 18. 6. 1994, p. 32, and OJ C 281, 26. 9. 1996, p. 20.

⁽³⁾ OJ L 153, 18. 6. 1994, p. 25.

⁽⁴⁾ OJ L 153, 18. 6. 1994, p. 30.

⁽⁵⁾ OJ L 186, 21. 7. 1994, p. 58.

agreement is likely to affect trade between the Contracting Parties to the EEA Agreement or to restrict competition to any significant extent, undertakings are free to apply for negative clearance or to notify the agreement pursuant to Chapter II⁽¹⁾, Chapter VI⁽²⁾, Chapter IX⁽³⁾ and Chapter XI⁽⁴⁾ of Protocol 4 to the Surveillance and Court Agreement.

5. In cases covered by this notice, and subject to points 11 and 20, the EFTA Surveillance Authority will not institute any proceedings either upon application or on its own initiative. Where undertakings have failed to notify an agreement falling within the scope of Article 53(1) because they assumed in good faith that the agreement was covered by this notice, the EFTA Surveillance Authority will not consider imposing fines.

6. This notice is likewise applicable to decisions by associations of undertakings and to concerted practices.

7. This notice is without prejudice to any interpretation that may be given by other competent authorities and in particular by the national courts, the EFTA Court, the Court of Justice or the Court of First Instance of the European Communities.

8. This notice is without prejudice to the application of national competition laws.

II

9. The EFTA Surveillance Authority holds the view that agreements between undertakings engaged in the production or distribution of goods or in the provision of services do not fall under the prohibition in Article 53(1) if the aggregate market shares held by all of the participating undertakings do not exceed, on any of the relevant markets:

- (a) the 5 % threshold, where the agreement is made between undertakings operating at the same level of production or of marketing ("horizontal" agreement);
- (b) the 10 % threshold, where the agreement is made between undertakings operating at different economic levels ("vertical" agreement).

In the case of a mixed horizontal/vertical agreement or where it is difficult to classify the agreement as either horizontal or vertical, the 5 % threshold is applicable.

10. The EFTA Surveillance Authority also holds the view that the said agreements do not fall under the prohibition of Article 53(1) if the market shares given at paragraph 9 are exceeded by no more than one tenth during two successive financial years.

11. With regard to:

- (a) horizontal agreements which have as their object:

- to fix prices or to limit production or sales,
- or
- to share markets or sources of supply;

- (b) vertical agreements which have as their object:

- to fix resale prices,

or

- to confer territorial protection on the participating undertakings or third undertakings;

the applicability of Article 53(1) cannot be ruled out even where the aggregate market shares held by all of the participating undertakings remain below the thresholds mentioned in paragraphs 9 and 10.

The EFTA Surveillance Authority considers, however, that in the first instance it is for the authorities and courts of the Contracting Parties to take action on any agreements envisaged above in (a) and (b). Accordingly, it will only intervene in such cases when it considers that the interests protected by the EEA Agreement so demand, and in particular if the agreements impair the proper functioning of the internal market as extended to the EFTA States by the Agreement.

12. For the purposes of this notice, "participating undertakings" are:

- (a) undertakings being parties to the agreement;
- (b) undertakings in which a party to the agreement, directly or indirectly,
 - owns more than half of the capital or business assets, or
 - has the power to exercise more than half of the voting rights, or
 - has the power to appoint more than half of the members of the supervisory board, board of management or bodies legally representing the undertakings, or
 - has the right to manage the undertaking's business;
- (c) undertakings which directly or indirectly have over a party to the agreement the rights or powers listed in (b);
- (d) undertakings over which an undertaking referred to in (c) has, directly or indirectly, the rights or powers listed in (b).

Undertakings over which several undertakings as referred to in (a) to (d) jointly have, directly or indirectly, the rights or powers set out in (b) shall also be considered to be participating undertakings.

13. In order to calculate the market share, it is necessary to determine the relevant market; for this, the relevant product market and the relevant geographic market must be defined.

14. The relevant product market comprises any products or services which are regarded as interchangeable or substitutable by the consumer, by reason of their characteristics, prices and intended use.

15. The relevant geographic market comprises the area in which the participating undertakings are involved in the supply of relevant products or services, in which the conditions of competition are sufficiently homogeneous, and which can be distinguished from neighbouring geographic areas because, in particular, conditions of competition are appreciably different in those areas.

16. When applying paragraphs 14 and 15, reference should be had to the notice on the definition of the relevant market under EEA competition law⁽⁵⁾.

⁽¹⁾ Corresponds to Council Regulation (EEC) No 17/62.

⁽²⁾ Corresponds to Council Regulation (EEC) No 1017/68.

⁽³⁾ Corresponds to Council Regulation (EEC) No 4056/86.

⁽⁴⁾ Corresponds to Council Regulation (EEC) No 3975/87.

⁽⁵⁾ Not yet published in the Official Journal.

17. In case of doubt as to the delimitation of the relevant geographic market, undertakings may take the view that the agreement has no appreciable effect on trade between the Contracting Parties to the EEA Agreement or on competition when the market share thresholds indicated in paragraphs 9 and 10 are not exceeded in any State within the territory covered by the EEA Agreement. This view, however, does not preclude the application of national competition law to the agreements in question.

18. Chapter II of this notice shall not apply where in a relevant market competition is restricted by the cumulative effects of parallel networks of similar agreements established by several manufacturers or dealers.

III

19. Agreements between small and medium-sized undertakings, as defined in the EFTA Surveillance Authority Decision No 112/96/COL of 11 September 1996 ⁽¹⁾ are rarely capable of significantly affecting trade between the Contracting Parties to

the EEA Agreement and competition within the EEA. Consequently, as a general rule, they are not caught by the prohibition in Article 53(1). In cases where such agreements exceptionally meet the conditions for the application of that provision, they will not be of sufficient EEA interest to justify any intervention. This is why the EFTA Surveillance Authority will not institute any proceedings, either upon request or on its own initiative, to apply the provisions of Article 53(1) to such agreements, even if the thresholds set out in paragraphs 9 and 10 above are exceeded.

20. The EFTA Surveillance Authority nevertheless reserves the right to intervene in such agreements:

- (a) where they significantly impede competition in a substantial part of the relevant market;
- (b) where, in the relevant market, competition is restricted by the cumulative effect of parallel networks of similar agreements made between several producers or dealers.

⁽¹⁾ OJ L 42, 13. 2. 1997, p. 33.