

Official Journal

of the European Communities

ISSN 0378-6978

L 212

Volume 41

30 July 1998

English edition

Legislation

Contents

I Acts whose publication is obligatory

- Commission Regulation (EC) No 1668/98 of 29 July 1998 establishing the standard import values for determining the entry price of certain fruit and vegetables 1
- Commission Regulation (EC) No 1669/98 of 29 July 1998 fixing the representative prices and the additional import duties for molasses in the sugar sector 3
- Commission Regulation (EC) No 1670/98 of 29 July 1998 altering the export refunds on white sugar and raw sugar exported in the natural state 5
- Commission Regulation (EC) No 1671/98 of 29 July 1998 fixing the maximum export refund for white sugar for the 49th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1408/97 7
- Commission Regulation (EC) No 1672/98 of 29 July 1998 determining the extent to which applications lodged in July 1998 for licences for certain eggs and poultrymeat products under the regime provided for by the Interim Agreements concluded by the Community with the Republic of Poland, the Republic of Hungary, the Czech Republic, Slovakia, Romania and Bulgaria can be accepted 8
- Commission Regulation (EC) No 1673/98 of 29 July 1998 determining the extent to which applications lodged in July 1998 for import licences for certain poultrymeat products under the regime provided for in Council Regulation (EC) No 774/94 opening and providing for the administration of certain Community tariff quotas for poultrymeat and certain other agricultural products can be accepted 11
- Commission Regulation (EC) No 1674/98 of 29 July 1998 determining the extent to which applications lodged in July 1998 for import licences for certain egg sector products and poultrymeat pursuant to Regulations (EC) No 1474/95 and (EC) No 1251/96 can be accepted 13

Contents (continued)

Commission Regulation (EC) No 1675/98 of 29 July 1998 determining the extent to which applications lodged in July 1998 for import licences for certain poultrymeat sector products pursuant to Regulation (EC) No 509/97 can be accepted	15
Commission Regulation (EC) No 1676/98 of 29 July 1998 determining to what extent applications for the right to import for cows and heifers of certain mountain breeds lodged under Regulation (EC) No 1143/98 can be met	17
* Commission Regulation (EC) No 1677/98 of 29 July 1998 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽¹⁾	18
* Commission Regulation (EC) No 1678/98 of 29 July 1998 amending Regulation (EEC) No 3887/92 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes	23
* Commission Regulation (EC) No 1679/98 of 29 July 1998 laying down detailed rules for the application of Council Regulation (EC) No 1099/98 and providing for the partial reimbursement of import duties levied on a quota of barley for malting	29
* Commission Regulation (EC) No 1680/98 of 29 July 1998 amending Regulations (EC) No 936/97 opening and providing for the administration of tariff quotas for high-quality fresh, chilled and frozen beef and for frozen buffalo meat and (EEC) No 139/81 defining the conditions for the admission of certain kinds of frozen beef and veal to subheading 0202 30 50 of the Combined Nomenclature	36
Commission Regulation (EC) No 1681/98 of 29 July 1998 fixing the export refunds on olive oil	37
Commission Regulation (EC) No 1682/98 of 29 July 1998 fixing the maximum export refunds for olive oil for the 17th partial invitation to tender under the standing invitation to tender issued by Regulation (EC) No 1978/97	39
* Commission Regulation (EC) No 1683/98 of 29 July 1998 on the sale at prices fixed in advance of beef held by certain intervention agencies	41
Commission Regulation (EC) No 1684/98 of 29 July 1998 on the issue of import licences for frozen thin skirt of bovine animals	47
Commission Regulation (EC) No 1685/98 of 29 July 1998 altering the corrective amount applicable to the refund on cereals	48

⁽¹⁾ Text with EEA relevance

Commission

98/476/EC:

- * **Commission Decision of 21 January 1998 on tax concessions under § 52(8) of the German Income Tax Act ⁽¹⁾ (notified under document number C(1998) 231)** 50

98/477/EC:

- * **Commission Recommendation of 22 July 1998 concerning information necessary to support applications for the evaluation of the epidemiological status of countries with respect to transmissible spongiform encephalopathies ⁽¹⁾ (notified under document number C(1998) 2268)** 58

Corrigenda

- * **Corrigendum to Commission Regulation (EC) No 260/98 of 30 January 1998 amending both Regulation (EC) No 1445/95 on rules of application for import and export licences in the beef and veal sector and Regulations (EC) No 589/96, (EC) No 935/97, (EC) No 936/97, (EC) No 995/97, (EC) No 996/97, (EC) No 1006/97, (EC) No 1042/97, (EC) No 1376/97, (EC) No 1939/97 and (EC) No 1940/97 (OJ L 25 of 31.1.1998)** 62

⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 1668/98
of 29 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 1498/98 ⁽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 30 July 1998.

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

Done at Brussels, 29 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ L 198, 15. 7. 1998, p. 4.

⁽³⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 29 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
0707 00 05	052	71,6
	999	71,6
0709 90 70	052	47,8
	999	47,8
0805 30 10	382	60,7
	388	62,5
	524	67,2
	528	54,3
	999	61,2
0806 10 10	052	121,8
	400	292,6
	412	187,0
	600	75,8
	624	163,8
	999	168,2
0808 10 20, 0808 10 50, 0808 10 90	388	68,0
	400	77,5
	508	108,4
	512	71,6
	524	76,3
	528	57,2
	720	167,0
	800	142,8
	804	117,3
	999	98,5
0808 20 50	052	105,7
	388	88,0
	512	56,6
	528	90,5
	999	85,2
0809 10 00	052	172,7
	064	121,7
	066	108,4
	999	134,3
0809 20 95	052	480,4
	061	260,9
	400	287,3
	404	387,3
	616	264,5
	999	336,1
0809 40 05	064	77,0
	066	58,6
	624	206,5
	999	114,0

⁽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 1669/98

of 29 July 1998

fixing the representative prices and the additional import duties for molasses in the sugar sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the market in sugar⁽¹⁾, as last amended by Regulation (EC) No 1148/98⁽²⁾,

Having regard to Commission Regulation (EC) No 1422/95 of 23 June 1995 laying down detailed rules of application for imports of molasses in the sugar sector and amending Regulation (EEC) No 785/68⁽³⁾, and in particular Articles 1 (2) and 3 (1) thereof,

Whereas Regulation (EC) No 1422/95 stipulates that the cif import price for molasses, hereinafter referred to as the 'representative price', should be set in accordance with Commission Regulation (EEC) No 785/68⁽⁴⁾; whereas that price should be fixed for the standard quality defined in Article 1 of the above Regulation;

Whereas the representative price for molasses is calculated at the frontier crossing point into the Community, in this case Amsterdam; whereas that price must be based on the most favourable purchasing opportunities on the world market established on the basis of the quotations or prices on that market adjusted for any deviations from the standard quality; whereas the standard quality for molasses is defined in Regulation (EEC) No 785/68;

Whereas, when the most favourable purchasing opportunities on the world market are being established, account must be taken of all available information on offers on the world market, on the prices recorded on important third-country markets and on sales concluded in international trade of which the Commission is aware, either directly or through the Member States; whereas, under Article 7 of Regulation (EEC) No 785/68, the Commission may for this purpose take an average of several prices as a basis, provided that this average is representative of actual market trends;

Whereas the information must be disregarded if the goods concerned are not of sound and fair marketable quality or if the price quoted in the offer relates only to a small quantity that is not representative of the market;

whereas offer prices which can be regarded as not representative of actual market trends must also be disregarded;

Whereas, if information on molasses of the standard quality is to be comparable, prices must, depending on the quality of the molasses offered, be increased or reduced in the light of the results achieved by applying Article 6 of Regulation (EEC) No 785/68;

Whereas a representative price may be left unchanged by way of exception for a limited period if the offer price which served as a basis for the previous calculation of the representative price is not available to the Commission and if the offer prices which are available and which appear not to be sufficiently representative of actual market trends would entail sudden and considerable changes in the representative price;

Whereas where there is a difference between the trigger price for the product in question and the representative price, additional import duties should be fixed under the conditions set out in Article 3 of Regulation (EC) No 1422/95; whereas should the import duties be suspended pursuant to Article 5 of Regulation (EC) No 1422/95, specific amounts for these duties should be fixed;

Whereas application of these provisions will have the effect of fixing the representative prices and the additional import duties for the products in question as set out in the Annex to this Regulation;

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

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and the additional duties applying to imports of the products referred to in Article 1 of Regulation (EC) No 1422/95 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 30 July 1998.

⁽¹⁾ OJ L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ L 159, 3. 6. 1998, p. 38.

⁽³⁾ OJ L 141, 24. 6. 1995, p. 12.

⁽⁴⁾ OJ L 145, 27. 6. 1968, p. 12.

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

Done at Brussels, 29 July 1998.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX

fixing the representative prices and additional import duties applying to imports of molasses in the sugar sector

CN code	Amount of the representative price in ECU per 100 kg net of the product in question	Amount of the additional duty in ECU per 100 kg net of the product in question	Amount of the duty to be applied to imports in ECU per 100 kg net of the product in question because of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 ⁽²⁾
1703 10 00 ⁽¹⁾	6,84	0,08	—
1703 90 00 ⁽¹⁾	8,24	—	0,00

⁽¹⁾ For the standard quality as defined in Article 1 of amended Regulation (EEC) No 785/68.

⁽²⁾ This amount replaces, in accordance with Article 5 of Regulation (EC) No 1422/95, the rate of the Common Customs Tariff duty fixed for these products.

COMMISSION REGULATION (EC) No 1670/98
of 29 July 1998
altering the export refunds on white sugar and raw sugar exported in the natural state

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

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector ⁽¹⁾, as last amended by Regulation (EC) No 1599/96 ⁽²⁾, and in particular the second subparagraph of Article 19 (4) thereof,

Whereas the refunds on white sugar and raw sugar exported in the natural state were fixed by Commission Regulation (EC) No 1581/98 ⁽³⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EC) No 1581/98 to the information known to the Commission that the export refunds at

present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1(1)(a) of Regulation (EEC) No 1785/81, undenatured and exported in the natural state, as fixed in the Annex to Regulation (EC) No 1581/98 are hereby altered to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 30 July 1998.

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

Done at Brussels, 29 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ L 206, 23. 7. 1998, p. 32.

ANNEX

to the Commission Regulation of 29 July 1998 altering the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Amount of refund
	— ECU/100 kg —
1701 11 90 9100	40,71 ⁽¹⁾
1701 11 90 9910	39,66 ⁽¹⁾
1701 11 90 9950	⁽²⁾
1701 12 90 9100	40,71 ⁽¹⁾
1701 12 90 9910	39,66 ⁽¹⁾
1701 12 90 9950	⁽²⁾
	— ECU/1 % of sucrose × 100 kg —
1701 91 00 9000	0,4425
	— ECU/100 kg —
1701 99 10 9100	44,25
1701 99 10 9910	43,80
1701 99 10 9950	43,80
	— ECU/1 % of sucrose × 100 kg —
1701 99 90 9100	0,4425

⁽¹⁾ Applicable to raw sugar with a yield of 92 %; if the yield is other than 92 %, the refund applicable is calculated in accordance with the provisions of Article 17a (4) of Regulation (EEC) No 1785/81.

⁽²⁾ Fixing suspended by Commission Regulation (EEC) No 2689/85 (OJ L 255, 26. 9. 1985, p. 12), as amended by Regulation (EEC) No 3251/85 (OJ L 309, 21. 11. 1985, p. 14).

COMMISSION REGULATION (EC) No 1671/98
of 29 July 1998

fixing the maximum export refund for white sugar for the 49th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1408/97

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

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector ⁽¹⁾, as last amended by Regulation (EC) No 1148/98 ⁽²⁾, and in particular the second subparagraph of Article 17 (5)(b) thereof,

Whereas Commission Regulation (EC) No 1408/97 of 22 July 1997 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar ⁽³⁾, requires partial invitations to tender to be issued for the export of this sugar;

Whereas, pursuant to Article 9 (1) of Regulation (EC) No 1408/97 a maximum export refund shall be fixed, as the case may be, account being taken in particular of the state and foreseeable development of the Community and world markets in sugar, for the partial invitation to tender in question;

Whereas, following an examination of the tenders submitted in response to the 49th partial invitation to tender, the provisions set out in Article 1 should be adopted;

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 49th partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1408/97 the maximum amount of the export refund is fixed at ECU 47,050 per 100 kilograms.

Article 2

This Regulation shall enter into force on 30 July 1998.

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

Done at Brussels, 29 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ L 159, 3. 6. 1998, p. 38.

⁽³⁾ OJ L 194, 23. 7. 1997, p. 16.

COMMISSION REGULATION (EC) No 1672/98
of 29 July 1998

determining the extent to which applications lodged in July 1998 for licences for certain eggs and poultrymeat products under the regime provided for by the Interim Agreements concluded by the Community with the Republic of Poland, the Republic of Hungary, the Czech Republic, Slovakia, Romania and Bulgaria can be accepted

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

Having regard to Commission Regulation (EC) No 1899/97 ⁽¹⁾ setting rules of application in the poultrymeat and egg sectors for the arrangements covered by Council Regulation (EC) No 3066/95 and repealing Regulations (EEC) No 2699/93 and (EC) No 1559/94, and in particular Article 4(5) thereof,

Whereas the applications for import licences lodged for the third quarter of 1998 are, in the case of some products, for quantities less than or equal to the quantities available and can therefore be met in full, but in the case of other products the said applications are for quantities greater than the quantities available and must therefore be reduced by a fixed percentage to ensure a fair distribution,

HAS ADOPTED THIS REGULATION:

Article 1

1. Applications for import licences for the period 1 July to 30 September 1998 submitted under Regulation (EC) No 1899/97 shall be met as referred to in Annex I.
2. During the first 10 days of the period 1 October to 31 December 1998 applications may be lodged pursuant to Regulation (EC) No 1899/97 for import licenses for a total quantity as referred to in Annex II.

Article 2

This Regulation shall enter into force on 30 July 1998.

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

Done at Brussels, 29 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 267, 30. 9. 1997, p. 67.

ANNEX I

Group No	Percentage of acceptance of import licences submitted for the period 1 July to 30 September 1998
1	3,36
2	3,41
4	100,00
7	2,24
8	17,54
9	3,27
10	100,00
11	—
12	100,00
14	—
15	3,16
16	—
17	—
18	—
19	100,00
21	100,00
23	100,00
24	100,00
25	—
26	—
27	—
28	—
30	—
32	—
33	—
34	—
35	—
36	—
37	18,23
38	78,07
39	—
40	100,00
43	—
44	7,75
45	100,00

ANNEX II

(tonnes)

Group No	Total quantity available for the period 1 October to 31 December 1998
1	3 823,75
2	373,75
4	10 326,50
7	2 415,00
8	603,75
9	1 380,00
10	942,90
11	287,50
12	1 119,50
14	2 012,50
15	1 408,75
16	805,00
17	862,50
18	172,50
19	342,13
21	1 345,50
23	1 256,38
24	115,00
25	3 047,50
26	172,50
27	1 265,00
28	241,50
30	1 035,00
32	402,50
33	287,50
34	1 437,50
35	115,00
36	575,00
37	143,75
38	143,75
39	920,00
40	293,25
43	575,00
44	316,25
45	881,50

COMMISSION REGULATION (EC) No 1673/98
of 29 July 1998

determining the extent to which applications lodged in July 1998 for import licences for certain poultrymeat products under the regime provided for in Council Regulation (EC) No 774/94 opening and providing for the administration of certain Community tariff quotas for poultrymeat and certain other agricultural products can be accepted

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

Having regard to Commission Regulation (EC) No 1431/94 of 22 June 1994, laying down detailed rules for the application in the poultrymeat sector of the import arrangements provided for in Council Regulation (EC) No 774/94 opening and providing for the administration of certain Community tariff quotas for poultrymeat and certain other agricultural products ⁽¹⁾, as last amended by Regulation (EC) No 1514/97 ⁽²⁾, and in particular Article 4 (5) thereof,

Whereas the applications for import licences lodged for the period 1 July to 30 September 1998 are greater than

the quantities available and must therefore be reduced by a fixed percentage to ensure a fair distribution,

HAS ADOPTED THIS REGULATION:

Article 1

Applications for import licences for the period 1 July to 30 September 1998 submitted under Regulation (EC) No 1431/94 shall be met as referred to in the Annex.

Article 2

This Regulation shall enter into force on 30 July 1998.

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

Done at Brussels, 29 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 156, 23. 6. 1994, p. 9.

⁽²⁾ OJ L 204, 31. 7. 1997, p. 16.

ANNEX

Group No	Percentage of acceptance of import certificate submitted for the period 1 July to 30 September 1998
1	2,35
2	2,35
3	2,39
4	100,00
5	3,89

COMMISSION REGULATION (EC) No 1674/98**of 29 July 1998****determining the extent to which applications lodged in July 1998 for import
licences for certain egg sector products and poultrymeat pursuant to Regulations
(EC) No 1474/95 and (EC) No 1251/96 can be accepted**

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

Having regard to Commission Regulation (EC) No 1474/
95 ⁽¹⁾ opening and providing for the administration of the
tariff quotas in the egg sector and for egg albumin, as last
amended by Regulation (EC) No 1371/98 ⁽²⁾, and in
particular Article 5 (5) thereof,

Having regard to Commission Regulation (EC) No 1251/
96 of 28 June 1996 opening and providing for the admin-
istration of tariff quotas in the poultrymeat sector and
albumin ⁽³⁾, as last amended by Regulation (EC) No 1370/
98 ⁽⁴⁾ and in particular Article 5 (5) thereof,

Whereas the applications for import licences lodged for
the third quarter of 1998 are, in the case of certain prod-
ucts, for quantities less than or equal to the quantities
available and can therefore be met in full, but in the case
of other products the said applications are for quantities

greater than the quantities available and must therefore be
reduced by a fixed percentage to ensure a fair distribution,

HAS ADOPTED THIS REGULATION:

Article 1

1. Applications for import licences for the period 1
July to 30 September 1998 submitted pursuant to Regula-
tions (EC) No 1474/95 and (EC) No 1251/96 shall be met
as referred to in Annex I.
2. During the first 10 days of the period 1 October to
31 December 1998 applications may be lodged pursuant
to Regulations (EC) No 1474/95 and (EC) No 1251/96 for
import licences for the total quantity as referred to in
Annex II.

Article 2

This Regulation shall enter into force on 30 July 1998.

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

Done at Brussels, 29 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 145, 29. 6. 1995, p. 19.

⁽²⁾ OJ L 185, 30. 6. 1998, p. 17.

⁽³⁾ OJ L 161, 29. 6. 1996, p. 136.

⁽⁴⁾ OJ L 185, 30. 6. 1998, p. 15.

ANNEX I

Group No	Percentage of acceptance of import licences submitted for the period 1 July to 30 September 1998
E1	—
E2	100,00
E3	100,00
P1	100,00
P2	32,97
P3	4,09
P4	100,00

*ANNEX II**(tonnes)*

Group No	Total quantity available for the period 1 October to 31 December 1998
E1	54 560,00
E2	1 919,80
E3	5 609,82
P1	1 840,00
P2	600,00
P3	117,00
P4	210,00

COMMISSION REGULATION (EC) No 1675/98**of 29 July 1998****determining the extent to which applications lodged in July 1998 for import
licences for certain poultrymeat sector products pursuant to Regulation (EC) No
509/97 can be accepted**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 509/97 of 20 March 1997 laying down procedures for applying in the poultrymeat sector the Interim Agreement on trade and accompanying measures between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and the Republic of Slovenia, of the other part ⁽¹⁾, as amended by Regulation (EC) No 1514/97 ⁽²⁾, and in particular Article 4 (5) thereof,

Whereas the applications for import licences lodged for the third quarter of 1998 are for quantities less than the quantities available and can therefore be met in full;

Whereas the surplus to be added to the quantity available for the following period should be determined,

HAS ADOPTED THIS REGULATION:

Article 1

1. Applications for import licences for the period 1 July to 30 September 1998 submitted pursuant to Regulation (EC) No 509/97 shall be met as referred to in Annex I.
2. During the first 10 days of the period 1 October to 31 December 1998 applications may be lodged pursuant to Regulation (EC) No 509/97 for import licences for the total quantities as referred to in Annex II.

Article 2

This Regulation shall enter into force on 30 July 1998.

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

Done at Brussels, 29 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 80, 21. 3. 1997, p. 3.

⁽²⁾ OJ L 204, 31. 7. 1997, p. 16.

ANNEX I

Group No	Percentage of acceptance of import licences submitted for the period 1 July to 30 September 1998
80	100,00
90	90,91
100	100,00

*ANNEX II**(tonnes)*

Group No	Available quantities
80	1 320,00
90	275,00
100	972,40

COMMISSION REGULATION (EC) No 1676/98**of 29 July 1998****determining to what extent applications for the right to import for cows and heifers of certain mountain breeds lodged under Regulation (EC) No 1143/98 can be met**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1143/98 of 2 June 1998 laying down detailed rules for a tariff quota for cows and heifers of specified mountain breeds originating in various third countries, other than for slaughter and amending Regulation (EC) No 1012/98 ⁽¹⁾, and in particular Article 5 (1) thereof,

Whereas Article 2 (2) of Regulation (EC) No 1143/98 provides for the quantities reserved to traditional importers to be assigned in proportion to their imports during the period 1 July 1995 to 30 June 1998;

Whereas allocation of the quantities available to operators covered by Article 2 (3) of the abovementioned Regulation is to be made in proportion to the quantities applied for; whereas since the quantities applied for exceed those available, a fixed percentage reduction should be set,

HAS ADOPTED THIS REGULATION:

Article 1

Every application for the right to import lodged in accordance with Regulation (EC) No 1143/98 shall be granted to the following extent:

- (a) for importers covered by (a) in Article 2 (1) of Regulation (EC) No 1143/98, 42,3312 % of the quantities imported during the period 1 July 1995 to 30 June 1998;
- (b) for importers covered by (b) in Article 2 (1) of Regulation (EC) No 1143/98, 2,6144 % of the quantities applied for.

Article 2

This Regulation shall enter into force on 30 July 1998.

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

Done at Brussels, 29 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 159, 3. 6. 1998, p. 14.

COMMISSION REGULATION (EC) No 1677/98**of 29 July 1998****amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code****(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽¹⁾, as last amended by European Parliament and Council Regulation (EC) No 82/97 ⁽²⁾, and in particular Article 249 thereof,

Whereas the provisions of Commission Regulation (EEC) No 2454/93 ⁽³⁾, as last amended by Regulation (EC) No 75/98 ⁽⁴⁾, regarding the customs value declarant, should be aligned on those applicable to the customs declarant, in order to have a more coherent application of both sets of provisions;

Whereas Community legislation on outward processing provides for cases in which authorisations are granted pursuant to a decision of the Commission; whereas use of the procedure should be simplified by amending the procedure for granting authorisation to a person other than the one arranging for the outward processing operations performed, with recourse to the Committee procedure as required;

Whereas in order to benefit from treatment as returned goods, agricultural products must be reimported within 12 months of the date of acceptance of the export declaration, with no possibility of an extension; whereas in the light of experience, the customs authorities should be permitted to allow this period to be exceeded in duly justified exceptional circumstances; whereas in order to ensure uniformity in the regularisation of refunds under the common agricultural policy, details of cases should be communicated to the Commission;

Whereas situations arise, particularly in the air-freight sector, in which large quantities of goods have to be dispatched under conditions of considerable pressure; whereas this can lead to errors in the designation of the status of goods which are rectified at the initiative or on behalf of the person concerned when the goods arrive at

their destination; whereas in such cases, where the goods are subject only to post-clearance controls, they may be regarded, provided that the error is put right without damage to financial interests, as not having been removed definitively from customs supervision; whereas this possibility should not be open to abuse;

Whereas it is appropriate to rationalise the procedures to be implemented at Community level concerning, on the one hand, situations not necessitating a subsequent entry in the accounts of import duties or export duties and, on the other hand, requests for repayment or remission of import or export duties;

Whereas it is advisable to increase the existing threshold below which the Member States themselves may decide, unless they are in doubt, not to carry out subsequent entry in the accounts of duty not charged when they consider that all the conditions referred to in point (b) of Article 220(2) of Regulation (EEC) No 2913/92 (hereinafter 'the Code') are met; whereas in addition, it is advisable to lay down a threshold in ecus below which the Member States themselves can decide, unless they are in doubt, to grant repayment or remission when they consider that the conditions referred to in Article 239(1) of the Code are met;

Whereas the right to a hearing, on the part of persons affected by a decision on post-clearance entry in the accounts of import or export duties and of applicants for repayment or remission of import or export duties, should be safeguarded; whereas, therefore, such interested parties must be given the opportunity to give their comments in writing on all the objections that the Commission envisages making in its decisions; whereas this situation requires an adjustment of the time limits for adoption of those decisions by the Commission;

Whereas Council Regulation (EC) No 974/98 of 3 May 1998 concerning the introduction of the euro ⁽⁵⁾ provides that the euro is to become the currency of the participating Member States from 1 January 1999; whereas the euro is expressed, until 31 December 2001, in national monetary units according to the conversion rates; whereas,

⁽¹⁾ OJ L 302, 19. 10. 1992, p. 1.

⁽²⁾ OJ L 17, 21. 1. 1997, p. 1.

⁽³⁾ OJ L 253, 11. 10. 1993, p. 1.

⁽⁴⁾ OJ L 7, 13. 1. 1998, p. 3.

⁽⁵⁾ OJ L 139, 11. 5. 1998, p. 1.

consequently, there is a legal equivalence between the euro unit and the national currency units; whereas, during the transitional period, contracts, national laws and other legal instruments can validly be established in the euro unit or in the national monetary unit;

Whereas, therefore, it appears necessary to introduce measures to adjust the rules for the Single Administrative Document in order to allow the euro unit to be used; whereas, consequently, it is necessary to amend Annex 37 to this end;

Whereas Council Regulation (EC) No 374/98 of 12 February 1998 amending Articles 6 and 9 of Regulation (EC) No 1172/95 on the statistics relating to the trading of goods by the Community and its Member States with non-member countries⁽¹⁾ provides for the replacement from 1 January 1999 of the country nomenclature currently used for the statistics relating to the trading of goods by an alphabetical nomenclature based on the ISO alpha-2 code;

Whereas it is therefore necessary to adjust the rules for using the Single Administrative Document so as to take account of this change; whereas Annex 38 should be adjusted accordingly; whereas it is desirable, however, to allow Member States to continue using the current codes until Annexes 37 and 38 are replaced;

Whereas it is desirable to extend the list in Annex 87 on economic grounds for certain electronic components and the like, following the introduction of the Information Technology Agreement;

Whereas the measures provided for by this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2454/93 is amended as follows:

1. Article 178(2) is replaced by the following:

‘2. The value declaration provided for in paragraph 1 shall be made only by a person established in the Community and in possession of the relevant facts.

The second indent of Article 64(2)(b) and Article 64(3) of the Code shall apply *mutatis mutandis*’.

2. Article 759(3) is replaced by the following:

‘3. Where more than one Member State is involved in the export operations and an application for a single authorisation is made, the procedure provided for in Article 751(2) shall apply.

If there are objections to a draft authorisation, the Commission may decide in accordance with the Committee procedure whether the authorisation can be issued and on what conditions’.

3. The following subparagraph is added to Article 844(4):

‘However, where the goods are declared for free circulation after expiry of the period referred to in the first subparagraph, the customs authorities of the Member State of reimportation may allow the period to be exceeded where exceptional circumstances justify this. Where the customs authorities do allow the period to be exceeded, they shall send details of the case to the Commission’.

4. The following paragraph is added to Article 865:

‘However, in the case of airline companies authorised to use a simplified transit procedure with the use of an electronic manifest, the goods shall not be considered to have been removed from customs supervision if, at the initiative or on behalf of the person concerned, they are treated in accordance with their status as non-Community goods before the customs authorities find the existence of an irregular situation and if the behaviour of the person concerned does not suggest any fraudulent dealing’.

5. In Article 869(b), the term ‘ECU 2 000’ is replaced by the term ‘ECU 50 000’.

6. The following Article 872a is inserted:

Article 872a

Where, at any time in the procedure provided for in Articles 872 and 873, the Commission intends to take a decision unfavourable towards the person concerned by the case presented, it shall communicate its objections to him/her in writing, together with all the documents on which it bases those objections. The person concerned by the case submitted to the Commission shall express his/her point of view in writing within a period of one month from the date on which the objections were sent. If he/she does not give a point of view within that period, he/she shall be deemed to have waived the right to express a position’.

7. Article 873 is amended as follows:

(a) In the first and second sentences of the second paragraph, the words ‘six months’ are replaced by the words ‘nine months’.

⁽¹⁾ OJ L 48, 19. 2. 1998, p. 6.

(b) The following paragraph is added:

'Where the Commission has communicated its objections to the person concerned by the case presented, in accordance with Article 872a, the nine-month deadline shall be extended by a period equivalent to that between the date on which the Commission sent the objections and the date on which it received the answer of the person concerned or, in the absence of an answer, the date of expiry of the period which was set to give his/her point of view'.

8. In Article 905(1), the following second subparagraph is inserted:

'However, except if the decision-making customs authority is in doubt, it can decide itself to grant repayment or remission of the duties in cases in which it considers that the conditions laid down in Article 239(1) of the Code are fulfilled, provided that the amount concerned per operator in respect of one or more import or export operations, but arising from one and the same special situation, is less than ECU 50 000'.

9. The following Article 906a is inserted:

'Article 906a

Where, at any time in the procedure provided for in Articles 906 and 907, the Commission intends to take a decision unfavourable towards the applicant for repayment or remission, it shall communicate its objections to him/her in writing, together with all the documents on which it bases those objections. The applicant for repayment or remission shall express his/her point of view in writing within a period of one month from the date on which the objections

were sent. If he/she does not give his/her point of view within that period, he/she shall be deemed to have waived the right to express a position'.

10. Article 907 is amended as follows:

(a) In the first and second sentences of the second paragraph, the words 'six months' are replaced by the words 'nine months'.

(b) The following paragraph is added:

'Where the Commission has communicated its objections to the applicant for repayment or remission, in accordance with Article 906a, the nine-month deadline shall be extended by a period equivalent to that between the date on which the Commission sent the objections and the date on which it received the answer of the interested party or, in the absence of an answer, the date of the expiry of the period which was given to him/her to give his/her point of view'.

11. Annex 37 is amended in accordance with Annex I hereto.

12. Annex 38 is amended in accordance with Annex II hereto.

13. Annex 87 is amended in accordance with Annex III hereto.

Article 2

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

Points 11 and 12 of Article 1 shall apply from 1 January 1999.

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

Done at Brussels, 29 July 1998.

For the Commission

Mario MONTI

Member of the Commission

ANNEX I

Annex 37 is amended as follows:

1. The explanatory notes in title II, sections A and C for box 44 are supplemented by the following paragraphs:

‘From 1 January 1999, the declarations made in the Member States which give the opportunity to operators to opt for the use of the euro unit for the establishment of their customs declarations will include in this box, preferably in the subdivision in the bottom right-hand corner, an indicator of the currency unit, national unit or euro unit, used.

Member States may provide that this indicator be entered only in box 44 for the first item of goods of the declaration. In this case, the information will be deemed valid for all the good items of the declaration.

This indicator will be constituted by the iso-alpha-3 currency code (ISO 4217)’.

2. The first paragraph of the explanatory note in title II, section A, for box 46 is replaced by the following text:

‘Enter the statistical value expressed in the currency unit the code for which may appear in box 44, or, in the absence of such a code in box 44, in the currency of the Member State where the export formalities are completed, in accordance with the Community provisions in force’.

3. The explanatory note in title II, section A for box 47 is completed with the following paragraph which is inserted after the current text:

‘The amounts in this box are expressed in the currency unit the code for which may appear in box 44, or, in the absence of such a code in box 44, in the currency of the Member State where the export formalities are completed’.

4. The explanatory note in title II, section C for box 45 is completed with the following paragraph which is inserted after the current text:

‘The amounts in this box are expressed in the currency unit the code for which may appear in box 44, or, in the absence of such a code in box 44, in the currency of the Member State of destination’.

5. The first paragraph of the explanatory note in title II, section C, for box 46 is replaced by the following text:

‘Enter the statistical value expressed in the currency unit the code for which may appear in box 44, or, in the absence of such a code in box 44, in the currency of the Member State of destination, in accordance with the Community provisions in force’.

6. The explanatory note in title II, section C for box 47 is completed with the following paragraph which is inserted after the current text:

‘The amounts in this box are expressed in the currency unit the code for which may appear in box 44, or, in the absence of such a code in box 44, in the currency of the Member State of destination’.

ANNEX II

Annex 38 is amended as follows:

The explanatory note to box 22 (invoice currency) is replaced by the following:

‘The invoice currency is to be indicated by means of the ISO alpha-3 currency code (ISO 4217).

However, Member States may continue to use the three-digit nomenclature codes adopted by virtue of Article 9 of Council Regulation (EC) No 1172/95 (*).

(*) OJ L 118, 25. 5. 1995, p. 10.’

ANNEX III

The following point is added to Annex 87:

	Column 1	Column 2
Order No	Goods for which processing under customs control is authorised	Processing which may be carried out
‘18	Any electronic type of components, parts, assemblies (including sub-assemblies), or materials (whether or not electronic), which are vital to the electronic working performance of the processed product	Processing into information technology products falling within: 1. a CN subheading found on the “EC-ITA-schedule CXL” of Council Decision 97/359/EC (*) where a duty exemption operates on the date of authorisation, or 2. a CN subheading provided for in Articles 1, 2 or 3 of Council Regulation (EC) No 2216/97 (**) where an autonomous suspension of duty operates on the date of authorisation (*) OJ L 155, 12. 6. 1997, p. 1 (the Information Technology Agreement). (**) OJ L 305, 8. 11. 1997, p. 1.’

COMMISSION REGULATION (EC) No 1678/98**of 29 July 1998****amending Regulation (EEC) No 3887/92 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes⁽¹⁾, as last amended by Regulation (EC) No 820/97⁽²⁾, and in particular Article 12 thereof,

Whereas it should be laid down that areas are to be declared in hectares to two decimal places;

Whereas, in order to guarantee that direct per-hectare aid is not paid for parcels without justification, parcels subject to certain other arrangements not covered by the integrated administration and control system established by Regulation (EEC) No 3508/92 (hereinafter 'the integrated system') should be declared separately;

Whereas, in view of the requirement to use a minimum quantity of certified seed in the case of declared and sown durum wheat, deterrent penalties should be provided for; whereas similar penalties should be laid down for infringements of the provisions on varieties;

Whereas, by analogy with agricultural rules in other sectors, farmers should be given the opportunity, under certain conditions, of correcting information in their applications which could lead to the imposition of penalties;

Whereas rules for the charging of interest, irrespective of the method of recovery chosen, should be laid down;

Whereas, in order to ensure uniform application throughout the Community of the principle of legitimate expectation where amounts unduly paid are recovered, the conditions under which that principle may be invoked should be laid down without prejudice to the treatment of irregular expenditure as provided for, in particular, in Articles 5 and 8 of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy⁽³⁾, as last amended by Regulation (EC) No 1287/95⁽⁴⁾;

Whereas, in the light of experience, the amount below which the competent authorities may decide not to demand repayment of amounts paid in error should be increased;

Whereas Regulation (EC) No 820/97 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products stipulates that the system for identification and registration of bovine animals is to include ear tags to identify animals individually, computerised databases, animal passports and individual registers kept on each holding;

Whereas effective control of bovine animals requires that animals be identified and recorded; whereas, to this end, Regulation (EC) No 820/97 lays down specific provisions;

Whereas to ensure the effective functioning of the rules for Community aid for eligible animals and the general veterinary rules laid down for the implementation of Regulation (EC) No 820/97 by Commission Regulations (EC) No 2630/97⁽⁵⁾ and (EC) No 494/98⁽⁶⁾ checks and sanctions pursuant to the integrated system and checks and sanctions for veterinary purposes should be considered separately; whereas an exchange of data and common controls are not excluded;

Whereas Article 5 of Regulation (EEC) No 3508/92 stipulates that the system for identification and registration of animals to be taken into account for the granting of aid is to be set up in accordance with Regulation (EC) No 820/97;

Whereas experience has shown that implementation of Regulation (EEC) No 3508/92 in respect of bovine animals has not been entirely satisfactory and needs improvement; whereas, the entry into force of Regulation (EC) No 820/97 provides the opportunity to integrate certain elements of common control practice in the Member States, and also to clarify, harmonise and simplify control procedures and practice; whereas, to this end, the minimum content of checks and reporting of controls should be specified;

⁽¹⁾ OJ L 355, 5. 12. 1992, p. 1.

⁽²⁾ OJ L 117, 7. 5. 1997, p. 1.

⁽³⁾ OJ L 94, 28. 4. 1970, p. 13.

⁽⁴⁾ OJ L 125, 8. 6. 1995, p. 1.

⁽⁵⁾ OJ L 354, 30. 12. 1997, p. 23.

⁽⁶⁾ OJ L 60, 28. 2. 1998, p. 78.

Whereas it should be ensured that Community aid is granted only for bovines for which the obligations of identification and registration in accordance with Regulation (EC) No 820/97 have been complied with; whereas reliable control practice requires that all eligible bovine animals, that is to say all bovines for which applications have been lodged or which may be the subject of future aid applications, on the holding of an aid applicant be subject to on-the-spot checks; whereas, the identification and registration of bovine animals introduced by Regulation (EC) No 820/97 is applicable to all bovine animals;

Whereas provisions should be adopted to prevent and penalise irregularities and fraud effectively; whereas, to this end, there should be sanctions graded according to the gravity of the irregularity committed; whereas, the infringements should be defined in the light of experience with the application of sanctions;

Whereas therefore Commission Regulation (EEC) No 3887/92⁽¹⁾, as last amended by Regulation (EC) No 613/97⁽²⁾, should be amended accordingly;

Whereas the Committee for the European Agricultural Guidance and Guarantee Fund has not delivered an opinion within the time limit laid down by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3887/92 is amended as follows:

1. Article 4(1) is amended as follows:

(a) the second indent of the first subparagraph is replaced by the following:

‘— particulars permitting identification of all agricultural parcels on the holding, their area expressed in hectares to two decimal places, location, use, whether the parcel is irrigated, and the aid scheme concerned;’

(b) in the third subparagraph, the following indents are added:

‘— agricultural production compatible with the requirements of environmental protection and maintenance of the countryside as referred to in Regulation (EEC) No 2078/92,

— cotton, as referred to in Council Regulation (EC) No 1554/95^(*),

— hops, as referred to in Council Regulation (EEC) No 1696/71^(**),

— flax and hemp, as referred to in Council Regulation (EEC) No 1308/70^(***).

^(*) OJ L 148, 30. 6. 1995, p. 48.

^(**) OJ L 175, 4. 8. 1971, p. 1.

^(***) OJ L 146, 4. 7. 1970, p. 1’.

2. Article 6 is amended as follows:

(a) Paragraph 2 is replaced by the following:

‘2. The administrative checks referred to in Article 8(1) of Regulation (EEC) No 3508/92 shall include in particular:

(a) cross-checks on parcels and animals declared in order to ensure that aid is not granted twice in respect of the same calendar year without justification;

(b) once the computerised database is fully operational in accordance with Article 5 of Council Regulation (EC) No 820/97^(*), cross-checks with a view to ensuring that Community aid is granted only for bovine animals for which the births, movements and deaths have been duly notified by the applicant for Community aid to the competent authority referred to in Article 7(1) of Council Regulation (EC) No 820/97.

^(*) OJ L 117, 7. 5. 1997, p. 1.’;

(b) in paragraph 4, the following indent is added:

‘— infringements of Regulation (EC) No 820/97’;

(c) in paragraph 5, the second subparagraph is replaced by the following:

‘With the exception of male bovine animals for which a special premium is granted according to Article 8 of Commission Regulation (EEC) No 3886/92^(*) at the time of slaughter or at the first placing on the market with a view to their slaughter, at least 50 % of the minimal checks on animals shall be made during the retention period. Checks may be effected outside that period only if the registers provided for in Article 4 of Directive 92/102/EEC or Article 3(d) of Regulation (EC) No 820/97 are available.

On-the-spot checks pursuant to this Regulation may be carried out in conjunction with any other inspection provided for by Community legislation.

⁽¹⁾ OJ L 391, 31. 12. 1992, p. 36.

⁽²⁾ OJ L 94, 9. 4. 1997, p. 1.

^(*) OJ L 391, 31. 12. 1992, p. 20.’;

(d) paragraph 6 is replaced by the following:

‘6. On-the-spot checks of livestock for the aid scheme concerned shall include in particular:

- (a) a check that the total number of animals present on the holding, and eligible for the scheme concerned, corresponds to the number of such eligible animals entered in the register;
- (b) a check on the basis of the register kept by the producer that all the animals for which aid applications were submitted in the 12 months prior to the on-the-spot check have been kept throughout the retention period;
- (c) a check of the register by sampling of supporting documents such as purchase and sales invoices, slaughter certificates, veterinary certificates and passports as provided for in Article 6 of Regulation (EC) No 820/97;
- (d) a check that all bovine animals present on the holding, for which aid applications have been lodged or which may be the subject of future aid applications, are identified by ear tags and passports and recorded in the register in accordance with Regulation (EC) No 820/97.

The check provided for in the first subparagraph, point (d), shall be made individually for all male bovines for which an application has been submitted for special beef premium. However, for all other bovine animals eligible for Community aid which are present on such holdings, the check on correct recording in the register may be made by sampling provided that a reliable and representative level of control is achieved.

Where sample checks reveal serious anomalies, the extent and scope of the check shall be increased to ensure an appropriate level of control’.

3. Article 9 is amended as follows:

- (a) the sixth subparagraph of paragraph 2 is replaced by the following two subparagraphs:

‘For the purposes of this Article, “determined area” means the area for which all of the conditions laid down in the rules have been met, including the following provisions:

- for rape seed: Article 4 of Commission Regulation (EC) No 658/96 (*),
- for sunflower: Article 4(5) of Regulation (EC) No 658/96,
- for linseed: Article 6a(4) of Regulation (EEC) No 1765/92,

— for durum wheat: Article 6(5) of Regulation (EC) No 658/96.

With regard to areas declared and actually sown in durum wheat, where a discrepancy is found between the minimum quantity of certified seed fixed by the Member State and the quantity actually used, “determined area” shall mean the area calculated by dividing the total quantity of certified seed for which the producer has furnished proof of use by the minimum quantity per hectare laid down by the Member State for the region of the producer in question. The area thus determined is used, after application of paragraph 2, for the calculation of the right to the supplement or to the specific aid provided for at Article 4 of Regulation (EEC) No 1765/92.

(*) OJ L 91, 12. 4. 1996, p. 46.’;

- (b) paragraph 5 is deleted.

4. Article 10 is replaced by the following:

‘Article 10

1. Where an individual limit or individual ceiling is applicable, the number of animals shown in aid applications shall be reduced to the limit or ceiling set for the farmer concerned.

2. If the number of animals declared in an aid application exceeds that established during administrative or on-the-spot checks carried out in accordance with Article 6(6), the aid shall be calculated on the number of eligible animals established. However, except in cases of *force majeure* and after paragraph 11 of this Article has been applied as regards natural circumstances, that aid shall be reduced pursuant to paragraph 3.

3. Where the application concerns a maximum of 20 animals, the amount of the aid shall be reduced:

- (a) by the percentage corresponding to the difference found if this is not more than two animals, or
- (b) by twice the percentage corresponding to the difference found if this is more than two but not more than four animals.

If the difference is greater than four animals, no premium shall be granted.

In other cases, the amount of the aid shall be reduced:

- (a) by the percentage corresponding to the difference found if this is not more than 5 %, or
- (b) by twice the percentage corresponding to the difference found if this is more than 5 % but not more than 20 %.

If the difference found is more than 20 %, no aid shall be granted.

The percentages mentioned in points (a) and (b) of the first subparagraph shall be calculated on the basis of the number declared, and those mentioned in points (a) and (b) of the third subparagraph on the basis of the number found.

4. As regards bovine animals other than those covered by paragraphs 2 and 3, where on-the-spot checks reveal that the number of animals eligible for Community aids established on the holding does not correspond to the number of eligible animals entered in the register or to the number of passports of eligible animals held on the holding, and when such findings are revealed on at least two checks within a period of 24 months, the total amount of the aid granted to the applicant for the aid scheme concerned for the 12 months prior to the second on-the-spot check revealing such findings shall, except in cases of *force majeure*, be reduced proportionately.

However, as regards the special beef premium pursuant to Article 8 of Regulation (EEC) No 3886/92, a reduction in accordance with the first subparagraph shall apply after each on-the-spot check where such findings are established.

If the difference found during an on-the-spot check is greater than 20 % of the number of eligible animals established, or if a difference of at least 3 % and at least two animals are found during two checks in the same calendar year, no premium shall be granted for the 12 months prior to the on-the-spot check.

5. As regards bovine animals, an animal established within the meaning of paragraphs 2, 3 and 4 above at the time of an on-the-spot check is one which:

- (a) is individually identified by a passport in accordance with Article 6 of Regulation (EC) No 820/97, which indicates at least the date of birth, sex, movements and death within the meaning of the second indent of Article 7(1) of Council Regulation (EC) No 820/97;
- (b) is properly recorded in the register in accordance with the first indent of Article 7(1) of Council Regulation (EC) No 820/97;
- (c) is individually identified by ear tags provided for by Article 4 of Council Regulation (EC) No 820/97;

- (d) in the case of an animal declared for Community aid, is found at the location notified by the applicant in accordance with the fourth indent of Article 5(1) of this Regulation.

However, a bovine animal which has lost one of the two ear tags shall be regarded as being established providing that it is clearly and individually identified by all other relevant conditions mentioned in the first subparagraph. Furthermore, as regards bovine animals incorrectly entered in the register or for which passports issued are incorrectly completed due to reasons attributable to the applicant with regard to the date of birth, sex, movements and death, Community aid shall be reduced in accordance with paragraphs 2, 3 and 4 only if such omissions are established on at least two checks within a period of 24 months.

6. Where it is found that a false declaration in the aid application, register or passport was made as a result of serious negligence, the farmer in question shall be excluded from the aid scheme concerned for the calendar year in question. In the case of a false declaration made intentionally, he shall be excluded from the same aid scheme for the following calendar year as well.

7. If a farmer has been unable to comply with his retention undertaking as a result of *force majeure* he shall retain his right to aid in respect of the number of animals actually eligible at the time when the case of *force majeure* occurred.

In no case may aid be granted on a greater number of animals than that shown in the aid application.

8. If the compensatory allowance provided for in Council Regulation (EC) No 950/97 (*) is calculated on the basis of livestock units, the determining of the number present and the sanctions provided for in paragraphs 2 to 6 shall apply on the basis of the number of livestock units corresponding to the number of animals declared and established.

9. Bovine animals present on the holding shall not be counted unless identified in the aid application.

However, a suckler cow declared for the premium or a bovine declared for the compensatory allowance provided for in Regulation (EC) No 950/97 may be replaced by another suckler cow or bovine respectively provided that replacement occurs within 20 days of the animal's departure from the holding and that the replacement is entered in the register not later than three days after the day of replacement.

10. If the compensatory allowance provided for in Regulation (EC) No 950/97 is calculated on the basis of the number of livestock units without distinguishing between the species of animals concerned, animals declared can be replaced by other animals eligible for this allowance on condition that the corresponding number of livestock units does not decrease and that replacements take place according to the conditions provided for in paragraph 9.

11. In cases where, owing to the impact of natural circumstances on the herd, the farmer cannot meet his commitment to keep the animals notified for a premium throughout the compulsory retention period, he shall be entitled to the premium for the number of eligible animals actually kept throughout the period, provided that he has informed the competent authority in writing within 10 working days of finding any reduction in the number of animals.

12. For the purposes of paragraphs 1 to 11, animals eligible for different Community aids shall be treated separately.

(^(*)) OJ L 142, 2. 6. 1997, p. 1¹.

5. In Article 11, the following paragraph 1a is inserted:

‘1a. The penalties applicable according to Articles 9 and 10 shall not be imposed in cases where the farmer, on finding that the application which he has lodged contains errors other than those made intentionally or by serious negligence incurring one or more of the said penalties, within 10 working days of finding these errors, informs the competent authority in writing, provided that the authority has not notified the farmer of its intention to carry out an on-the-spot control, the farmer has not been able to learn of this intention in any other way and the authority has not already informed the farmer of the irregularity in the application’.

6. Article 12 is replaced by the following:

‘Article 12

Every on-the-spot check shall be the subject of a report setting out, in particular, the reasons for the visit, the aid schemes and applications checked, the persons present, the number of parcels visited, those measured, the measuring methods used, the number of animals of each species found and, where applicable, the eartag numbers and entries to the register subject to checks as well as the result of the checks and if appropriate particular findings relating to specific identification numbers. It shall be open to the farmer or his rep-

resentative to sign the report. He may either merely attest his presence at the inspection or also add his observations.

Where Member States carry out on-the-spot checks pursuant to this Regulation in conjunction with inspections pursuant to Commission Regulation (EC) No 2630/97 (^(*)), the report shall be supplemented by the report referred to in Article 2(5) of Regulation (EC) No 2630/97.

Where on-the-spot checks conducted in accordance with Article 6(5) of this Regulation reveal infringements of Regulation (EC) No 820/97, copies of the reports of the on-the-spot checks pursuant to this Regulation shall be sent without delay to the authorities which are competent for the implementation of Regulation (EC) No 2630/97.

(^(*)) OJ L 354, 30. 12. 1997, p. 23¹.

7. Article 14 is replaced by the following:

‘Article 14

1. If undue payment is made, the farmer shall repay the amount in question plus interest calculated in accordance with paragraph 3.

2. Member States may decide that recovery of an undue payment shall be by deduction of the amount to be recovered from the first advance or first payment made to the farmer following the date of the decision to recover. However, the farmer may repay the amount without waiting for the deduction.

3. The interest shall be calculated for the period elapsing between payment and either repayment or deduction.

The rate of interest applicable shall be calculated according to the provisions of national law but shall not be lower than the interest rate applicable for the recovery of national amounts.

No interest shall be charged on undue payments made by error of the competent authority.

4. The repayment obligation referred to in paragraph 1 shall not apply if the payment was made by error of the competent authority itself or by error of another authority and if the error could not reasonably be detected by the farmer, who for his part acted in good faith and complied with all the rules in force.

However, where the error relates to factual elements relevant for the calculation of the payment concerned, the first subparagraph shall only apply if the decision to recover was not communicated within 12 months of the payment.

For the purposes of the first and second subparagraphs, any third party whose acts are imputable to the farmer shall be treated as the farmer.

5. Paragraph 4 shall not apply in the case of advances and payments the return of which is claimed because a penalty has been imposed under Articles 8, 9 or 10 or any other Community or national provision.

6. Member States may decide not to claim return of amounts of ECU 100 or less, not including interest, per farmer and per aid application to which the claim applies, provided that their national law provides for non-recovery in such cases.

7. In the case of aid or premiums financed by the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section, paying agencies shall

deduct amounts recovered and interest paid from the expenditure of that Section, without prejudice to Article 7 of Regulation (EEC) No 595/91'.

Article 2

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

Points 1(b), 2, 3, 4 and 6 of Article 1 shall apply to aid applications lodged on or after 1 January 1999.

Point 1(a) of Article 1 shall apply to aid applications lodged on or after 1 January 2000.

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

Done at Brussels, 29 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 1679/98**of 29 July 1998****laying down detailed rules for the application of Council Regulation (EC) No 1099/98 and providing for the partial reimbursement of import duties levied on a quota of barley for malting**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1099/98 of 25 May 1998 opening a Community tariff quota for barley for malting falling within CN code 1003 00 ⁽¹⁾, and in particular Article 2 thereof,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ⁽²⁾, as last amended by Commission Regulation (EC) No 923/96 ⁽³⁾, and in particular Article 10(4) thereof,

Whereas the provisions governing the way imports of cereals into the Community are treated were laid down in Commission Regulation (EC) No 1249/96 of 28 June 1996 on rules of application (cereal sector import duties) for Council Regulation (EEC) No 1766/92 ⁽⁴⁾, as last amended by Regulation (EC) No 2092/97 ⁽⁵⁾; whereas Article 2(5) of Regulation (EC) No 1249/96 provides, under certain conditions, for a flat-rate reduction in the import duty of ECU 8 per tonne in particular on barley for malting;

Whereas, pursuant to Article 1 of Regulation (EC) No 1099/98, a tariff quota has been opened for 1997 and 1998 for 50 000 tonnes of high-grade barley falling within CN code 1003 00 for the production of malt to be used in the manufacture of a type of beer aged in vats containing beechwood; whereas the rate of duty applicable to such imports is 50 % of the full rate of duty in force on the day of import, without the flat-rate reductions of ECU 8/tonne in the import duty provided for in Regulation (EC) No 1249/96; whereas, as a consequence, the duties applied pursuant to Regulation (EC) No 1249/96 for up to 50 000 tonnes of barley for malting covered by import licence applications submitted from 1 January to 31 December 1997 and for an unspecified quantity covered

by import licence applications submitted between 1 January 1998 and the date of entry into force of this Regulation, should be adjusted by reducing the rate of duty in force on the day of release for free circulation of the imported product by 50 %, the amount thereby obtained being increased by ECU 8/tonne to take account of the flat-rate reduction in the import duty which may have been applied on release for free circulation; whereas the import duty on quantities covered by import licence applications submitted between the date of entry into force of this Regulation and 31 December 1998, within the limit of the remaining balance of the annual quota of 50 000 tonnes, must be reduced by 50 %;

Whereas the tariff quota opened by Regulation (EC) No 1099/98 covers the periods 1 January to 31 December 1997 and 1 January to 31 December 1998; whereas notwithstanding Article 2 of that Regulation, no provisions applying retroactively can be laid down to guarantee the type of barley already imported or to recognise documents guaranteeing that that type of barley has been imported;

Whereas the implementation of this international commitment should be ensured by providing that operators who have imported barley of a particular quality for malting during the period concerned may qualify, on application, for the reduction in the import duty, less any flat-rate reductions; whereas the Member States must accordingly be authorised to reimburse duties levied in excess to operators who can prove that the import duties they paid were reduced by ECU 8 per tonne as laid down for barley of brewery quality for the production of malt from 1 January to 31 December 1997 and from 1 January 1998 to the date of entry into force of this Regulation; whereas, since the time limit laid down by Regulation (EC) No 1249/96 for processing barley into malt is six months from the date of release for free circulation and since 100 days is quite sufficient to manufacture the type of beer provided for under this quota, it is appropriate, in the interests of simplification, to maintain these time limits in the rules governing the quota;

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

⁽¹⁾ OJ L 157, 30. 5. 1998, p. 9.

⁽²⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽³⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽⁴⁾ OJ L 161, 29. 6. 1996, p. 125.

⁽⁵⁾ OJ L 292, 25. 10. 1997, p. 10.

HAS ADOPTED THIS REGULATION:

Article 1

1. Pursuant to Article 1 of Regulation (EC) No 1099/98, 50 % of the full import duty in force for each consignment concerned on the date of release for free circulation, less ECU 8 per tonne, shall be reimbursed on quantities of barley for malting to be used for the manufacture of beer aged in vats containing beechwood which qualified for a flat-rate reduction of ECU 8 per tonne pursuant to Article 2(5) of Regulation (EC) No 1249/96 and which were covered by import licence applications submitted between 1 January and 31 December 1997 or between 1 January 1998 and the date of entry into force of this Regulation, up to a limit of 50 000 tonnes for each of the two periods, on application by the importer or his authorised agent. The duty shall be reimbursed provided that:

- the imported barley is malted within six months from the date of release for free circulation, and
- the resulting malt is used in the manufacture of beer aged in vats containing beechwood within no more than 100 days following the date on which the barley was processed into malt.

2. Within 15 working days of the date of entry into force of this Regulation, the parties concerned shall lodge applications for reduced duty on the quantities referred to in paragraph 1, in accordance with the model set out in Annex II, with the competent authorities of the Member State that issued the import licence, specifying the quantity that may be covered by the partial reimbursement of the duty as provided for in paragraph 1, in accordance with Article 880 of Commission Regulation (EEC) No 2454/93 ⁽¹⁾.

Applications shall be accompanied by:

- an extract of the import licence proving that that quantity has been released for free circulation,
- proof that the applicant has lodged a 'good faith' security of ECU 5/tonne with the authority that issued the import licence, and
- an application for a certificate for reimbursement of duty in accordance with the model set out in Annex I.

3. Within five working days of expiry of the period laid down in the first subparagraph of paragraph 2, Member States shall forward to the Commission, by telex, fax or telegram, details of the quantities covered by applications for certificates for reimbursement of duty submitted for both periods, i.e. 1 January to 31 December 1997 and 1

January 1998 to the date of entry into force of this Regulation.

4. On the basis of the information forwarded by Member States, where the total quantity for which applications for reduced duty have been lodged exceeds 50 000 tonnes, the Commission shall notify Member States, within three working days of expiry of the period referred to in paragraph 3, of the percentage reduction to be applied to quantities for which applications for certificates have been lodged.

5. The competent authorities of the Member State that issued the import licence shall issue a certificate in accordance with the model set out in Annex I, taking account of any percentage reduction as referred to in paragraph 3, specifying the quantity which may be covered by partial reimbursement of the duty in accordance with Article 880 of Regulation (EEC) No 2454/93. Certificates shall be issued and 'good faith' securities as provided for in paragraph 2 shall be released only in respect of quantities for which the parties concerned provide:

- proof of processing into malt as provided for in Article 2(5)(c) of Regulation (EC) No 1249/96, and
- an additional certificate proving that the malt has been used to manufacture beer aged in vats containing beechwood within the deadline provided for in paragraph 1. Such certificates shall be issued:
 - by the relevant authorities proving that the plant where the malt concerned has been used for the production of beer had vats for ageing containing beechwood, where the processing took place before this Regulation was published,
 - by the customs department responsible for checking that barley is malted, for quantities of barley covered by import licence applications submitted before this Regulation was published but not yet manufactured into beer at that date.

The 'good faith' security referred to in paragraph 2 covering quantities actually processed but for which not duty reduction is granted shall be released.

6. Applications for reimbursement must be submitted by the parties concerned to the office where customs clearance took place. Applications for reimbursement must be accompanied by:

- (a) the import licence or a certified copy thereof;
- (b) the certificate referred to in paragraph 5; and
- (c) the declaration of release for free circulation covering the imports concerned.

The amount to be reimbursed per tonne shall be 50 % of the full rate of duty in force on the day of release for free circulation, minus ECU 8/tonne.

⁽¹⁾ OJ L 253, 11. 10. 1993, p. 1.

Article 2

1. Pursuant to Article 1 of Regulation (EC) No 1099/98, the import duty in force for each consignment concerned on the date of release for free circulation shall be reduced by 50 % for quantities of barley falling within CN code 1003 00 intended for malting (quota serial number 09.4061), to be used for the manufacture of beer aged in vats containing beechwood and covered by import licence applications submitted between the date of entry into force of this Regulation and 31 December 1998. In such cases, the duty reduction of ECU 8/tonne provided for in Article 2(5) of Regulation (EC) No 1249/96 shall not be applied. However, the 50 % reduction of the import duty shall be applied only for a quantity equal to the 50 000 tonne quota for 1998, minus the quantity covered by applications for duty reimbursement submitted for the period between 1 January 1998 and the date of entry into force of this Regulation, in accordance with Article 1. Where necessary, the duty reduction shall be granted only for applications covering the quantity thus calculated by chronological order of submission from the date of entry into force of this Regulation. The duty reduction shall be granted provided that:

- the imported barley is malted within six months from the date of release for free circulation, and
- the resulting malt is used in the manufacture of beer aged in vats containing beechwood within no more than 100 days following the date on which the barley is processed into malt.

2. For the purpose of applying the reduced duty referred to in paragraph 1, Section 24 of import licences drawn up in accordance with Article 2(5) of Regulation (EC) No 1249/96 shall contain one of the following:

- Derecho 50 % solicitado. Reglamento (CE) n° 1679/98. Contingente arancelario n° 09.4061
- Toldsats 50%. Förordning (EF) nr. 1679/98. Toldkontingent nr. 09.4061
- 50 %-Satz erforderlich. Verordnung (EG) Nr. 1679/98. Zollkontingent Nr. 09.4061
- Ζητούμενος δασμός 50 %. Κανονισμός (ΕΚ) αριθ. 1679/98. Δασμολογικές ποσοστώσεις υπ' αριθ. 09.4061
- 50 % duty requested. Regulation (EC) No 1679/98. Tariff quota No 09.4061
- Droit 50 % demandé. Règlement (CE) n° 1679/98. Contingent tarifaire n° 09.4061
- Dazio 50 % richiesto. Regolamento (CE) n. 1679/98. Contingente tariffario n. 09.4061

- Gevraagd recht 50 %. Verordening (EG) nr. 1679/98. Tariefcontingent nr. 09.4061
- Direito 50 % pedido. Regulamento (CE) n° 1679/98. Contingente pautal n° 09.4061
- Pyydetty tullinalennus 50 %. Asetus (EY) N:o 1679/98. Tariffikiintiö N:o 09.4061
- Begärd tullsats 50 %. Förordning (EG) nr 1679/98. Tullkvot nr 09.4061.

When the consignment concerned is released for free circulation, the customs office shall endorse the licence only if the imported barley meets the following quality criteria:

- specific weight: 60,5 kg/hl or more,
- damaged grains: 1 % or less,
- moisture content: 13,5 % or less,
- sound, fair and merchantable barley: 98 % or more,

as certified by:

- either a certificate of analysis carried out at the importer's request by the customs office of release for free circulation,
- or a quality certificate for the imported barley issued by a government authority of the country of origin. In this case, the customs office of release for free circulation shall take samples from at least 5 % of the imported cargo for analysis to verify conformity with the analytical parameters.

3. The parties concerned shall lodge applications for reduced duty, in accordance with the model set out in Annex II, with the competent authorities of the Member State of release for free circulation. Such applications shall be accepted only if accompanied by:

- proof that the applicant is a natural or legal person who has carried out a commercial activity in the cereals sector for at least 12 months and is registered in the Member State in which the application is submitted,
- proof that the applicant has lodged a security of ECU 10/tonne with the competent authority of the Member State of release for free circulation,
- a written undertaking by the applicant that all the imported goods will be processed, within six months from the date of acceptance of entry for free circulation, into malt for use in the manufacture of beer aged in vats containing beechwood within 100 days following the date on which the barley was processed into malt.

4. The provisions governing the dispatch of goods for processing into malt as referred to in Article 2(5) of Regulation (EC) No 1249/96 shall apply. In addition, the competent authority must check that the malt is used in the manufacture of beer aged in vats containing beechwood within 100 days.

Article 3

1. On the first working Monday of each month, up to and including 7 December 1998, Member States shall forward to the Commission, by telex, fax or telegram, in accordance with the model set out in Annex III, the quantities covered by applications for reduced duty lodged during the previous month in accordance with Article 2(3). Not later than 11 January 1999, Member States shall forward to the Commission, by telex, fax or telegram the quantities covered by applications for reduced duty lodged until 31 December 1998.

2. On the basis of the information forwarded by Member States, where the total quantity for which applications for reduced duty have been lodged exceeds the quantity referred to in Article 2(1), the Commission shall notify Member States, within three working days of expiry of the period referred to in paragraph 1, of the period for lodging applications for reduced duty for which such applications can be accepted and, where necessary, of the quantity to which the 50 % duty reduction can be applied for applications lodged on the last day of that period.

3. The competent authorities of the Member State where the application for reduced duty is lodged shall issue a certificate specifying the quantity which may be covered by partial reimbursement of the duty, in accordance with Article 880 of Regulation (EEC) No 2454/93. Such certificates, drawn up in accordance with the model set out in Annex I, shall be issued only for applications that can be accepted within the limit provided for in paragraph 2 for which the party concerned provides the following proof:

- proof of processing into malt as provided for in Article 2(5)(c) of Regulation (EC) No 1249/96,
- the import licence referred to in Article 2(2), duly endorsed by the customs office of release for free circulation, and
- an additional certificate proving that the malt has been used to manufacture beer aged in vats containing beechwood within the deadline provided for in Article 2(1). Such certificates shall be issued by the customs department responsible for checking that barley is malted.

4. Applications for partial reimbursement of the import duty must be submitted by the parties concerned to the office where customs clearance took place. Applications for reimbursement must be accompanied by:

- (a) the import licence or a certified copy thereof;
- (b) the certificate referred to in paragraph 3; and
- (c) the declaration of release for free circulation covering the imports concerned.

The amount to be reimbursed per tonne shall be 50 % of the full rate of duty in force on the day of release for free circulation, minus ECU 8/tonne where the duty reduction provided for in Article 2(5) of Regulation (EC) No 1249/95 has been applied.

Article 4

The security of ECU 10/tonne provided for in the second indent of Article 2(3) shall be released:

- (a) for quantities covered by applications, actually processed but for which no duty reduction has been granted; and
- (b) for the quantities accepted for each application for duty reduction, provided that:
 - the quality of the barley, established on the basis of the quality certificate or analysis certificate, meets the criteria laid down in the second subparagraph of Article 2(2),
 - the certificate applicant provides proof of the specific final use referred to in Article 2(4), certifying that this use took place within the deadline provided for in the written undertaking referred to in the third indent of Article 2(3).

Article 5

For the purposes of this Regulation:

- (a) 'damaged grains' means grains of barley, other cereals or wild oat that display damage, including deterioration caused by disease, frost, heat, insects or fungus, bad weather and all other forms of material damage;
- (b) 'sound, fair and merchantable barley' means barley grains or pieces of grains that are not damaged as defined in (a), except grains damaged by frost or fungus.

Article 6

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, 29 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission

*ANNEX I***Model for certificate applications and certificates for reimbursement of duty as referred to in Articles 1(2) and (5) and 3(3) of Regulation (EC) No 1679/98**

Import licence reference number:

Holder (name, full address and Member State):

Body issuing the extract (name and address):

Rights assigned to (name, full address and Member State):

Quantity for which reimbursement may be applied for under Regulation (EC) No 1679/98 (quantity in kilograms):

.....
(date and signature)*ANNEX II***Model for applications for duty reduction as referred to in Articles 1(2) and 2(3) of Regulation (EC) No 1679/98**

Import licence reference number:

Holder (name, full address and Member State):

Body issuing the extract (name and address):

Rights assigned to (name, full address and Member State):

Quantity for which the duty reduction is applied for under Regulation (EC) No 1679/98 (quantity in kilograms):

.....
(date and signature)

*ANNEX III***Model for notification of applications for duty reduction as referred to in Article 3(1) of Regulation (EC) No 1679/98**

Import licence reference number:

Holder (name, full address and Member State):

Body issuing the extract (name and address):

Rights assigned to (name, full address and Member State):

Quantity for which the duty reduction is applied for under Regulation (EC) No 1679/98 (quantity in kilograms):

Date of submission of application for reduced duty (day, month, year):

.....

(date and signature)

COMMISSION REGULATION (EC) No 1680/98

of 29 July 1998

amending Regulations (EC) No 936/97 opening and providing for the administration of tariff quotas for high-quality fresh, chilled and frozen beef and for frozen buffalo meat and (EEC) No 139/81 defining the conditions for the admission of certain kinds of frozen beef and veal to subheading 0202 30 50 of the Combined Nomenclature

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

Having regard to Commission Regulation (EC) No 936/97 of 27 May 1997 opening and providing for the administration of tariff quotas for high-quality fresh, chilled and frozen beef and for frozen buffalo meat⁽¹⁾, as last amended by Regulation (EC) No 1299/98⁽²⁾, and in particular Article 7(2) thereof,

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organisation of the market in beef and veal⁽³⁾, as last amended by Regulation (EC) No 2634/97⁽⁴⁾, and in particular Article 9(2) thereof,

Whereas New Zealand has designated a new authority to issue certificates of authenticity; whereas Annex II to Regulation (EC) No 936/97 must be amended as a result;

Whereas imports of some beef and veal at reduced rates of customs duty pursuant to Commission Regulation (EEC) No 139/81⁽⁵⁾, as last amended by Regulation (EC) No 1299/98, are subject to the presentation of certificates of authenticity issued by the countries in question; whereas the name and address of the issuing authority in New Zealand must be updated;

Whereas the procedure for revising the list of authorities issuing certificates of authenticity should be standardised;

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

HAS ADOPTED THIS REGULATION:

Article 1

In Annex II to Regulation (EC) No 936/97, 'New Zealand Meat Producers Board' is replaced by 'New Zealand Meat Board'.

Article 2

Regulation (EEC) No 139/81 is amended as follows:

1. Article 5(2) is replaced by the following:

'2. The list may be revised by the Commission where any issuing authority is no longer recognised, where it fails to fulfil any of the obligations incumbent on it or where a new issuing authority is designated.'

2. In Annex II, 'New Zealand Meat Producers Board' is replaced by 'New Zealand Meat Board'.

Article 3

This Regulation shall enter into force on 1 September 1998.

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

Done at Brussels, 29 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 137, 28. 5. 1997, p. 10.

⁽²⁾ OJ L 180, 24. 6. 1998, p. 6.

⁽³⁾ OJ L 148, 28. 6. 1968, p. 24.

⁽⁴⁾ OJ L 356, 31. 12. 1997, p. 13.

⁽⁵⁾ OJ L 15, 17. 1. 1981, p. 4.

COMMISSION REGULATION (EC) No 1681/98
of 29 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 30 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, 29 July 1998.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX

to the Commission Regulation of 29 July 1998 fixing the export refunds on olive oil
(*ECU/100 kg*)

Product code	Amount of refund ⁽¹⁾
1509 10 90 9100	6,00
1509 10 90 9900	0,00
1509 90 00 9100	6,00
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.

COMMISSION REGULATION (EC) No 1682/98**of 29 July 1998****fixing the maximum export refunds for olive oil for the 17th 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 17th 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 23 July 1998.

Article 2

This Regulation shall enter into force on 30 July 1998.

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

Done at Brussels, 29 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 29 July 1998 fixing the maximum export refunds for olive oil for the 17th 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	9,01
1509 10 90 9900	—
1509 90 00 9100	9,00
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 1683/98

of 29 July 1998

on the sale at prices fixed in advance of beef held by certain intervention agencies

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organisation of the market in beef and veal ⁽¹⁾, as last amended by Regulation (EC) No 2634/97 ⁽²⁾, and in particular Article 7(3) thereof,

Whereas the application of intervention measures in respect of beef has created stocks in several Member States; whereas, in order to prevent an excessive prolongation of storage, part of these stocks should be sold;

Whereas subject to certain special exceptions which are necessary, the sale should be made subject to the rules laid down by Commission Regulation (EEC) No 2173/79 ⁽³⁾, as last amended by Regulation (EC) No 2417/95 ⁽⁴⁾, and in particular Titles I and III thereof;

Whereas, to ensure economic management of stocks, the intervention agencies should give priority to selling the meat which has been stored the longest;

Whereas provision should be made for derogations from Article 2(2) of Regulation (EEC) No 2173/79, in view of the administrative difficulties which application of this point creates in the Member States concerned;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. The sale shall take place, of products bought into intervention under Article 6 of Regulation (EEC) No 805/68 amounting to:

- approximately 200 tonnes of bone-in hindquarters held by the Belgian intervention agency,
- approximately 200 tonnes of bone-in hindquarters held by the Danish intervention agency,
- approximately 200 tonnes of bone-in hindquarters held by the German intervention agency,
- approximately 200 tonnes of bone-in hindquarters held by the Spanish intervention agency,

- approximately 200 tonnes of bone-in hindquarters held by the French intervention agency,
- approximately 400 tonnes of bone-in hindquarters held by the Italian intervention agency,
- approximately 200 tonnes of bone-in hindquarters held by the Irish intervention agency,
- approximately 200 tonnes of bone-in hindquarters held by the Dutch intervention agency,
- approximately 200 tonnes of bone-in hindquarters held by the Austrian intervention agency,
- approximately 400 tonnes of boneless beef held by the French intervention agency,
- approximately 2 100 tonnes of boneless beef held by the Irish intervention agency,
- approximately 2 100 tonnes of boneless beef held by the United Kingdom intervention agency,
- approximately 1 tonne of boneless beef held by the Danish intervention agency.

Detailed information concerning quantities and their selling prices is given at Annex I.

2. Subject to the provisions of this Regulation the products referred to in paragraph 1 shall be sold in accordance with Regulation (EEC) No 2173/79, in particular Titles I and III thereof.

Article 2

1. Interested parties may obtain the details of the quantities available and the places where the products are stored from the addresses listed in Annex II to this Regulation.

2. For each product mentioned in Annex I the intervention agencies concerned shall sell first the meat which has been stored the longest.

3. Notwithstanding Article 2(2) of Regulation (EEC) No 2173/79, purchase applications shall not indicate in which cold store or stores the products are held.

Article 3

The security provided for in Article 15(1) of Regulation (EEC) No 2173/79 shall be ECU 120 per tonne.

Article 4

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

⁽¹⁾ OJ L 148, 28. 6. 1968, p. 24.

⁽²⁾ OJ L 356, 31. 12. 1997, p. 13.

⁽³⁾ OJ L 251, 5. 10. 1979, p. 12.

⁽⁴⁾ OJ L 248, 14. 10. 1995, p. 39.

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

Done at Brussels, 29 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission

ANEXO I — BILAG I — ANHANG I — ΠΑΡΑΡΤΗΜΑ I — ANNEX I — ANNEXE I — ALLEGATO I — BIJLAGE I — ANEXO I — LIITE I — BILAGA I

Estado miembro	Productos ⁽¹⁾	Cantidad aproximada (toneladas)	Precio de venta expresado en ecus por tonelada
Medlemsstat	Produkter ⁽¹⁾	Tilnærmet mængde (tons)	Salgspriser i ECU/ton
Mitgliedstaat	Erzeugnisse ⁽¹⁾	Ungefähre Mengen (Tonnen)	Verkaufspreise, ausgedrückt in ECU/Tonne
Κράτος μέλος	Προϊόντα ⁽¹⁾	Κατά προσέγγιση ποσότητα (τόνοι)	Τιμές πώλησης εκφραζόμενες σε Ecu ανά τόνο
Member State	Products ⁽¹⁾	Approximate quantity (tonnes)	Selling prices expressed in ecus per tonne
État membre	Produits ⁽¹⁾	Quantité approximative (tonnes)	Prix de vente exprimés en écus par tonne
Stato membro	Prodotti ⁽¹⁾	Quantità approssimativa (tonnellate)	Prezzi di vendita espressi in ecu per tonnellata
Lidstaat	Producten ⁽¹⁾	Hoeveelheid bij benadering (ton)	Verkoopprijzen uitgedrukt in ECU per ton
Estado-membro	Produtos ⁽¹⁾	Quantidade aproximada (toneladas)	Preço de venda expresso em ecus por tonelada
Jäsenvaltio	Tuotteet ⁽¹⁾	Arvioitu määrä (tonneina)	Myyntihinta ecuina tonnilta
Medlemsstat	Produkter ⁽¹⁾	Ungefärlig kvantitet (ton)	Försäljningspris i ecu per ton

a) **Carne con hueso — Kød, ikke udbenet — Fleisch mit Knochen — Κρέατα με κόκαλα — Bone-in beef — Viande avec os — Carni non disossate — Vlees met been — Carne com osso — Luullinen naudanliha — Kött med ben**

BELGIQUE/BELGIË	— Quartiers arrière/Achtersvoeten	200	1 800
DANMARK	— Bagfjerdinger	200	1 850
DEUTSCHLAND	— Hinterviertel	200	2 000
ESPAÑA	— Cuartos traseros	200	2 000
FRANCE	— Quartiers arrière	200	1 850
IRELAND	— Hindquarters	200	1 800
ITALIA	— Quarti posteriori	400	1 900
NEDERLAND	— Achtersvoeten	200	1 800
ÖSTERREICH	— Hinterviertel	200	1 900

b) **Carne deshuesada — Udbenet kød — Fleisch ohne Knochen — Κρέατα χωρίς κόκαλα — Boneless beef — Viande désossée — Carni senza osso — Vlees zonder been — Carne desossada — Luuton naudanliha — Benfritt kött**

DANMARK	— Tyksteg (INT 16)	1	2 400
FRANCE	— Semelle (INT 14)	200	2 400
	— Rumsteak (INT 16)	200	2 600
IRELAND	— Intervention thick flank (INT 12)	300	2 750
	— Intervention topside (INT 13)	300	3 150
	— Intervention silverside (INT 14)	300	2 500
	— Intervention fillet (INT 15)	300	9 100
	— Intervention rump (INT 16)	300	3 200
	— Intervention striploin (INT 17)	300	5 300
	— Intervention forerib (INT 19)	300	3 000
UNITED KINGDOM	— Intervention thick flank (INT 12)	300	2 750
	— Intervention topside (INT 13)	300	3 350
	— Intervention silverside (INT 14)	300	2 650
	— Intervention fillet (INT 15)	300	7 400
	— Intervention rump (INT 16)	300	4 100
	— Intervention striploin (INT 17)	300	5 000
	— Intervention forerib (INT 19)	300	3 000

- (¹) Véanse los anexos V y VII del Reglamento (CEE) n° 2456/93 de la Comisión (DO L 225 de 4. 9. 1993, p. 4), cuya última modificación la constituye el Reglamento (CE) n° 2602/97 (DO L 351 de 23. 12. 1997, p. 20).
- (¹) Se bilag V og VII til Kommissionens forordning (EØF) nr. 2456/93 (EFT L 225 af 4. 9. 1993, s. 4), senest ændret ved forordning (EF) nr. 2602/97 (EFT L 351 af 23. 12. 1997, s. 20).
- (¹) Vgl. Anhänge V und VII der Verordnung (EWG) Nr. 2456/93 der Kommission (ABl. L 225 vom 4. 9. 1993, S. 4), zuletzt geändert durch die Verordnung (EG) Nr. 2602/97 (ABl. L 351 vom 23. 12. 1997, S. 20).
- (¹) Βλέπε παραρτήματα V και VII του κανονισμού (ΕΟΚ) αριθ. 2456/93 της Επιτροπής (ΕΕ L 225 της 4. 9. 1993, σ. 4), όπως τροποποιήθηκε τελευταία από τον κανονισμό (ΕΚ) αριθ. 2602/97 (ΕΕ L 351 της 23. 12. 1997, σ. 20).
- (¹) See Annexes V and VII to Commission Regulation (EEC) No 2456/93 (OJ L 225, 4. 9. 1993, p. 4), as last amended by Regulation (EC) No 2602/97 (OJ L 351, 23. 12. 1997, p. 20).
- (¹) Voir annexes V et VII du règlement (CEE) n° 2456/93 de la Commission (JO L 225 du 4. 9. 1993, p. 4). Règlement modifié en dernier lieu par le règlement (CE) n° 2602/97 (JO L 351 du 23. 12. 1997, p. 20).
- (¹) Cfr. allegati V e VII del regolamento (CEE) n. 2456/93 della Commissione (GU L 225 del 4. 9. 1993, pag. 4), modificato da ultimo dal regolamento (CE) n. 2602/97 (GU L 351 del 23. 12. 1997, pag. 20).
- (¹) Zie de bijlagen V en VII bij Verordening (EEG) nr. 2456/93 van de Commissie (PB L 225 van 4.9.1993, blz. 4), laatstelijk gewijzigd bij Verordening (EG) nr. 2602/97 (PB L 351 van 23.12.1997, blz. 20).
- (¹) Ver anexos V e VII do Regulamento (CEE) n° 2456/93 da Comissão (JO L 225 de 4. 9. 1993, p. 4). Regulamento com a última redacção que lhe foi dada pelo Regulamento (CE) n° 2602/97 (JO L 351 de 23. 12. 1997, p. 20).
- (¹) Katso komission asetuksen (ETY) N:o 2456/93 (EYVL L 225, 4. 9. 1993, s. 4), sellaisena kuin se on viimeksi muutettuna asetuksella (EY) N:o 2602/97 (EYVL L 351, 23.12.1997, s. 20), liitteet V ja VII.
- (¹) Se bilaga V och VII i förordning (EEG) nr 2456/93 (EGT L 225, 4.9.1993, s. 4), senast ändrad genom förordning (EG) nr 2602/97 (EGT L 351, 23.12.1997, s. 20).

*ANEXO II — BILAG II — ANHANG II — ΠΑΡΑΡΤΗΜΑ II — ANNEX II — ANNEXE II —
ALLEGATO II — BIJLAGE II — ANEXO II — LIITE II — BILAGA II*

**Direcciones de los organismos de intervención — Interventionsorganernes adresser —
Anschriften der Interventionsstellen — Διευθύνσεις των οργανισμών παρεμβάσεως — Addresses
of the intervention agencies — Adresses des organismes d'intervention — Indirizzi degli
organismi d'intervento — Adressen van de interventiebureaus — Endereços dos organismos de
intervenção — Interventioelinten osoitteet — Interventionsorganens adresser**

BELGIQUE/BELGIË

Bureau d'intervention et de restitution belge
Rue de Trèves 82
B-1040 Bruxelles
Belgisch Interventie- en Restitutiebureau
Trierstraat 82
B-1040 Brussel
Téléphone/Tel.: (32-2) 287 24 11; télex/telex: BIRB. BRUB/24076-65567; télécopieur/telefax: (32-2)
230 25 33/280 03 07

BUNDESREPUBLIK DEUTSCHLAND

Bundesanstalt für Landwirtschaft und Ernährung (BLE)
Postfach 180203, D-60083 Frankfurt am Main
Adickesallee 40
D-60322 Frankfurt am Main
Tel.: (49) 69 1564-704/772; Telex: 411727; Telefax: (49) 69 15 64-790/791

DANMARK

Ministeriet for Fødevarer, Landbrug og Fiskeri
EU-direktoratet
Kampmannsgade 3
DK-1780 København V
Tlf. (45) 33 92 70 00; telex 151317 DK; fax (45) 33 92 69 48, (45) 33 92 69 23

ESPAÑA

FEGA (Fondo Español de Garantía Agraria)
Beneficencia, 8
E-28005 Madrid
Teléfono: (34) 913 47 65 00, 913 47 63 10; télex: FEGA 23427 E, FEGA 41818 E; fax: (34) 915 21 98 32,
915 22 43 87

FRANCE

OFIVAL
80, avenue des Terroirs-de-France
F-75607 Paris Cedex 12
Téléphone: (33 1) 44 68 50 00; télex: 215330; télécopieur: (33 1) 44 68 52 33

ITALIA

AIMA (Azienda di Stato per gli interventi nel mercato agricolo)
Via Palestro 81
I-00185 Roma
Tel. 49 49 91; telex 61 30 03; telefax: 445 39 40/445 19 58

IRELAND

Department of Agriculture, Food and Forestry
Agriculture House
Kildare Street
Dublin 2
Ireland
Tel. (01) 678 90 11, ext. 2278 and 3806;
telex 93292 and 93607, telefax (01) 661 62 63, (01) 678 52 14 and (01) 662 01 98

NEDERLAND

Ministerie van Landbouw, Natuurbeheer en Visserij, Voedselvoorzieningsin- en verkoopbureau
p/a LASER, Zuidoost
Slachthuisstraat 71
Postbus 965
6040 AZ Roermond
Tel.: (31-475) 35 54 44; telex: 56396 VIBNL; telefax: (31-475) 31 89 39.

ÖSTERREICH

AMA-Agrarmarkt Austria
Dresdner Straße 70
A-1201 Wien
Tel.: (431) 33 15 12 20; Telefax: (431) 33 15 1297

UNITED KINGDOM

Intervention Board Executive Agency
Kings House
33 Kings Road
Reading RG1 3BU
Berkshire
United Kingdom
Tel. (01-189) 58 36 26
Fax (01-189) 56 67 50

COMMISSION REGULATION (EC) No 1684/98
of 29 July 1998

on the issue of import licences for frozen thin skirt of bovine animals

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

Having regard to Commission Regulation (EC) No 996/97 of 3 June 1997 on the opening and administration of an import tariff quota for frozen thin skirt of bovine animals falling within CN code 0206 29 91 ⁽¹⁾, as last amended by Regulation (EC) No 1266/98 ⁽²⁾, and in particular Article 8 (3) thereof,

Whereas Article 1 (3) (b) of Regulation (EC) No 996/97 fixes the amount of frozen thin skirt which may be imported on special terms in 1998/99 at 800 tonnes;

Whereas Article 8 (3) of Regulation (EC) No 996/97 lays down that the quantities applied for may be reduced; whereas the applications lodged relate to total quantities

which exceed the quantities available; whereas, under these circumstances and taking care to ensure an equitable distribution of the available quantities, it is appropriate to reduce proportionally the quantities applied for,

HAS ADOPTED THIS REGULATION:

Article 1

All applications for import licences made pursuant to Article 8 of Regulation (EC) No 996/97 are hereby met to the extent of 0,53392 % of the quantity requested.

Article 2

This Regulation shall enter into force on 30 July 1998.

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

Done at Brussels, 29 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 144, 4. 6. 1997, p. 6.

⁽²⁾ OJ L 175, 19. 6. 1998, p. 9.

COMMISSION REGULATION (EC) No 1685/98**of 29 July 1998****altering the corrective amount applicable to the refund on cereals**

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

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals ⁽¹⁾, as last amended by Commission Regulation (EC) No 923/96 ⁽²⁾, and in particular Article 13 (8) thereof,

Whereas the corrective amount applicable to the refund on cereals was fixed by Commission Regulation (EC) No 1532/98 ⁽³⁾;

Whereas, on the basis of today's cif prices and cif forward delivery prices, taking foreseeable developments on the market into account, the corrective amount at present applicable to the refund on cereals should be altered;

Whereas the corrective amount must be fixed according to the same procedure as the refund; whereas it may be altered in the period between fixings;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92 ⁽⁴⁾, as last amended by Regulation (EC) No 150/95 ⁽⁵⁾, 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 ⁽⁶⁾, as last amended by Regulation (EC) No 961/98 ⁽⁷⁾,

HAS ADOPTED THIS REGULATION:

Article 1

The corrective amount referred to in Article 1 (1) (a), (b) and (c) of Regulation (EEC) No 1766/92 which is applicable to the export refunds fixed in advance in respect of the products referred to, except for malt, is hereby altered to the amounts set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 30 July 1998.

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

Done at Brussels, 29 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 201, 17. 7. 1998, p. 65.

⁽⁴⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁵⁾ OJ L 22, 31. 1. 1995, p. 1.

⁽⁶⁾ OJ L 108, 1. 5. 1993, p. 106.

⁽⁷⁾ OJ L 135, 8. 5. 1998, p. 5.

ANNEX

to the Commission Regulation of 29 July 1998 altering the corrective amount applicable to the refund on cereals

(ECU / tonne)

Product code	Destination ⁽¹⁾	Current 7	1st period 8	2nd period 9	3rd period 10	4th period 11	5th period 12	6th period 1
1001 10 00 9200	—	—	—	—	—	—	—	—
1001 10 00 9400	—	—	—	—	—	—	—	—
1001 90 91 9000	—	—	—	—	—	—	—	—
1001 90 99 9000	01	0	0	-1,00	-5,00	-7,00	—	—
1002 00 00 9000	01	0	0	0	0	0	—	—
1003 00 10 9000	—	—	—	—	—	—	—	—
1003 00 90 9000	01	0	0	0	0	0	—	—
1004 00 00 9200	—	—	—	—	—	—	—	—
1004 00 00 9400	01	0	0	0	0	0	—	—
1005 10 90 9000	—	—	—	—	—	—	—	—
1005 90 00 9000	01	0	0	0	0	0	—	—
1007 00 90 9000	—	—	—	—	—	—	—	—
1008 20 00 9000	—	—	—	—	—	—	—	—
1101 00 11 9000	—	—	—	—	—	—	—	—
1101 00 15 9100	01	0	0	0	0	0	—	—
1101 00 15 9130	01	0	0	0	0	0	—	—
1101 00 15 9150	01	0	0	0	0	0	—	—
1101 00 15 9170	01	0	0	0	0	0	—	—
1101 00 15 9180	01	0	0	0	0	0	—	—
1101 00 15 9190	—	—	—	—	—	—	—	—
1101 00 90 9000	—	—	—	—	—	—	—	—
1102 10 00 9500	01	0	0	0	0	0	—	—
1102 10 00 9700	—	—	—	—	—	—	—	—
1102 10 00 9900	—	—	—	—	—	—	—	—
1103 11 10 9200	—	—	—	—	—	—	—	—
1103 11 10 9400	—	—	—	—	—	—	—	—
1103 11 10 9900	—	—	—	—	—	—	—	—
1103 11 90 9200	01	0	0	0	0	0	—	—
1103 11 90 9800	—	—	—	—	—	—	—	—

⁽¹⁾ The destinations are identified as follows:
01 all third countries.

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

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 21 January 1998

on tax concessions under § 52(8) of the German Income Tax Act

(notified under document number C(1998) 231)

(Only the German text is authentic)

(Text with EEA relevance)

(98/476/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having given the other Member States and interested parties notice to submit their comments, in accordance with Article 93(2) of the EC Treaty,

Whereas:

I

By Decision of 26 February 1997 the Commission initiated proceedings pursuant to Article 93(2) in respect of a provision in the German Annual Tax Act 1996 (*Jahressteuergesetz 1996*)⁽¹⁾ which amended § 52(8) of the Income Tax Act (*Einkommensteuergesetz*) so as to modify a scheme laid down in § 6b of the latter Act. The

Commission informed Germany of its Decision by letter dated 25 March 1997⁽²⁾, and published the letter in the *Official Journal of the European Communities* on 6 June 1997⁽³⁾. Germany submitted its comments by letter of 13 May 1997. No observations were received from other Member States or interested parties.

The provision at issue introduces a special tax concession for the years 1996, 1997 and 1998 which is intended to strengthen the market in holdings in companies in the new German *Länder* and West Berlin, and thus to increase their equity capital. The concession can be summarised as follows.

Under German tax law, gains accruing from the sale of certain assets to natural persons resident in Germany (§ 1 of the Income Tax Act) or legal persons resident in Germany (§ 1 of the Corporation Tax Act (*Körperschaftsteuergesetz*)) are subject to income tax; the Corporation Tax Act (§ 8) states that legal persons are to be treated in accordance with the relevant provisions in the Income Tax Act.

§ 6b of the Income Tax Act allows natural and legal persons who sell certain movable and immovable assets or shares in companies (*Kapitalgesellschaften*) to offset up to 50 % of the taxable gain on the sale, and in some cases up to 100 %, against the cost of acquiring or producing certain assets in the year of sale or the following four

⁽¹⁾ BGBl. 1995 I 1250; entered into force 1 January 1996.

⁽²⁾ SG(97) D/2381.

⁽³⁾ OJ C 172, 6. 6. 1997, p. 2.

years⁽¹⁾. A 100 % offset under § 6b of the Income Tax Act was *inter alia* already possible before the Annual Tax Act 1996, in relation to the cost of purchasing shares in a company acquired by a holding company within the meaning of the Holding Companies Act (Gesetz über Unternehmensbeteiligungsgesellschaften).

This inquiry concerning the aid rules is not concerned with the possibility that an advantage may thereby be conferred on holding companies, and this Decision does not prejudice any position the Commission may in future take with respect to any such advantage.

As amended with effect from 1 January 1996, § 52(8) of the Income Tax Act broadens the tax concession in § 6b for the financial years 1996, 1997 and 1998. Up to 100 % of the gain may now be offset against acquisition or production costs, provided that the gain in question is used to acquire shares in companies, that this is done on the occasion of an increase in capital or the setting up of a new company, and that the company:

- has its registered office and central administration in one of the new *Länder* or West Berlin⁽²⁾, and at the time the shares are acquired has no more than 250 employees currently employed, or
- is a holding company (Beteiligungsgesellschaft) whose sole object under its own statutes is to acquire or to administer and sell temporary holdings in companies, and which at the time the holdings are acquired has its registered office and central administration in one of the new *Länder* or West Berlin and has no more than 250 employees currently employed.

According to Germany's estimates the measure will lead to a temporary loss in tax revenues of some DEM 150 million (approximately ECU 75 million). Several thousand companies in the new German *Länder* and West Berlin may benefit; and the scheme is not confined to particular industries. There is no rule to prevent combination of this measure with other State aid schemes.

II

The Commission was informed of the provision at issue by letter of 13 October 1995, belatedly, after the legislation had been enacted, and only at the Commission's own express request. The Annual Tax Act 1996 entered into force on 1 January 1996, before the Commission's authorisation had been granted. The Commission accordingly registered the scheme as an unnotified aid measure (NN 9/96). An administrative instruction issued by the Federal Ministry of Finance on 2 January 1996 postponed the

application of the scheme pending authorisation by the Commission⁽³⁾.

In the Decision initiating the proceedings the Commission took the view that § 52(8) of the Income Tax Act constituted a State aid measure caught by Article 92(1) of the EC Treaty and Article 61(1) of the EEA Agreement. The Commission considered that there were two groups which benefited: taxpayers liable under the Income Tax Act, and companies in eastern Germany and Berlin with 250 employees or less.

The Commission was first of the opinion that a tax concession given to taxpayers selling certain assets, who could then offset the gain on the sale when they acquired other assets, was a general measure with no aid component because all taxpayers who invested gains in a certain way, irrespective of their size, business or location, would qualify for the concession.

But the Commission took the view in the decision initiating proceedings that the provision requiring that in order to qualify for the tax concession the taxpayer had to take a holding in a company with its registered office and central administration in the new *Länder* or West Berlin did constitute State aid for the purposes of Article 92(1). The Commission pointed out that according to the consistent case-law of the Court of Justice of the European Communities an assessment of whether a measure constituted State aid within the meaning of Article 92(1) had to be based on whether or not it had the effect of conferring benefit. The effect of the measure at issue here was to increase the profitability of holdings in companies with their registered office and central administration in the new *Länder* and West Berlin, as compared with holdings in companies with their registered office and central administration in western Germany or outside Germany altogether. In their letter of 13 October 1995 the German authorities had argued that the economic advantage conferred by this measure would be very small, indeed almost non-existent; but the Commission once again referred to the case-law of the Court of Justice of the European Communities, according to which the fact that the advantage conferred was small did not as such exclude the possibility that intra-Community trade might be affected.

The Commission accordingly doubted whether the measure was compatible with the common market. It was not linked to investment, and had accordingly to be regarded as operating aid; but it was the Commission's established practice that operating aid was permitted only on certain conditions, and only in areas assisted pursuant to Article 92(3)(a) of the EC Treaty. The scheme also applied in Berlin. Under the Commission Decision on

⁽¹⁾ Constitution of reserves under § 6b(3) of the Income Tax Act.

⁽²⁾ § 1(2) of the Assisted Areas Act (Fördergebietsgesetz).

⁽³⁾ Bundessteuerblatt 1996, Teil I, No 1, p. 2.

the designation of assisted areas for the years 1997 to 1999 (aid measure N 613/96), East Berlin could qualify as an assisted area pursuant to Article 92(3)(c), but the Decision allowed it to be treated in the same way as the neighbouring areas assisted pursuant to Article 92(3)(a) for that period; on the other hand West Berlin was an assisted area pursuant to Article 92(3)(c), but it was not given the benefit of any similar transitional arrangement, so that it did not meet the conditions set out above regarding compatibility of operating aid.

The fact that the grant of aid was not linked to investment also meant that there was a substantial danger that the aid might have economic effects outside the assisted areas. The Commission further took the view that the scheme infringed the ban on discrimination imposed by the freedom of establishment provision in Article 52 of the EC Treaty, because one of the conditions for the concession was that the registered office and central administration of the company in which shares were purchased had to be located in the new *Länder* or West Berlin. Lastly, the scheme did not provide for compliance with the specific rules which governed aid to sensitive industries.

III

In its letter of 13 May 1997 Germany argued that the measure did not constitute State aid within the meaning of Article 92(1). The German position on the proceedings initiated can be summarised as follows.

Germany drew attention, first of all, to the structural deficiencies of the economy in eastern Germany, which continued to be serious, and especially to the low rates of capitalisation of east German companies, which this scheme was intended to improve. The German authorities considered that it was unlikely that any companies in sensitive industries would be assisted under the scheme, as holding companies provided venture capital primarily to companies whose centre of activities was in promising markets.

The tax concession was merely a deferral of taxation; there was no remission of tax, since even if the taxpayer did not sell the holding acquired for a long time, its value would at the very latest appear when the firm was being wound up, and the gains would be taxed at that stage.

There was a tax advantage only to the party providing the capital, but not to the party receiving it. The recipient was obtaining additional capital the cost of which was freely

negotiable and determined by the market. A direct relationship between a tax concession to the recipient of the capital and the cost of that capital was not discernible, and certainly could not be quantified. The mere fact that a tax concession was being given for the purchase of shares in companies located in a defined area did not justify the conclusion that there was a State aid equivalent present. There would be a State aid equivalent only if capital provided under § 52(8) of the Income Tax Act was made cheaper to east German and Berlin companies than the other share capital available. Germany saw nothing to suggest that this was so; in its Decision the Commission had merely stated that this effect was possible, without setting out any precise evidence in support of that view. On the contrary, it was to be supposed that the advantages of the tax deferral would not be passed on to companies with their registered office and central administration in the new *Länder* or West Berlin, because those advantages were small, and would have no further attraction if they changed hands.

In Germany's view, therefore, the tax concession was a general measure not only as far as the provider of capital was concerned but also as far as the recipient was concerned; this was so especially as the advantage to the recipient arose only as a result of the tax concession given to the provider, and the tax concession given to the provider was a general measure in the Commission's opinion too.

In conclusion, the Commission had failed both to show who was to benefit under the alleged aid scheme and to quantify the aid. In the alternative, the advantage to companies in the new *Länder* and West Berlin was extremely limited, if it was measurable at all, so that the *de minimis* rule ought to be applied⁽¹⁾.

IV

The broadened tax concession under § 52(8) of the Income Tax Act constitutes State aid, within the meaning of Article 92(1) of the EC Treaty and Article 61(1) of the EEA Agreement, to companies with no more than 250 employees, and having their registered office and central administration in the new *Länder* or West Berlin in which a holding be acquired, either directly or through a holding company, on the occasion of an increase in capital or the setting up of a new company, in order to qualify for the tax concession on gains accruing on the sale of certain assets or shares in companies. However, the concession is a general measure, and does not comprise any aid component, in so far as it benefits persons subject to income tax who sell certain assets and can offset the taxable gains so arising when they acquire other assets. The Commission has arrived at this conclusion on the following grounds.

⁽¹⁾ OJ C 68, 6. 3. 1996, p. 9.

First, the measure is 'aid granted by a Member State or through State resources' within the meaning of Article 92(1) of the EC Treaty. In order to assess whether a State measure constituted aid, the Court of Justice of the European Communities held in SFEI that it had to be established 'whether the recipient undertaking receives an advantage which it would not have received under normal market conditions' in the absence of the State measure at issue ⁽¹⁾.

§ 52(8) of the Income Tax Act offers a tax concession to natural or legal persons ('share purchasers') who realise a gain on the sale of an asset, in that it allows them to offset up to 100 % of the gain on that sale against the cost of acquiring shares in certain companies and on certain conditions, so that there is a tax payment they need not make. An advantage is thereby conferred on these persons as compared with the treatment for which they would qualify under the ordinary tax rules, which provide for a reduction of up to 50 % in taxable profits if they reinvest the gain anywhere in the Federal Republic of Germany. The 100 % tax offset is permissible only if the taxpayer acquires shares in certain companies and the acquisition takes place on the occasion of a capital increase or the setting up of a new company. The scheme thus requires taxpayers to acquire shares in such a way as to increase the capital of a company or to set up a new company; thus the tax measure has the consequence, and indeed the stated aim, of promoting demand for investment capital in certain companies, and consequently increasing or launching the equity capitalisation of these firms.

As a result of the increased demand for holdings in companies with their registered office and central administration in the new *Länder* or West Berlin ('share sellers') which arises as a result of the State measures, the financial investment behaviour of share purchasers as a whole will be affected, other things being equal, to the extent that they will now acquire holdings on terms more favourable to the share seller than they would have been without the introduction of § 52(8) of the Income Tax Act, holdings which in the absence of the tax concession they would not have acquired at all or would have acquired on terms less advantageous to the share seller. It is true, as Germany points out, that the share seller receives capital the costs of which are freely negotiable and in line with market conditions, but the measure affects the market, with the consequence that capital provided in the framework of § 52(8) becomes more attractive as compared with similar capital otherwise available to companies with their registered office and central administration outside the new *Länder* and Berlin.

The change in the financial investment behaviour and an increase in the equity of the companies concerned is in fact the declared intention of the German legislature; but

in their comments the German authorities contend that the scheme has no measurable effect on the east German and Berlin companies in which the holdings are to be taken.

The tax scheme confers a direct advantage on certain natural and legal persons, who are the direct beneficiaries, to encourage them to acquire certain assets from certain firms, who are the indirect beneficiaries. The economic advantage conferred is the greater demand for shares in the indirect beneficiary companies as compared with the legal situation which existed before § 52(8) entered into force; investors, the direct beneficiaries, will consequently be prepared to acquire holdings in east German and Berlin companies on terms more favourable to those companies than the terms which would have been obtained if the measure had not been introduced. As a result, the volume of holdings in those companies will rise, or the terms of the acquisition of the holding (price as compared with nominal value, duration of holding, return on holding, etc.) will be shifted in favour of those companies, or both.

The measure is accordingly likely to confer an economic advantage on the indirect beneficiaries under § 52(8) of the Income Tax Act, which have their registered office and central administration in the new *Länder* or West Berlin, an advantage they would not have enjoyed without it; and it does not require anything in return.

In its comments Germany contends that the measure is merely a deferral and in no way a remission of tax. It should be pointed out, first of all, that under § 222 of the German Tax Code (*Abgabenordnung*) there is deferral of tax only where the due date of a tax claim which has already arisen is postponed; here, however, a tax claim under § 6b of the Income Tax Act is extinguished, and a fresh claim may possibly arise on a further disposal. In addition, it is irrelevant whether the tax concession can be deemed to be a tax deferral in economic terms, since there would be an indirect economic advantage to the share seller even in the case of a tax deferral (see Commission Decision 93/349/EEC in the *British Aerospace* and *Rover* case ⁽²⁾).

As Germany has argued in its comments, however, it would be difficult here to demonstrate a specific advantage in each individual case, or to quantify the State aid component. Nevertheless, as has already been explained, it can safely be said that an economic advantage is indeed being conferred in the typical case. When the matter is examined *ex ante*, the economic advantage conferred cannot be determined with certainty for each holding acquired, because the measure hinges on the business conduct of a private financial investor who takes investment decisions on the basis of financial investment

⁽¹⁾ Case C-39/94 SFEI and Others v. La Poste and Others [1996] ECR I-3547, paragraph 60.

⁽²⁾ OJ L 143, 15. 6. 1993, p. 7.

conditions which have been deliberately modified by State intervention. It cannot be abstractly shown that the behaviour of an individual share purchaser has been changed by the State measure. The advantage cannot be quantified with certainty *ex ante*, and indeed will not always be quantifiable *ex post* either.

It should be noted that in assessing whether a measure constitutes State aid the Commission need not refer to each individual case. The Court of Justice of the European Communities held in Case 248/84 Germany v. Commission that in the case of an aid programme the Commission could confine itself to examining the characteristics of the programme in question in order to determine whether by its nature the scheme was caught by Article 92(1) ⁽¹⁾. In order to come to the conclusion that there was no State aid, then, the Commission would have to be able to show that there was no case in which an economic advantage was conferred and hence State aid granted. It must be concluded that by its nature the scheme has the effect of conferring an economic advantage on an ascertainable class of companies, namely those with no more than 250 employees and their registered office and central administration in the new *Länder* or West Berlin.

In order to calculate the economic advantage in individual cases a comparison would have to be made between the terms on which a company in eastern Germany or Berlin with 250 employees or less could secure an investment with or without the tax concession, other things being equal.

Under this measure an economic advantage is to be granted through State resources. The scheme does cause a reduction in tax revenue, because the gain on the disposal of the asset is not taxed, and this for an indeterminate period. The tax advantage granted through State resources is passed on in part to the beneficiary of aid under a legal provision which seeks to guide the investment behaviour of private investors.

As the Court of Justice has held in similar circumstances, for example in Van der Kooy ⁽²⁾, the State is using a legislative provision to cause the share purchaser to pass on the tax advantage to specific firms. The measure thus has the same effect as the parafiscal charges financed by some industries which are used by a body administering the resources thus assembled to subsidise projects to be carried out by particular firms. The Court of Justice has consistently held, for example in *Compagnie commerciale de l'Ouest* ⁽³⁾, that depending on the use to which the revenue from these parafiscal charges is put, they may

constitute State aid, as the advantage conferred on particular companies is attributable to State action even if the measure is not financed directly out of State resources, because the parafiscal charge is levied on a compulsory basis.

In the present case the economic advantage is passed on not by an official or private body administering the revenue which was set up to pass on the benefit, but instead by State guidance of the investment behaviour of private share purchasers. Because of the influence brought to bear, the economic effect of this State guidance is comparable. It follows that the passing on of the advantage to particular companies is caused by the State, through the relevant legislative provision.

The measure does favour certain undertakings: it is confined to a particular region — the company must have its registered office and central administration in the new *Länder* or West Berlin — and to companies of a specified size — the company must have no more than 250 employees. It is admittedly not possible to identify these companies individually in advance, but a category of advantaged companies can be determined which is sufficiently well-defined to allow it to be said that these are the companies on which the advantage is conferred. The scheme is therefore sufficiently specific to distinguish it from general measures that confer an advantage on all businesses in a Member State, and which consequently fall outside the scope of Article 92(1) of the EC Treaty.

Lastly, the scheme threatens to distort competition, since it favours undertakings with their registered office and central administration in the relevant region as compared with those in the rest of Germany and in other Member States. The German authorities' view that the aid intensity involved is very small, indeed close to zero, changes nothing; as the Court of Justice of the European Communities held in the Tubemeuse case, an effect on trade between Member States cannot be ruled out on the sole ground that the aid is small ⁽⁴⁾. Nor have the German authorities undertaken to comply with the *de minimis* notice.

On the basis of these considerations, then, the Commission concludes that the broadened tax concession under § 52(8) of the Income Tax Act constitutes State aid, within the meaning of Article 92(1) of the EC Treaty and Article 61(1) of the EEA Agreement, given to companies having their registered office and central administration in the new *Länder* or West Berlin, in which a holding is to be acquired, either directly or through a holding company, on the occasion of an increase in capital or the setting up

⁽¹⁾ [1987] ECR 4013, paragraph 18.

⁽²⁾ Joined Cases 67/85, 68/85 and 70/85 Van der Kooy and Others v. Commission [1988] ECR 219.

⁽³⁾ Joined Cases C-78/90 to C-83/90 *Compagnie commerciale de l'Ouest* and Others v. *Receveur des douanes de La Pallice Port* [1992] I-1847, paragraph 35.

⁽⁴⁾ Case C-142/87 Belgium v. Commission [1990] ECR I-959.

of a new company, in order to qualify for the tax concession on gains accruing on the disposal of certain assets or shares in companies.

V

The aid scheme at issue has the effect of favouring the acquisition, on the occasion of a capital increase or the setting up of a new company, of holdings in companies with up to 250 employees which have their registered office and central administration in the new *Länder* and West Berlin at a price that is more advantageous to the share seller or on terms more advantageous to the share seller than would have been obtained if the provision had not been introduced. The scheme consequently favours the strengthening of those firms' equity base.

The aid scheme is not 'conditional on initial investment' within the meaning of the Commission communication on regional aid systems⁽¹⁾, but instead has an ongoing character, being designed to overcome specific structural disadvantages, as the German authorities have expressly confirmed. In accordance with the judgment of the Court of Justice of the European Communities in *Siemens v. Commission* ⁽²⁾, therefore, it must be treated as operating aid.

It is the Commission's established practice to allow operating aid only in exceptional cases, on certain conditions, and in areas within the scope of Article 92(3)(a) of the EC Treaty, that is to say in 'areas where the standard of living is abnormally low or where there is serious underemployment' (see point 6 of the Commission's 1988 communication on the method for the application of Article 92(3)(a) and (c) to regional aid)⁽³⁾.

The five eastern *Länder* (Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt and Thuringia) are areas assisted pursuant to Article 92(3)(a); a Commission Decision of 18 December 1996 classed them as such until the end of 1999 (State aid measures N 464/93 ⁽⁴⁾, in respect of the period up to 1996, and N 613/96 ⁽⁵⁾, in respect of the period 1997 to 1999). Until the end of 1996 the Commission also accepted that East Berlin could be assisted pursuant to Article 92(3)(a) (State aid measure N 464/93), and as a transitional arrangement for the period 1997 to 1999 the Commission has decided that East Berlin can be treated in the same way as an area assisted pursuant to Article 92(3)(a), in view

of its special geographic position, the fact that it was considered an Article 92(3)(a) area in the period 1994 to 1996, and the history of the city of Berlin; this puts it on the same footing as the five new *Länder* (State aid measure N 613/96).

However, the aid to these areas cannot be considered compatible with the common market pursuant to Article 92(3)(a) of the EC Treaty, for the following reasons:

— The Commission's 1988 communication, referred to above, states that operating aid will be allowed in Article 92(3)(a) regions only in exceptional cases, if the aid is 'designed to promote a durable and balanced development of economic activity'. In addition, it has been the Commission's constant practice to require that the aid should be granted for a predetermined period only, and should fall over time.

The effect of the scheme at issue here is to strengthen the equity base of the recipient firms; the scheme does not ensure that the capital provided to the recipient companies will be used for the economic development of the recipient companies in the Article 92(3)(a) regions, and that it will not in reality benefit companies whose economic activities lie outside an assisted area. On the basis of an examination of the scheme it cannot be ruled out that companies which belong to large companies, or which are independent companies outside the assisted areas, may benefit from the scheme without any real contribution being made to the economic development of companies in the assisted area and thus to the assisted area itself⁽⁶⁾. Thus the scheme cannot be classed under the exemption for regional aid provided for in Article 92(3) of the Treaty. Lastly, there is no provision for the scheme to be run down over time.

— There is nothing to prevent the scheme from being applied to companies in sensitive industries for which specific State aid rules have been laid down (rules of this kind currently exist in the synthetic fibres industry, the motor industry, shipbuilding, transport, agriculture, fisheries, the ECSC sectors and non-ECSC steel). But the Commission's 1988 communication, referred to above, states that aid is not to 'give rise to a sectoral overcapacity', something that typically exists in these sensitive industries.

⁽¹⁾ OJ C 31, 3. 2. 1979, p. 9.

⁽²⁾ Case C-278/95 [1997] ECR I-2507, paragraph 55.

⁽³⁾ OJ C 212, 12. 8. 1998, p. 2.

⁽⁴⁾ OJ C 373, 29. 12. 1994, p. 3.

⁽⁵⁾ OJ C 288, 23. 9. 1997, p. 5.

⁽⁶⁾ See Commission Decision 98/194/EC of 1 October 1997 concerning the extension of the 8 % investment premium, [1986] ECR 273 State aid measure C 28/96 (OJ L 73, 12. 3. 1998, p. 38).

— Lastly, there is nothing to prevent the scheme from being applied to firms in difficulty, within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty⁽¹⁾, even if the general design of the scheme does make this unlikely. The scheme would not be compatible with the conditions for the grant of aid to firms in difficulty which are laid down in those guidelines.

As regards the application of the aid scheme to companies with their registered office and central administration in West Berlin, it should be noted that on the basis of the abovementioned decisions West Berlin was until 1996 only in part, and for the period 1997 to 1999 in its entirety, an assisted area pursuant to Article 92(3)(c). This means that the scheme also applies to companies outside areas assisted pursuant to Article 92(3)(a), that is to say in unassisted areas and areas assisted pursuant to Article 92(3)(c). According to the Commission's established practice, already referred to, operating aid outside areas assisted pursuant to Article 92(3)(a) cannot be declared compatible with the common market, irrespective of whether it is granted to companies in sensitive industries or to companies in difficulty.

The scheme consequently cannot be considered compatible with the common market under the exemption clauses in Article 92(3)(a) and (c). Nor is it intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State, or to promote culture and heritage conservation within the meaning of Article 92(3). Nor is it compatible with the common market pursuant to Article 92(2): in particular, the Commission has no information to suggest that the scheme is required in order to compensate for the economic disadvantages caused by the division of Germany within the meaning of Article 92(3)(c).

The scheme further makes it a condition for the tax concession that the firm in which the holding is taken should have its registered office and central administration in the new *Länder* or West Berlin. This provision is in contradiction with the ban on discrimination in Article 52 of the EC Treaty on the right of establishment.

Article 52 *et seq.* provide for the removal of restrictions on establishment. Articles 52 to 58 also guarantee the freedom to carry on a business through a branch or subsidiary. For the purposes of Article 58, the nationality of a firm is to be determined by reference to the Member State in accordance with whose law it is formed and to its registered office and central administration, as the Court

of Justice of the European Communities held in Case 270/83 *Commission v. France* ⁽²⁾. The ban on discrimination applies not only to direct discrimination but also to measures having equivalent effect. Article 54(3)(h) of the EC Treaty provides that the Commission is to satisfy itself 'that the conditions of establishment are not distorted by aids granted by Member States'. In application of this provision, the Council provided in its 1962 General Programme for the abolition of restrictions on freedom of establishment that rules and practices that eliminated or restricted the exercise by foreigners, but not of domestic nationals, of the rights normally associated with a self-employed activity, or made it subject to conditions, were to be done away with ⁽³⁾. These rules or practices include direct or indirect State aid measures.

By banning restrictions on the right of establishment, Article 52 *et seq.* seek to ensure that those companies are treated in the same way as companies with their registered offices in the host Member State. But the aid under the scheme at issue is available only to companies that have their registered office and central administration in the new *Länder* and West Berlin. In order to qualify, companies with their registered offices and central administration outside that region would have to transfer their registered office and central administration there. The scheme thus favours east German and Berlin companies as compared with companies with their registered offices outside Germany, and consequently infringes the ban on discrimination in Articles 52 *et seq.*

On the ground that the application of the scheme was postponed by the Ministry of Finance's administrative instruction of 2 January 1996, Germany objects that it has not yet been applied and that no aid has been paid under it. If the scheme has in fact already been applied, Germany will have to take the necessary steps to recover aid already paid out,

HAS ADOPTED THIS DECISION:

Article 1

1. The tax concession provided for in § 52(8) of the Income Tax Act constitutes State aid to companies with no more than 250 employees and having their registered office and central administration in the new *Länder* or West Berlin and is incompatible with the common market pursuant to Article 92(1) of the EC Treaty and Article 61(1) of the EEA Agreement.

⁽¹⁾ OJ C 368, 23. 12. 1994, p. 12.

⁽²⁾ [1986] ECR 273.

⁽³⁾ OJ 2, 15. 1. 1962, p. 36/62.

2. Germany is called on to repeal § 52(8) of the Income Tax Act.

Article 2

1. Any aid already paid under the scheme referred to in Article 1(1) is unlawful, having been granted before the Commission Decision.

2. Germany shall ensure that any aid unlawfully granted is repaid.

The aid shall be recovered in accordance with the procedures and provisions of national law, and in particular the national rules on default interest, with interest running from the date of the grant of the unlawful aid, and the rate applied being the reference interest rate used in Germany at the time the aid was granted for calculating the grant equivalent of regional aid.

Article 3

Germany shall inform the Commission within two months of notification of this Decision of the measures it has taken to comply with it.

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 21 January 1998.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION RECOMMENDATION

of 22 July 1998

concerning information necessary to support applications for the evaluation of the epidemiological status of countries with respect to transmissible spongiform encephalopathies

(notified under document number C(1998) 2268)

(Text with EEA relevance)

(98/477/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 155 thereof,

1. Whereas new information has been published in the United Kingdom further supporting the hypothesis that exposure to the bovine spongiform encephalopathy (BSE) agent is linked to the new variant of Creutzfeldt Jacob disease in humans; whereas on 16 September 1997 the Spongiform Encephalopathy Advisory Committee of the United Kingdom concluded that recent research provided compelling new evidence that the agent which causes BSE is identical to the agent which causes the new variant of CJD in humans; whereas on 18 September 1997 the Advisory Committee on Dangerous Pathogens concluded that the BSE agent should now be classified as a human pathogen; whereas on 26 November 1997 the Commission adopted Directive 97/65/EC which classified the BSE and other animal TSE agents in the same group of risk as the human pathogen causing CJD;

2. Whereas the Council on 31 March 1998 invited the Commission to submit an appropriate proposal in the field of specified risk material after the conclusions of the World Organisation for Animal Health (OIE) session in May 1998; whereas the Commission reconfirmed its intention to elaborate a wider Community proposal on the basis of Article 100A, involving both the Council and the European Parliament; whereas Chapter 3.2.13 of the OIE code on BSE recommends to take account of the epidemiological status when importing from a country or a zone;

3. Whereas a risk assessment based on accepted scientific methodology may show that there is a significantly higher risk of exposure of animals or humans to transmissible spongiform encephalopathies (TSEs) in certain countries; whereas a thorough epidemiological evaluation conducted to common standards through a Community procedure will give the necessary information about the status of each country;

4. Whereas the Scientific Steering Committee (SSC), in its opinion of 23 January 1998, has established the list of factors determining the geographical risk in a given

geographical zone; whereas the SSC, in its opinion of 19 and 20 February 1998, has established the contents of a complete dossier of epidemiological status with respect to TSEs;

5. Whereas the task of countries in preparing an application for recognition of the epidemiological status of countries with respect to TSEs will be facilitated when information is presented according to the above scientific opinion; whereas the evaluation of those applications will be facilitated when such data are presented according to the above scientific opinion;

6. Whereas the Commission will base its approach concerning the epidemiological status on the opinion of the SSC; whereas, therefore, the Commission encourages countries to submit a dossier according to this recommendation,

HEREBY RECOMMENDS THAT:

1. Member States are invited to submit as soon as possible, and preferably before 1 October 1998, an application for recognition of their epidemiological status with respect to TSEs, in at least one of the official languages of the Community.

2. Member States should ensure that supporting documents accompanying the application are prepared and presented in accordance with the recommendations set out in the Annex.

3. All the applications and requests for additional information should be addressed to:

European Commission
Directorate-General for Consumer Policy and
Consumer Health Protection
DG XXIV/B.1,
Rue de la Loi/Wetstraat 200,
B-1049 Brussels.
Tel. (32-2)295 39 62, fax (32-2)299 63 01,
e-mail: tse-status@dg24.cec.be

4. The possibilities foreseen by this recommendation shall also be open to non-member countries.
5. The Commission services will ensure evaluation of the dossiers and will ask the Scientific Steering Committee to give an opinion on all applications.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

Information to be submitted in support of an application for recognition of epidemiological status

All data must be provided on an annual basis and preferably from 1980 onwards, but at least from 1988.

Applicant States must make every effort to provide comprehensive and consistent information. Data, which are not provided or are regarded as incomplete or as unsatisfactory, may have to be replaced by worst-case assumption for the purposes of a risk assessment.

Information must be provided on**1. *Structure and dynamics of the bovine, ovine and caprine animal populations***

- (a) absolute numbers of animals per species and breed, alive and at time of slaughter;
- (b) age distributions of animals per species and breed, sex and type;
- (c) age distribution of animals per species and breed, sex and type at time of slaughter;
- (d) geographical distribution of the animals by species and breeds;
- (e) geographical distribution of the animals by husbandry systems, herd sizes and production purposes;
- (f) system of identification and capacities for tracing of animals.

2. *Animal trade*

- (a) imports and exports;
- (b) trade within the geographical area;
- (c) imports of embryos and semen;
- (d) use made of imported animals, embryos or semen;
- (e) mechanisms used by slaughterhouses to identify animals and their origins, as well as data from these procedures.

3. *Animal feed*

- (a) domestic production of meat and bone meal (MBM), and its use per species and husbandry system (in particular the proportion of the domestically produced MBM fed to bovine, ovine and caprine animals);
- (b) imports of MBM, specifying country of origin, and its use per species and husbandry system (in particular the proportion of that MBM fed to bovine, ovine and caprine animals);
- (c) exported MBM, specifying country of destination.

4. *Meat and bone meal (MBM) bans*

- (a) complete description;
- (b) dates of introduction;
- (c) actual implementation, policing and compliance figures;
- (d) possibilities of cross-contamination with other feed.

5. *Specified bovine offal (SBO) and specified risk materials (SRM) bans*

- (a) complete description;
- (b) dates of introduction;
- (c) actual implementation, policing and compliance figures.

6. *Surveillance of TSE, with particular reference to BSE and scrapie*

- (a) incidence of laboratory confirmed cases of BSE and scrapie;
- (b) age distribution, geographical distribution, and countries of origin of cases;
- (c) incidence of neurological disorders in which TSE could not be excluded on clinical grounds in any animal species;
- (d) methodologies and programmes of surveillance and recording of clinical cases of BSE and scrapie, including awareness training for farmers, veterinarians, supervisory bodies and authorities;
- (e) incentives for reporting cases, compensation and reward schemes;
- (f) methodologies of laboratory confirmation and recording of suspect cases of BSE and scrapie;
- (g) strains of BSE and scrapie agents possibly involved;
- (h) existing systems or current plans for targeted active surveillance.

7. *Rendering and feed processing*

- (a) all rendering and feed processing systems used;
- (b) nature of the records of rendering and processing plants;
- (c) quantitative and qualitative parameters of MBM and tallow production by each of the processing systems;
- (d) the geographical areas from which the rendered materials originate;
- (e) the type of raw material used;
- (f) parameters on separate processing lines for materials from healthy and suspected animals;
- (g) transport and storage systems for MBM or feed containing MBM.

8. *BSE or scrapie related culling*

- (a) culling criteria;
 - (b) date of introduction of the culling scheme and of any subsequent modification;
 - (c) animals culled (details as specified in point 1);
 - (d) sizes of herds in which animals were culled.
-

CORRIGENDA

Corrigendum to Commission Regulation (EC) No 260/98 of 30 January 1998 amending both Regulation (EC) No 1445/95 on rules of application for import and export licences in the beef and veal sector and Regulations (EC) No 589/96, (EC) No 935/97, (EC) No 936/97, (EC) No 995/97, (EC) No 996/97, (EC) No 1006/97, (EC) No 1042/97, (EC) No 1376/97, (EC) No 1939/97 and (EC) No 1940/97

(Official Journal of the European Communities L 25 of 31 January 1998)

On page 44, in Article 1(4) under 'Article 6b', first subparagraph, last two lines:

for: '... when the licence or extract is charged against the quota.'

read: '... when the quantity actually imported is attributed to the licence or the extract.'
