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Contents

I *Acts whose publication is obligatory*

- ★ **Commission Regulation (EC) No 12/1999 of 7 January 1999 amending Regulation (EC) No 1921/95 laying down detailed rules for the application of the system of import licences for products processed from fruit and vegetables and repealing Regulation (EEC) No 3566/90** 1
- ★ **Commission Regulation (EC) No 13/1999 of 7 January 1999 setting the intervention threshold for tomatoes for the 1999 marketing year** 6
- ★ **Commission Regulation (EC) No 14/1999 of 5 January 1999 establishing unit values for the determination of the customs value of certain perishable goods** 7
- Commission Regulation (EC) No 15/1999 of 7 January 1999 fixing the export refunds on cereals and on wheat or rye flour, groats and meal..... 13
- Commission Regulation (EC) No 16/1999 of 7 January 1999 fixing the corrective amount applicable to the refund on cereals 15
- Commission Regulation (EC) No 17/1999 of 7 January 1999 fixing the maximum export refund on barley in connection with the invitation to tender issued in Regulation (EC) No 1078/98 17
- Commission Regulation (EC) No 18/1999 of 7 January 1999 fixing the maximum export refund on rye in connection with the invitation to tender issued in Regulation (EC) No 1746/98..... 18
- Commission Regulation (EC) No 19/1999 of 7 January 1999 fixing the maximum export refund on common wheat in connection with the invitation to tender issued in Regulation (EC) No 1079/98..... 19
- Commission Regulation (EC) No 20/1999 of 7 January 1999 fixing the maximum export refund on common wheat in connection with the invitation to tender issued in Regulation (EC) No 2004/98..... 20

Contents (continued)

Commission Regulation (EC) No 21/1999 of 7 January 1999 fixing the maximum export refund on oats in connection with the invitation to tender issued in Regulation (EC) No 2007/98	21
Commission Regulation (EC) No 22/1999 of 7 January 1999 concerning tenders notified in response to the invitation to tender for the export of barley issued in Regulation (EC) No 1564/98	22
Commission Regulation (EC) No 23/1999 of 7 January 1999 fixing the maximum reduction in the duty on maize imported in connection with the invitation to tender issued in Regulation (EC) No 2849/98	23
Commission Regulation (EC) No 24/1999 of 7 January 1999 fixing the maximum reduction in the duty on sorghum imported in connection with the invitation to tender issued in Regulation (EC) No 2852/98	24
Commission Regulation (EC) No 25/1999 of 7 January 1999 establishing the standard import values for determining the entry price of certain fruit and vegetables	25

II *Acts whose publication is not obligatory*

Commission

1999/6/EC:

- ★ **Commission Decision of 14 December 1998 relating to a proceeding under Article 85 of the EC Treaty (IV/35.280 — Sicasov) (notified under document number C(1998) 3452)**..... 27

1999/7/EC:

- ★ **Commission Decision of 16 December 1998 amending Decision 98/439/EC on the eligibility of expenditure to be incurred by certain Member States in 1998 for the purpose of introducing monitoring and control systems applicable to the common fisheries policy (notified under document number C(1998) 4173)** 41

Notice to readers (see page 3 of the cover)

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 12/1999

of 7 January 1999

amending Regulation (EC) No 1921/95 laying down detailed rules for the application of the system of import licences for products processed from fruit and vegetables and repealing Regulation (EEC) No 3566/90

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organisation of the market in products processed from fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 2199/97 ⁽²⁾, and in particular Article 11(2) thereof,

Whereas the Annex to Commission Regulation (EC) No 1921/95 ⁽³⁾, as amended by Regulation (EC) No 2427/95 ⁽⁴⁾, lists the products for which import licences are required and the relevant securities; whereas experience gained with those import control measures and the development of trade and statistical methods allow some products to be deleted from that Annex; whereas, following such deletion, Article 6 of Regulation (EC) No 1921/95 serves no further purpose and should be deleted;

Whereas, under the tariff ceiling for processed sour cherries originating in the former Yugoslav Republic of Macedonia fixed in Council Regulation (EC) No 77/98 ⁽⁵⁾ and administered pursuant to Commission Regulation (EC) No 123/98 ⁽⁶⁾, the products covered by CN code ex 0813 40 95 should be added to the list of products for which import licences are required and the relevant securities should be fixed;

Whereas Commission Regulation (EEC) No 3566/90 ⁽⁷⁾, as amended by Regulation (EC) No 1032/95 ⁽⁸⁾, establishes the list of products to which Article 2(2) of Regulation (EC) No 1921/95 is applicable; whereas, on the one hand, Commission Regulation (EC) No 2125/95 ⁽⁹⁾, as last amended by Regulation (EC) No 2493/98 ⁽¹⁰⁾, makes

provision for that measure as regards preserved mushrooms and Commission Regulations (EC) No 122/98 ⁽¹¹⁾, as amended by Regulation (EC) No 1057/98 ⁽¹²⁾ and (EC) No 123/98 make provision therefore as regards processed sour cherries originating in the Republics of Bosnia-Herzegovina and Croatia and in the former Yugoslav Republic of Macedonia and, on the other hand, maintaining that list seems unnecessary for the other products and origins; whereas, for the sake of clarity and efficiency of administration, Regulation (EEC) No 3566/90 should be repealed;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1921/95 is amended as follows:

1. Article 6 is deleted.
2. The Annex is replaced by the Annex hereto.

Article 2

Regulation (EEC) No 3566/90 is repealed.

Article 3

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

⁽¹⁾ OJ L 297, 21. 11. 1996, p. 29.

⁽²⁾ OJ L 303, 6. 11. 1997, p. 1.

⁽³⁾ OJ L 185, 4. 8. 1995, p. 10.

⁽⁴⁾ OJ L 249, 17. 10. 1995, p. 12.

⁽⁵⁾ OJ L 8, 14. 1. 1998, p. 1.

⁽⁶⁾ OJ L 11, 17. 1. 1998, p. 17.

⁽⁷⁾ OJ L 347, 12. 12. 1990, p. 17.

⁽⁸⁾ OJ L 105, 9. 5. 1995, p. 3.

⁽⁹⁾ OJ L 212, 7. 9. 1995, p. 16.

⁽¹⁰⁾ OJ L 309, 19. 11. 1998, p. 38.

⁽¹¹⁾ OJ L 11, 17. 1. 1998, p. 15.

⁽¹²⁾ OJ L 151, 21. 5. 1998, p. 25.

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

Done at Brussels, 7 January 1999.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

ANNEX

List of products referred to in Articles 3(1) and 5(1)

CN code	Description	Amount EUR/100 kg net	TARIC code
0711	Vegetables, provisionally preserved (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for immediate consumption:		
0711 90	– Other vegetables; mixtures of vegetables:		
	– – Vegetables:		
	– – – Mushrooms:		
0711 90 40	– – – – Of the genus <i>Agaricus</i>	2,40	
0711 90 60	– – – – Other	2,40	
0806	Grapes, fresh or dried:		
0806 20	– Dried:		
	– – In immediate containers of a net capacity not exceeding 2 kg:		
0806 20 12	– – – Sultanas	2,40	
0806 20 18	– – – Other	2,40	
	– – Other:		
0806 20 92	– – – Sultanas	2,40	
0806 20 98	– – – Other	2,40	
0811	Fruit and nuts, uncooked or cooked by steaming or boiling in water, frozen, whether or not containing added sugar or other sweetening matter:		
0811 90	– Other:		
	– – Containing added sugar or other sweetening matter:		
	– – – With a sugar content exceeding 13 % by weight:		
ex 0811 90 19	– – – – Other:		
	– – – – – Sour cherries (<i>Prunus cerasus</i>)	2,40	*21, *29
	– – – – – Other cherries	2,40	*31, *39
	– – – Other		
ex 0811 90 39	– – – – Other:		
	– – – – – Sour cherries (<i>Prunus cerasus</i>)	2,40	*21, *29
	– – – – – Other cherries	2,40	*31, *39
	– – Other:		
0811 90 75	– – – – Sour cherries (<i>Prunus cerasus</i>)	2,40	

CN code	Description	Amount EUR/100 kg net	TARIC code
0811 90 80	— — — — Other cherries	2,40	
0812	Fruit and nuts, provisionally preserved (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for immediate consumption:		
0812 10 00	— Cherries:		
	— — Sour cherries (<i>Prunus cerasus</i>)	2,40	*10
	— — Other	2,40	*90
0813	Fruit, dried, other than that of heading Nos 0801 to 0806; mixtures of nuts or dried fruits of this chapter:		
	— — Other		
ex 0813 40 95	— — — Sour cherries (<i>Prunus cerasus</i>)	2,40	*20
2001	Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid:		
	— Other:		
2001 90 50	— — Mushrooms:		
	— — — Of the genus <i>Agaricus</i>	2,40	
	— — — Other	2,40	
2002	Tomatoes prepared or preserved otherwise than by vinegar or acetic acid:		
2002 90	— Other:		
	— — With a dry matter content of less than 12 % by weight:		
2002 90 11	— — — In immediate packings of a net content exceeding 1 kg	0,70	
2002 90 19	— — — In immediate packings of a net content not exceeding 1 kg	0,70	
	— — With a dry matter content of not less than 12 % but not more than 30 % by weight:		
2002 90 31	— — — In immediate packings of a net content exceeding 1 kg	2,20	
2002 90 39	— — — In immediate packings of a net content not exceeding 1 kg	2,20	
	— — With a dry matter content of more than 30 % by weight:		
2002 90 91	— — — In immediate packings of a net content exceeding 1 kg	2,20	
2002 90 99	— — — In immediate packings of a net content not exceeding 1 kg	2,20	
2003	Mushrooms and truffles, prepared or preserved otherwise than by vinegar or acetic acid:		
2003 10	— Mushrooms:		
	— — Of the genus <i>Agaricus</i> :		
2003 10 20	— — — Provisionally preserved, completely cooked	2,90	
2003 10 30	— — — Other	2,90	
2003 10 80	— — Other	2,90	
2005	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading No 2006:		

CN code	Description	Amount EUR/100 kg net	TARIC code
2005 60 00	— Asparagus	2,40	
2008	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included:		
2008 60	— Cherries:		
	— — Not containing added spirit:		
	— — — Containing added sugar, in immediate packings of a net content exceeding 1 kg:		
2008 60 51	— — — — Sour cherries (<i>Prunus cerasus</i>)	2,40	
2008 60 59	— — — — Other	2,40	
	— — — Containing added sugar, in immediate packings of a net content not exceeding 1 kg:		
2008 60 61	— — — — Sour cherries (<i>Prunus cerasus</i>)	2,40	
2008 60 69	— — — — Other	2,40	
	— — — Not containing added sugar, in immediate packings of a net content:		
	— — — — Of 4,5 kg or more:		
2008 60 71	— — — — — Sour cherries (<i>Prunus cerasus</i>)	2,40	
2008 60 79	— — — — — Other	2,40	
	— — — — Of less than 4,5 kg:		
2008 60 91	— — — — — Sour cherries (<i>Prunus cerasus</i>)	2,40	
2008 60 99	— — — — — Other	2,40	
2008 70	— Peaches:		
	— — Not containing added spirit:		
	— — — Containing added sugar, in immediate packings of a net content exceeding 1 kg:		
2008 70 61	— — — — With a sugar content exceeding 13 % by weight	0,70	
2008 70 69	— — — — Other	0,70	
	— — — Containing added sugar, in immediate packings of a net content not exceeding 1 kg:		
2008 70 71	— — — — With a sugar content exceeding 15 % by weight	0,70	
2008 70 79	— — — — Other	0,70	
2009	Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter:		
	— Orange juice:		
	— — Frozen:		
	— — — Of a density not exceeding 1,33 g/cm ³ at 20 °C:		
2009 11 99	— — — — Other:	1,40 [*]	

COMMISSION REGULATION (EC) No 13/1999**of 7 January 1999****setting the intervention threshold for tomatoes for the 1999 marketing year**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables⁽¹⁾, as amended by Commission Regulation (EC) No 2520/97⁽²⁾, and in particular Article 27(1) and (2) thereof,

Whereas Article 27(1) of Regulation (EC) No 2200/96 provides for the possibility of setting an intervention threshold if the market in a product listed in Annex II thereto is suffering or at risk of suffering from widespread structural imbalances giving, or liable to give rise to too large a volume of withdrawals; whereas such a development would be likely to cause budget problems for the Community;

Whereas an intervention threshold was fixed for tomatoes for the 1998 marketing year in Regulation (EC) No 281/98⁽³⁾; whereas, since the conditions laid down in the abovementioned Article 27 continue to be met for that product, a new threshold should be set for the 1999 marketing year equal to that set for the 1998 marketing year, and the period to be taken into account for the assessment of the overrun of the threshold should also be determined;

Whereas, pursuant to the abovementioned Article 27, an overrun of the intervention threshold results in a reduction in the Community withdrawal compensation in the marketing year following the year in which the threshold is exceeded; whereas the consequences of such an overrun should be determined and a reduction in proportion to

the size of the overrun fixed, but restricted to a certain percentage;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. The intervention threshold for tomatoes for the 1999 marketing year shall be 360 000 tonnes.
2. The overrun of the intervention threshold laid down in paragraph 1 shall be assessed on the basis of withdrawals effected between 1 November 1998 and 31 October 1999.

Article 2

If the quantity subject to withdrawals during the period set in Article 1(2) exceeds the threshold set in Article 1(1), the Community withdrawal compensation set in Annex V to Regulation (EC) No 2200/96 for the following marketing year shall be reduced in proportion to the size of the overrun based on the production used to calculate the relevant threshold.

However, the reduction in the Community compensation shall not exceed 30 %.

Article 3

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, 7 January 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 297, 21. 11. 1996, p. 1.

⁽²⁾ OJ L 346, 17. 12. 1997, p. 41.

⁽³⁾ OJ L 28, 4. 2. 1998, p. 4.

COMMISSION REGULATION (EC) No 14/1999
of 5 January 1999
establishing unit values for the determination of the customs value of certain
perishable goods

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 Regulation (EC) No 82/97 ⁽²⁾,

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽³⁾, as last amended by Regulation (EC) No 1677/98 ⁽⁴⁾, and in particular Article 173 (1) thereof,

Whereas Articles 173 to 177 of Regulation (EEC) No 2454/93 provide that the Commission shall periodically establish unit values for the products referred to in the classification in Annex 26 to that Regulation;

Whereas the result of applying the rules and criteria laid down in the abovementioned Articles to the elements communicated to the Commission in accordance with Article 173 (2) of Regulation (EEC) No 2454/93 is that unit values set out in the Annex to this Regulation should be established in regard to the products in question,

HAS ADOPTED THIS REGULATION:

Article 1

The unit values provided for in Article 173 (1) of Regulation (EEC) No 2454/93 are hereby established as set out in the table in the Annex hereto.

Article 2

This Regulation shall enter into force on 8 January 1999.

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

Done at Brussels, 5 January 1999.

For the Commission

Martin BANGEMANN

Member of the Commission

⁽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 212, 30. 7. 1998, p. 18.

ANNEX

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	EUR FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
1.10	New potatoes 0701 90 51 0701 90 59	a) b) c)	50,84 302,28 482,37	699,57 333,49 2 050,88	99,43 40,04 35,87	378,70 98 439,97	16 761,39 112,04	8 459,06 10 192,50
1.30	Onions (other than seed) 0703 10 19	a) b) c)	15,20 90,38 144,22	209,16 99,71 613,17	29,73 11,97 10,72	113,22 29 431,30	5 011,27 33,50	2 529,07 3 047,33
1.40	Garlic 0703 20 00	a) b) c)	105,52 627,39 1 001,18	1 451,99 692,17 4 256,67	206,38 83,10 74,44	786,00 204 315,21	34 788,78 232,54	17 557,05 21 154,86
1.50	Leeks ex 0703 90 00	a) b) c)	55,25 328,50 524,21	760,26 362,42 2 228,78	108,06 43,51 38,98	411,55 106 978,92	18 215,32 121,75	9 192,83 11 076,63
1.60	Cauliflowers 0704 10 10 0704 10 05 0704 10 80	a) b) c)	75,84 450,92 719,57	1 043,58 497,48 3 059,38	148,33 59,73 53,50	564,92 146 846,72	25 003,61 167,13	12 618,71 15 204,55
1.70	Brussels sprouts 0704 20 00	a) b) c)	59,69 354,90 566,34	821,35 391,54 2 407,89	116,74 47,01 42,11	444,62 115 575,96	19 679,14 131,54	9 931,58 11 966,77
1.80	White cabbages and red cabbages 0704 90 10	a) b) c)	42,70 253,88 405,14	587,56 280,09 1 722,51	83,51 33,63 30,12	318,06 82 678,73	14 077,72 94,10	7 104,68 8 560,58
1.90	Sprouting broccoli or calabrese (<i>Brassica oleracea</i> L. <i>convar. botrytis</i> (L.) Alef var. <i>italica</i> Plenck) ex 0704 90 90	a) b) c)	105,95 629,95 1 005,26	1 457,90 694,99 4 274,01	207,22 83,44 74,74	789,20 205 147,81	34 930,55 233,48	17 628,60 21 241,07
1.100	Chinese cabbage ex 0704 90 90	a) b) c)	57,59 342,41 546,42	792,46 377,77 2 323,17	112,64 45,36 40,63	428,98 111 509,79	18 986,79 126,91	9 582,17 11 545,76
1.110	Cabbage lettuce (head lettuce) 0705 11 10 0705 11 05 0705 11 80	a) b) c)	152,67 907,73 1 448,54	2 100,79 1 001,45 6 158,69	298,60 120,24 107,70	1 137,21 295 610,34	50 333,62 336,44	25 402,15 30 607,59
1.120	Endives ex 0705 29 00	a) b) c)	21,82 129,74 207,03	300,25 143,13 880,22	42,68 17,18 15,39	162,53 42 249,41	7 193,81 48,08	3 630,54 4 374,52
1.130	Carrots ex 0706 10 00	a) b) c)	42,68 253,76 404,95	587,29 279,96 1 721,71	83,47 33,61 30,11	317,91 82 640,00	14 071,13 94,05	7 101,35 8 556,57
1.140	Radishes ex 0706 90 90	a) b) c)	173,89 1 033,90 1 649,87	2 392,78 1 140,64 7 014,71	340,10 136,95 122,67	1 295,27 336 697,99	57 329,62 383,20	28 932,86 34 861,81
1.160	Peas (<i>Pisum sativum</i>) 0708 10 90 0708 10 20 0708 10 95	a) b) c)	419,20 2 492,45 3 977,38	5 768,32 2 749,77 16 910,49	819,88 330,15 295,73	3 122,53 811 684,38	138 205,63 923,80	69 749,01 84 042,05

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	EUR FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
1.170	Beans:							
1.170.1	Beans (<i>Vigna</i> spp., <i>Phaseolus</i> spp.) ex 0708 20 90 ex 0708 20 20 ex 0708 20 95	a) b) c)	105,85 629,36 1004,31	1 456,53 694,33 4 269,98	207,02 83,36 74,67	788,45 204 954,18	34 897,58 233,26	17 611,96 21 221,02
1.170.2	Beans (<i>Phaseolus</i> spp., <i>vulgaris</i> var. <i>Compressus</i> Savi) ex 0708 20 90 ex 0708 20 20 ex 0708 20 95	a) b) c)	125,44 745,83 1 190,18	1 726,09 822,83 5 060,24	245,34 98,79 88,49	934,37 242 885,71	41 356,19 276,43	20 871,46 25 148,46
1.180	Broad beans ex 0708 90 00	a) b) c)	157,74 937,88 1 496,64	2 170,55 1 034,71 6 363,22	308,51 124,23 111,28	1 174,97 305 427,23	52 005,14 347,61	26 245,73 31 624,03
1.190	Globe artichokes 0709 10 00	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
1.200	Asparagus:							
1.200.1	— green ex 0709 20 00	a) b) c)	523,34 3 111,64 4 965,47	7 201,32 3 432,89 21 111,48	1 023,56 412,16 369,19	3 898,24 1 013 327,54	172 539,44 1 153,29	87 076,45 104 920,25
1.200.2	— other ex 0709 20 00	a) b) c)	324,15 1 927,31 3 075,54	4 460,40 2 126,28 13 076,18	633,98 255,29 228,67	2 414,52 627 641,92	106 868,69 714,33	53 934,02 64 986,24
1.210	Aubergines (eggplants) 0709 30 00	a) b) c)	121,15 720,33 1 149,47	1 667,06 794,69 4 887,18	236,95 95,41 85,47	902,42 234 579,11	39 941,82 266,98	20 157,66 24 288,39
1.220	Ribbed celery (<i>Apium graveolens</i> L., var. <i>dulce</i> (Mill.) Pers.) ex 0709 40 00	a) b) c)	75,73 450,27 718,53	1 042,07 496,76 3 054,94	148,12 59,64 53,42	564,10 146 633,73	24 967,35 166,89	12 600,41 15 182,50
1.230	Chantarelles 0709 51 30	a) b) c)	1 193,55 7 096,53 11 324,44	16 423,61 7 829,17 48 147,69	2 334,38 940,00 842,00	8 890,49 2 311 035,06	393 500,31 2 630,24	198 590,01 239 285,29
1.240	Sweet peppers 0709 60 10	a) b) c)	116,13 690,48 1 101,84	1 597,98 761,76 4 684,67	227,13 91,46 81,92	865,03 224 859,04	38 286,78 255,92	19 322,41 23 281,97
1.250	Fennel 0709 90 50	a) b) c)	73,55 437,31 697,84	1 012,07 482,46 2 967,00	143,85 57,93 51,89	547,86 142 412,66	24 248,63 162,08	12 237,69 14 745,45
1.270	Sweet potatoes, whole, fresh (intended for human consumption) 0714 20 10	a) b) c)	47,50 282,42 450,68	653,61 311,58 1 916,15	92,90 37,41 33,51	353,82 91 972,82	15 660,23 104,68	7 903,34 9 522,90
2.10	Chestnuts (<i>Castanea</i> spp.), fresh ex 0802 40 00	a) b) c)	176,48 1 049,30 1 674,45	2 428,42 1 157,63 7 119,19	345,16 138,99 124,50	1 314,56 341 712,93	58 183,51 388,91	29 363,80 35 381,06
2.30	Pineapples, fresh ex 0804 30 00	a) b) c)	50,54 300,50 479,53	695,45 331,52 2 038,78	98,85 39,80 35,65	376,46 97 859,09	16 662,48 111,38	8 409,15 10 132,36

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	EUR FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
2.40	Avocados, fresh ex 0804 40 90 ex 0804 40 20 ex 0804 40 95	a) b) c)	122,81 730,20 1 165,22	1 689,90 805,58 4 954,14	240,20 96,72 86,64	914,78 237 793,32	40 489,11 270,64	20 433,86 24 621,19
2.50	Guavas and mangoes, fresh ex 0804 50 00	a) b) c)	104,79 623,05 994,25	1 441,94 687,38 4 227,22	204,95 82,53 73,92	780,56 202 901,73	34 548,11 230,93	17 435,59 21 008,51
2.60	Sweet oranges, fresh:							
2.60.1	— Sanguines and semi-sanguines 0805 10 10	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.60.2	— Navels, navelines, navelates, salustianas, vernas, Valencia lates, Maltese, shamou- tis, ovalis, trovita and hamlins 0805 10 30	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.60.3	— Others 0805 10 50	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.70	Mandarins (including tangerines and satsu- mas), fresh; clementines, wilkings and simi- lar citrus hybrids, fresh:							
2.70.1	— Clementines 0805 20 10	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.70.2	— Monreales and satsumas 0805 20 30	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.70.3	— Mandarines and wilkings 0805 20 50	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.70.4	— Tangerines and others ex 0805 20 70 ex 0805 20 90	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.85	Limes (<i>Citrus aurantifolia</i>), fresh ex 0805 30 90	a) b) c)	132,08 785,31 1 253,18	1 817,46 866,39 5 328,09	258,33 104,02 93,18	983,83 255 742,54	43 545,32 291,07	21 976,26 26 479,66
2.90	Grapefruit, fresh:							
2.90.1	— white ex 0805 40 90 ex 0805 40 20 ex 0805 40 95	a) b) c)	43,76 260,19 415,20	602,15 287,05 1 765,27	85,59 34,46 30,87	325,96 84 731,18	14 427,19 96,43	7 281,05 8 773,09
2.90.2	— pink ex 0805 40 90 ex 0805 40 20 ex 0805 40 95	a) b) c)	39,80 236,64 377,62	547,66 261,07 1 605,53	77,84 31,35 28,08	296,46 77 063,55	13 121,62 87,71	6 622,16 7 979,18
2.100	Table grapes ex 0806 10 10	a) b) c)	237,38 1 411,40 2 252,27	3 266,42 1 557,11 9 575,89	464,27 186,95 167,46	1 768,19 459 631,77	78 261,57 523,12	39 496,71 47 590,42

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	EUR FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
2.110	Water melons 0807 11 00	a) b) c)	69,43 412,81 658,75	955,38 455,43 2 800,80	135,79 54,68 48,98	517,17 134 435,23	22 890,31 153,00	11 552,18 13 919,47
2.120	Melons (other than water melons):							
2.120.1	— Amarillo, cuper, honey dew (including cantalene), onteniente, piel de sapo (including verde liso), rochet, tendral, futuro ex 0807 19 00	a) b) c)	45,21 268,81 428,95	622,10 296,56 1 823,77	88,42 35,61 31,89	336,76 87 538,77	14 905,24 99,63	7 522,31 9 063,79
2.120.2	— other ex 0807 19 00	a) b) c)	135,33 804,64 1 284,02	1 862,18 887,71 5 459,20	264,68 106,58 95,47	1 008,04 262 035,42	44 616,81 298,23	22 517,02 27 131,23
2.140	Pears							
2.140.1	Pears — nashi (<i>Pyrus pyrifolia</i>) ex 0808 20 50	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.140.2	Other ex 0808 20 50	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.150	Apricots 0809 10 00	a) b) c)	229,47 1 364,37 2 177,22	3 157,58 1 505,22 9 256,80	448,80 180,72 161,88	1 709,27 444 315,88	75 653,73 505,69	38 180,60 46 004,60
2.160	Cherries 0809 20 05 0809 20 95	a) b) c)	428,13 2 545,55 4 062,11	5 891,20 2 808,35 17 270,72	837,35 337,18 302,03	3 189,05 828 975,28	141 149,75 943,47	71 234,84 85 832,36
2.170	Peaches 0809 30 90	a) b) c)	110,63 657,78 1 049,66	1 522,30 725,69 4 462,80	216,37 87,13 78,04	824,06 214 209,55	36 473,49 243,80	18 407,28 22 179,32
2.180	Nectarines ex 0809 30 10	a) b) c)	170,55 1 014,04 1 618,18	2 346,82 1 118,73 6 879,97	333,57 134,32 120,32	1 270,39 330 230,85	56 228,46 375,84	28 377,13 34 192,21
2.190	Plums 0809 40 05	a) b) c)	213,52 1 269,53 2 025,88	2 938,10 1 400,60 8 613,38	417,61 168,16 150,63	1 590,46 413 432,37	70 395,20 470,54	35 526,74 42 806,92
2.200	Strawberries 0810 10 10 0810 10 05 0810 10 80	a) b) c)	716,94 4 262,73 6 802,35	9 865,31 4 702,82 28 921,29	1 402,21 564,64 505,77	5 340,33 1 388 189,41	236 367,23 1 579,93	119 288,78 143 733,57
2.205	Raspberries 0810 20 10	a) b) c)	1 523,46 9 058,08 14 454,63	20 963,27 9 993,24 61 456,22	2 979,63 1 199,82 1 074,73	11 347,92 2 949 829,89	502 268,00 3 357,26	253 482,42 305 426,31
2.210	Fruit of the species <i>Vaccinium myrtillus</i> 0810 40 30	a) b) c)	1 603,31 9 532,85 15 212,25	22 062,03 10 517,02 64 677,37	3 135,80 1 262,71 1 131,06	11 942,70 3 104 441,05	528 593,67 3 533,23	266 768,34 321 434,80
2.220	Kiwi fruit (<i>Actinidia chinensis</i> Planch.) 0810 50 10 0810 50 20 0810 50 30	a) b) c)	159,02 945,49 1 508,79	2 188,16 1 043,10 6 414,85	311,02 125,24 112,18	1 184,50 307 905,66	52 427,14 350,43	26 458,70 31 880,65

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	EUR FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
2.230	Pomegranates ex 0810 90 85	a)	125,96	1 733,25	246,36	938,25	41 527,63	20 957,98
		b)	748,92	826,24	99,20	243 892,57	277,58	25 252,71
		c)	1 195,11	5 081,21	88,86			
2.240	Khakis (including sharon fruit) ex 0810 90 85	a)	183,39	2 523,50	358,68	1 366,03	60 461,67	30 513,53
		b)	1 090,39	1 202,96	144,43	355 092,56	404,14	36 766,39
		c)	1 740,01	7 397,93	129,37			
2.250	Lychees ex 0810 90 30	a)	223,65	3 077,49	437,42	1 665,92	73 734,94	37 212,23
		b)	1 329,76	1 467,05	176,14	433 046,79	492,86	44 837,80
		c)	2 122,00	9 022,02	157,78			

COMMISSION REGULATION (EC) No 15/1999**of 7 January 1999****fixing the export refunds on cereals and on wheat or rye flour, groats and meal**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

Whereas the refunds must be fixed taking into account the factors referred to in Article 1 of Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals⁽³⁾, as last amended by Regulation (EC) No 2513/98⁽⁴⁾;

Whereas, as far as wheat and rye flour, groats and meal are concerned, when the refund on these products is being calculated, account must be taken of the quantities of cereals required for their manufacture; whereas these quantities were fixed in Regulation (EC) No 1501/95;

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

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 8 January 1999.

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

Done at Brussels, 7 January 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 147, 30. 6. 1995, p. 7.

⁽⁴⁾ OJ L 313, 21. 11. 1998, p. 16.

ANNEX

to the Commission Regulation of 7 January 1999 fixing the export refunds on cereals and on wheat or rye flour, groats and meal

(EUR/tonne)			(EUR/tonne)		
Product code	Destination ⁽¹⁾	Amount of refund	Product code	Destination ⁽¹⁾	Amount of refund
1001 10 00 9200	—	—	1101 00 11 9000	—	—
1001 10 00 9400	01	0	1101 00 15 9100	01	38,25
1001 90 91 9000	—	—	1101 00 15 9130	01	35,75
1001 90 99 9000	03	18,00	1101 00 15 9150	01	33,00
	02	0	1101 00 15 9170	01	30,50
1002 00 00 9000	03	64,00	1101 00 15 9180	01	28,50
	02	0	1101 00 15 9190	—	—
1003 00 10 9000	—	—	1101 00 90 9000	—	—
1003 00 90 9000	03	47,50	1102 10 00 9500	01	82,00
	02	0	1102 10 00 9700	—	—
1004 00 00 9200	—	—	1102 10 00 9900	—	—
1004 00 00 9400	—	—	1103 11 10 9200	01	21,00 ⁽²⁾
1005 10 90 9000	—	—	1103 11 10 9400	01	18,00 ⁽²⁾
1005 90 00 9000	03	38,00	1103 11 10 9900	—	—
	02	0	1103 11 90 9200	01	21,00 ⁽²⁾
1007 00 90 9000	—	—	1103 11 90 9800	—	—
1008 20 00 9000	—	—			

⁽¹⁾ The destinations are identified as follows:

- 01 All third countries,
- 02 Other third countries,
- 03 Switzerland, Liechtenstein.

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

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

COMMISSION REGULATION (EC) No 16/1999**of 7 January 1999****fixing 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 Article 13 (8) of Regulation (EEC) No 1766/92 provides that the export refund applicable to cereals on the day on which application for an export licence is made must be applied on request to exports to be effected during the period of validity of the export licence; whereas, in this case, a corrective amount may be applied to the refund;

Whereas Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the cereals and the measures to be taken in the event of disturbance on the market for cereals⁽³⁾, as last amended by Regulation (EC) No 2513/98⁽⁴⁾, allows for the fixing of a corrective amount for the products listed in Article 1 (1)(c) of Regulation (EEC) No 1766/92; whereas that corrective amount must be calculated taking account of the factors referred to in Article 1 of Regulation (EC) No 1501/95;

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

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

Whereas it follows from applying the provisions set out above that the corrective amount must be as set out in the Annex hereto;

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 8 January 1999.

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

Done at Brussels, 7 January 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 147, 30. 6. 1995, p. 7.

⁽⁴⁾ OJ L 313, 21. 11. 1998, p. 16.

ANNEX

to the Commission Regulation of 7 January 1999 fixing the corrective amount applicable to the refund on cereals

(EUR / tonne)

Product code	Destination ⁽¹⁾	Current 1	1st period 2	2nd period 3	3rd period 4	4th period 5	5th period 6	6th period 7
1001 10 00 9200	—	—	—	—	—	—	—	—
1001 10 00 9400	01	0	-1,00	-2,00	-3,00	-4,00	—	—
1001 90 91 9000	—	—	—	—	—	—	—	—
1001 90 99 9000	01	0	0	0	0	0	—	—
1002 00 00 9000	01	0	0	0	0	0	—	—
1003 00 10 9000	—	—	—	—	—	—	—	—
1003 00 90 9000	03	0	-25,00	-25,00	-25,00	-25,00	—	—
	02	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	04	0	0	0	0	0	—	—
	02	0	-1,00	-2,00	-3,00	-4,00	—	—
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	01	0	0	0	0	0	—	—
1103 11 10 9400	01	0	0	0	0	0	—	—
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

02 other third countries

03 United States of America, Canada and Mexico

04 Switzerland, Liechtenstein.

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

COMMISSION REGULATION (EC) No 17/1999
of 7 January 1999

**fixing the maximum export refund on barley in connection with the invitation to
tender issued in Regulation (EC) No 1078/98**

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

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

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 2513/98 ⁽⁴⁾, and in particular Article 4 thereof,

Whereas an invitation to tender for the refund and/or the tax for the export of barley to all third countries was opened pursuant to Commission Regulation (EC) No 1078/98 ⁽⁵⁾;

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

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 1 to 7 January 1999, pursuant to the invitation to tender issued in Regulation (EC) No 1078/98, the maximum refund on exportation of barley shall be EUR 57,45 per tonne.

Article 2

This Regulation shall enter into force on 8 January 1999.

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

Done at Brussels, 7 January 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 147, 30. 6. 1995, p. 7.

⁽⁴⁾ OJ L 313, 21. 11. 1998, p. 16.

⁽⁵⁾ OJ L 154, 28. 5. 1998, p. 20.

COMMISSION REGULATION (EC) No 18/1999
of 7 January 1999

**fixing the maximum export refund on rye in connection with the invitation to
tender issued in Regulation (EC) No 1746/98**

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

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

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 2513/98 ⁽⁴⁾, and in particular Article 7 thereof,

Whereas an invitation to tender for the refund and/or the tax for the export of rye to all third countries was opened pursuant to Commission Regulation (EC) No 1746/98 ⁽⁵⁾;

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

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 1 to 7 January 1999, pursuant to the invitation to tender issued in Regulation (EC) No 1746/98, the maximum refund on exportation of rye shall be EUR 74,50 per tonne.

Article 2

This Regulation shall enter into force on 8 January 1999.

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

Done at Brussels, 7 January 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 147, 30. 6. 1995, p. 7.

⁽⁴⁾ OJ L 313, 21. 11. 1998, p. 16.

⁽⁵⁾ OJ L 219, 7. 8. 1998, p. 3.

COMMISSION REGULATION (EC) No 19/1999**of 7 January 1999****fixing the maximum export refund on common wheat in connection with the invitation to tender issued in Regulation (EC) No 1079/98**

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

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

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 2513/98 ⁽⁴⁾, and in particular Article 4 thereof,

Whereas an invitation to tender for the refund and/or the tax for the export of common wheat to all third countries with the exception of certain ACP States was opened pursuant to Commission Regulation (EC) No 1079/98 ⁽⁵⁾, as amended by Regulation (EC) No 2005/98 ⁽⁶⁾;

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

the criteria referred to in Article 1 of Regulation (EC) No 1501/95; whereas in that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund, as well as to any tenderer whose bid relates to an export tax;

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

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 1 to 7 January 1999, pursuant to the invitation to tender issued in Regulation (EC) No 1079/98, the maximum refund on exportation of common wheat shall be EUR 27,87 per tonne.

Article 2

This Regulation shall enter into force on 8 January 1999.

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

Done at Brussels, 7 January 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 147, 30. 6. 1995, p. 7.

⁽⁴⁾ OJ L 313, 21. 11. 1998, p. 16.

⁽⁵⁾ OJ L 154, 28. 5. 1998, p. 24.

⁽⁶⁾ OJ L 258, 22. 9. 1998, p. 8.

COMMISSION REGULATION (EC) No 20/1999
of 7 January 1999

**fixing the maximum export refund on common wheat in connection with the
invitation to tender issued in Regulation (EC) No 2004/98**

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

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

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 2513/98 ⁽⁴⁾, and in particular Article 7 thereof,

Whereas an invitation to tender for the refund and/or the tax for the export of common wheat to certain ACP States was opened pursuant to Commission Regulation (EC) No 2004/98 ⁽⁵⁾;

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

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 1 to 7 January 1999, pursuant to the invitation to tender issued in Regulation (EC) No 2004/98, the maximum refund on exportation of common wheat shall be EUR 35,50 per tonne.

Article 2

This Regulation shall enter into force on 8 January 1999.

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

Done at Brussels, 7 January 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 147, 30. 6. 1995, p. 7.

⁽⁴⁾ OJ L 313, 21. 11. 1998, p. 16.

⁽⁵⁾ OJ L 258, 22. 9. 1998, p. 4.

COMMISSION REGULATION (EC) No 21/1999**of 7 January 1999****fixing the maximum export refund on oats in connection with the invitation to
tender issued in Regulation (EC) No 2007/98**

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

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

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 2513/98 ⁽⁴⁾,

Having regard to Commission Regulation (EC) No 2007/98 of 21 September 1998 on a special intervention measure for cereals in Finland and Sweden ⁽⁵⁾, as last amended by Regulation (EC) No 2599/98 ⁽⁶⁾, and in particular Article 8 thereof,

Whereas an invitation to tender for the refund for the export of oats produced in Finland and Sweden for export from Finland or Sweden to all third countries was opened pursuant to Regulation (EC) No 2007/98;

Whereas Article 8 of Regulation (EC) No 2007/98 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 1 to 7 January 1999, pursuant to the invitation to tender issued in Regulation (EC) No 2007/98, the maximum refund on exportation of oats shall be EUR 56,90 per tonne.

Article 2

This Regulation shall enter into force on 8 January 1999.

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

Done at Brussels, 7 January 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 147, 30. 6. 1995, p. 7.

⁽⁴⁾ OJ L 313, 21. 11. 1998, p. 16.

⁽⁵⁾ OJ L 258, 22. 9. 1998, p. 13.

⁽⁶⁾ OJ L 325, 3. 12. 1998, p. 10.

COMMISSION REGULATION (EC) No 22/1999
of 7 January 1999
concerning tenders notified in response to the invitation to tender for the export
of barley issued in Regulation (EC) No 1564/98

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

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

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 2513/98 ⁽⁴⁾, and in particular Article 7 thereof,

Whereas an invitation to tender for the refund for the export of barley exported by Spain to all third countries was opened pursuant to Commission Regulation (EC) No 1564/98 ⁽⁵⁾, as amended by Regulation (EC) No 2309/98 ⁽⁶⁾;

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

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders notified from 1 to 7 January 1999 in response to the invitation to tender for the refund for the export of barley issued in Regulation (EC) No 1564/98.

Article 2

This Regulation shall enter into force on 8 January 1999.

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

Done at Brussels, 7 January 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 147, 30. 6. 1995, p. 7.

⁽⁴⁾ OJ L 313, 21. 11. 1998, p. 16.

⁽⁵⁾ OJ L 203, 21. 7. 1998, p. 6.

⁽⁶⁾ OJ L 288, 27. 10. 1998, p. 11.

COMMISSION REGULATION (EC) No 23/1999**of 7 January 1999****fixing the maximum reduction in the duty on maize imported in connection
with the invitation to tender issued in Regulation (EC) No 2849/98**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas an invitation to tender for the maximum reduction in the duty on maize imported into Spain was opened pursuant to Commission Regulation (EC) No 2849/98 ⁽³⁾;

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

awarded to any tenderer whose tender is equal to or less than the maximum reduction in the duty;

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

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 1 to 7 January 1999 pursuant to the invitation to tender issued in Regulation (EC) No 2849/98, the maximum reduction in the duty on maize imported shall be EUR 73,34 per tonne and be valid for a total maximum quantity of 204 500 tonnes.

Article 2

This Regulation shall enter into force on 8 January 1999.

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

Done at Brussels, 7 January 1999.

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 358, 31. 12. 1998, p. 43.

⁽⁴⁾ OJ L 177, 28. 7. 1995, p. 4.

⁽⁵⁾ OJ L 189, 10. 8. 1995, p. 22.

COMMISSION REGULATION (EC) No 24/1999**of 7 January 1999****fixing the maximum reduction in the duty on sorghum imported in connection
with the invitation to tender issued in Regulation (EC) No 2852/98**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas an invitation to tender for the maximum reduction in the duty on sorghum imported into Spain was opened pursuant to Commission Regulation (EC) No 2852/98 ⁽³⁾;

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

awarded to any tenderer whose tender is equal to or less than the maximum reduction in the duty;

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

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 1 to 7 January 1999, pursuant to the invitation to tender issued in Regulation (EC) No 2852/98, the maximum reduction in the duty on sorghum imported shall be EUR 79,19 per tonne and be valid for a total maximum quantity of 100 000 tonnes.

Article 2

This Regulation shall enter into force on 8 January 1999.

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

Done at Brussels, 7 January 1999.

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 358, 31. 12. 1998, p. 55.

⁽⁴⁾ OJ L 177, 28. 7. 1995, p. 4.

⁽⁵⁾ OJ L 189, 10. 8. 1995, p. 22.

COMMISSION REGULATION (EC) No 25/1999
of 7 January 1999
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 8 January 1999.

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

Done at Brussels, 7 January 1999.

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 7 January 1999 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	80,5
	204	76,5
	999	78,5
0709 90 70	052	90,7
	204	99,3
	999	95,0
0805 10 10, 0805 10 30, 0805 10 50	052	34,5
	204	30,4
	220	38,6
	999	34,5
0805 20 10	052	38,6
	204	51,2
	999	44,9
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	60,6
	464	76,5
	999	68,5
0805 30 10	052	56,9
	600	92,9
	999	74,9
0808 10 20, 0808 10 50, 0808 10 90	052	59,6
	060	26,7
	400	78,6
	404	104,3
	728	101,0
0808 20 50	999	74,0
	052	130,1
	064	50,2
	400	82,3
	720	41,9
	728	149,0
	999	90,7

⁽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'.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 14 December 1998

relating to a proceeding under Article 85 of the EC Treaty

(IV/35.280 — Sicasov)

(notified under document number C(1998) 3452)

(Only the French text is authentic)

(1999/6/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Whereas:

Having regard to the Treaty establishing the European Community,

I. THE FACTS

Having regard to Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty ⁽¹⁾, as last amended by the Act of Accession of Austria, Finland and Sweden, and in particular Articles 2, 4 and 8 thereof,

Having regard to the request for negative clearance and the notification submitted on 26 October 1994 by Sicasov (Société coopérative d'intérêt collectif agricole anonyme à capital variable) Paris, France in respect of standard licensing agreements for the production and sale of seeds,

Having regard to the summary of that notification, published ⁽²⁾ pursuant to Article 19(3) of Regulation No 17,

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

A. THE UNDERTAKINGS

(a) Sicasov

- (1) Sicasov groups together the breeders of plant varieties protected in France. No member of Sicasov may hold more than 10 % of the share capital or 10 % of the voting rights. Sicasov's objects are as follows:
- to take over, under an exclusive or non-exclusive licence, the plant varieties entrusted to it by its members, and all incorporeal rights relating to agriculture and the agri-foodstuffs industry,
 - to make new or improved plant material available, under the best technical and economic conditions, to farmers and the agri-foodstuffs industry,
 - to grant licences or sub-licences allowing breeders' plant varieties to be produced, multiplied and marketed under its supervision,

⁽¹⁾ OJ 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ C 95, 19. 4. 1995, p. 8.

- to ensure that varieties are maintained (that is, to attend to the protection of technical material of generations preceding the generation intended for sale to the end user) and take the necessary steps to avoid a shortage,
- to arrange for joint research to be carried out into the new genetic material,
- to encourage plant breeding and to promote and attend to the dissemination of plant material.

(2) In particular, Sicasov's role is to manage plant varieties entrusted to it by breeders (or their assignees). Accordingly, breeders (or their assignees) may either:

- (a) give Sicasov the right to grant non-exclusive multiplication and sales licences; or
- (b) give Sicasov an exclusive production and sales concession allowing Sicasov to grant non-exclusive multiplication and sales sub-licences.

The agreements between breeders and Sicasov are outside the scope of this Decision.

Managing breeders' plant varieties entails in particular concluding seed-production and sales contracts with multipliers under which Sicasov receives fees which it then transfers to the breeders after deducting its administration costs. It is these contracts, which have been notified, which are the subject of this Decision (see points 37 to 42).

(3) Until 1993 the management of plant varieties in France was entrusted to Sicasov and to the Caisse de gestion des licences végétales, hereinafter referred to as 'CGLV'.

On 1 January 1994 Sicasov took over CGLV in a full merger and is now the only company in France which manages breeders' rights; former Sicasov and CGLV members are now all members of Sicasov.

(4) Sicasov manages, on behalf of numerous French and foreign plant breeders, about 2 600 varieties belonging to about 50 genera. Practically every plant variety that can be produced under contract is produced via Sicasov. The management group concludes a total of about 9 500 licensing contracts each year with about 6 000 French and 2 500 foreign firms.

(b) Plant breeders

(5) Plant breeders are entities, whether private or public, that conduct research aimed at creating new plant varieties able to meet the criteria giving entitlement to plant variety rights.

Plant breeders consist, in the first instance, of family firms, which have a long-standing tradition of plant-breeding and vary considerably in size, and of a number of agricultural cooperatives. Secondly, there are large firms which, in recent years, have become involved in plant-breeding activities (particularly, undertakings which were already present in the chemicals sector). Finally, mention should also be made of public bodies carrying out agricultural research (such as the Institut national des recherches agronomiques, hereinafter 'INRA', schools of agronomy and universities), both in France and elsewhere.

Each plant breeder has a 'portfolio' of several varieties, one or more of which can be very competitive indeed.

(6) New varieties can be multiplied by the breeders themselves but, since the latter are very often unable to keep pace with demand, they entrust multiplication to a multiplying firm (see point 7) in order to obtain sufficient quantities of seeds which will be sold to farmers for their annual sowings. Being a plant breeder entails certain rights and obligations, which will be examined at points 11 to 36.

(c) Multipliers

(7) Seed production is carried out by multipliers, known also as seed producers (hereinafter referred to as 'multipliers'). They must hold a permit to carry on the business, and before they can produce certified seed they must undergo inspection by administrative bodies established for that purpose (see point 32). For multiplication of a new variety they must apply to Sicasov for a licence in respect of that variety.

There are currently about 6 000 multipliers in France.

(8) Multipliers frequently have access to a network of farmers who are given seeds for multiplication. The seed produced is then purchased by the multiplier, who undertakes certification and sale. The relationship between multiplier and multiplying farmer is governed by a standard contract drawn up by the Service officiel de contrôle (hereinafter 'SOC') and approved by the Ministry of Agriculture.

- (9) These multiplying farmers must not be confused with farmers who use seed for the purpose of sowing rather than for obtaining additional seed, and who are thus comparable with end-users.

B. THE PRODUCTS

- (10) The products relevant to this Decision are seeds and seedlings belonging to the following species or groups of species: cereals, fodder plants, high-protein products, maize, sorghum, vegetables, oil and fibre plants, and potatoes. For the purposes of this case, seed and seedlings will be jointly referred to as 'seed'.

C. THE PROTECTION AFFORDED BY PLANT-BREEDING LAW

(a) Community provisions

- (11) Most Member States have schemes which give legal protection to plant varieties. These schemes have not, however, been harmonised at Community level and continue to be governed by national laws.

On 27 July 1994, in the light of that situation, the Council adopted Regulation (EC) No 2100/94 on Community plant-variety rights⁽³⁾, as amended by Regulation (EC) No 2506/95⁽⁴⁾. The system is without prejudice to the right of Member States to grant national property rights for plant varieties (subject to a ban on cumulative protection). Since 1 April 1995 it has been possible to file applications for Community plant-variety rights.

- (12) In order to be eligible for Community plant-variety rights, varieties must be distinct, uniform, stable and new. Holders have exclusive rights in respect of the following: (a) production or reproduction (multiplication); (b) conditioning for the purpose of propagation; (c) offering for sale; (d) selling or other marketing; (e) exporting from the Community; (f) importing into the Community; (g) stocking for any of the purposes referred to in (a) to (f).
- (13) Community plant-variety rights last 25 years (30 years in the case of vines and trees).

⁽³⁾ OJ L 227, 1. 9. 1994, p. 1.

⁽⁴⁾ OJ L 258, 28. 10. 1995, p. 3.

(b) French provisions

- (14) In France the guiding principles for legal protection of new plant varieties are those of the International Convention for the Protection of New Varieties of Plants ('the UPOV Convention'), signed in Paris on 2 December 1961.

Law No 70-489 of 11 June 1970 provides that any new, uniform and stable plant variety may be the subject of a 'new variety certificate' (*certificat d'obtention végétale*), which confers on its holder the exclusive right to produce, to bring into France, to sell or offer for sale any material for the reproduction or vegetative propagation of the variety in question.

- (15) The Law states that the exclusive right is to last 20 years from the date of issue of the certificate, or 25 years if the species takes a long time to form its reproductive material. Decree No 71-75 of 9 September 1971 lists the species for which the right lasts, variously, for 20 or 25 years.

- (16) On the subject of ownership and transfer of new plant rights, the Law refers to the rules generally applicable to patents. New plant rights (both property and usufruct) can therefore be transferred as freely as those of patent holders.

D. THE REGULATION OF SEED PRODUCTION AND MARKETING

- (17) In France, seed production, inspection and certification are covered by detailed rules which correspond to the requirements laid down by the Community.

(a) Community provisions

- (18) Several Community directives provide for the detailed supervision of the production and marketing of seed within the Community in order to ensure their free movement. The directives are aimed at making the cultivation of the various plant species more productive by requiring that, when choosing varieties that may be marketed, Member States apply rules that are uniform and as strict as possible. Accordingly, the directives establish a unified certification scheme for the

Community, its purpose being to guarantee, by means of official monitoring, the identity and purity of varieties. It covers both sales on domestic markets and trade between the Member States. Seed cannot be marketed unless it has been officially examined and certified by a public agency belonging to one of the Member States.

- (19) Directives have thus far been adopted for the marketing of seed of the majority of plant species: cereals, beet, fodder plants, potatoes, oil and fibre plants, etc.

In addition, Council Directive 70/457/EEC⁽⁵⁾, as last amended by the Act of Accession of Austria, Finland and Sweden, introduced a common catalogue of varieties of agricultural plant species.

- (20) The directives lay down, for each plant species, the conditions which seeds must satisfy in order to be marketed. In particular, they specify the minimum conditions of varietal purity and uniformity and the conditions under which they are to be grown. Moreover, Community rules have been introduced regarding packing, sampling, sealing and marking.

(i) *Basic and certified seed*

- (21) On the basis of existing international terminology, the Community directives on seed marketing draw a distinction between 'basic seed' and 'certified seed'.

- (22) 'Basic seed' is seed which:

- has been produced under the responsibility of the breeder according to well-defined practices for the maintenance of the variety,
- is intended for the production of certified seed,
- satisfies the conditions laid down by the directive as regards cultivation, uniformity and varietal purity,
- has been found by official examination to satisfy the abovementioned conditions.

Thus basic seed is not seed intended for sale (whether direct or via cooperatives or the trade) to farmers, but seed intended solely for producing additional seed of a later generation. It can, as it were, be compared to intermediate industrial

machinery. In this connection, however, it should be emphasised that from a legal point of view there is nothing to prevent a breeder from using basic seed for sowing or from selling it to farmers so that they can use it for sowing (or from allowing licence holders to do so). Such an occurrence will be extremely rare, however, given that basic seed is fairly valuable and that its use for sowing would therefore prove uneconomic.

- (23) 'Certified seed' is seed which:

- is of direct descent from basic seed,
- is intended for purposes other than the production of seed (that is to say, intended for direct or indirect sale to farmers for sowing),
- satisfies the conditions laid down by the Directive as regards cultivation, uniformity and varietal purity,
- has been found by official examination to satisfy the abovementioned conditions.

Certified seed cannot lawfully be used to produce seed of a later generation. Seed produced from certified seed cannot itself be certified and cannot, therefore, be marketed. Consequently, certified seed must be used only for sowing or for sale (direct or via cooperatives or the trade) to farmers, who in turn will use it for sowing. Certified seed is thus often referred to as 'commercial seed' or 'seed in free circulation' and is to some extent comparable to a finished industrial product covered by a patent.

- (24) The situation is, however, more complex in the case of certain species (such as oats, barley, rice, wheat and spelt) where, under Community directives, both first-generation and second-generation certified seed are allowed. Community directives give the following definitions:

- (a) 'first-generation certified seed' is seed which:

- has been produced direct from basic seed,
- is intended either for the production of second-generation certified seed or for purposes other than seed production (that is, for direct or indirect sale to farmers for sowing),

⁽⁵⁾ OJ L 225, 12. 10. 1970, p. 1.

- satisfies the conditions laid down by the directive as regards cultivation, uniformity and varietal purity,
- has been found by official examination to satisfy the abovementioned conditions;

(b) 'second generation certified seed' is seed which:

- has been produced direct from first generation certified seed,
- is intended for purposes other than seed production (that is, for direct or indirect sale to farmers for sowing),
- satisfies the conditions laid down by the Directive,
- has been found by official examination to satisfy the abovementioned conditions.

Certain directives allow even third-generation certified seed.

(25) Thus, first-generation certified seed can be used for two purposes, either: (a) production of other certified seed; or (b) sowing. The first purpose is identical to that served by the basic seed referred to at point 22 (thereby making first-generation certified seed comparable to intermediate machinery). The second purpose, however, is to provide commercial seed for crop production (by virtue of which the seed can be compared to a finished industrial product). It is above all for the breeder (or his licence holder) to decide for what purpose first-generation certified seed is to be used. However, a third party who has lawfully obtained such seed (and who is authorised by national bodies to operate as a multiplier) could also produce second-generation seed and have it certified by public bodies.

(26) Regarding the distinctions made in points 21 to 25 it should be pointed out that while the Community directives ensure free movement within the Community of basic and certified seed which satisfies their conditions, they do not oblige Member States to make provision in their legislation for two separate generations (first and second) of certified seed. Thus, even in cases where a number of generations are allowed, some Member States make provision for only one generation. As a result, there

are individual species for which some Member States authorise only the first generation whereas others authorise both first and second (and possibly later) generations.

(27) Certified seed originating in a Member State providing for only one generation could thus be exported to Member States that allow two (or more) generations and be multiplied in one of those Member States. Such seed is often referred to in the trade as 'technical seed'. However, this name does not appear in Community instruments but is used in practice to designate a specific group of seeds which could be referred to as follows: certified seed of a commercial nature only (that is, not for producing other seed in the Member State of origin) which can be used as 'basic seed' (to produce new certified seed) in the country of destination.

(ii) *Common catalogue of varieties*

(28) Directive 70/457/EEC called for the drawing-up of a common catalogue of varieties of agricultural plant species on the basis of the Member States' national catalogues. Each Member State draws up one or more catalogues of the varieties officially approved for certification and marketing on its territory.

(29) Seed of a variety which is accepted in the national catalogue may no longer be subject to any marketing restriction in other Member States:

- with effect from 31 December of the second year following that in which the said varieties are entered in the national catalogue,

or

- when all the Member States have manifested to the Standing Committee on Seeds and Propagating Material their intention not to restrict the marketing of seeds of the variety entered in the said national catalogue.

The Commission publishes in the *Official Journal of the European Communities* (under the title 'Common catalogue of varieties of agricultural plant species') a list of all varieties the seed of which are not subject to any marketing restriction.

- (30) By virtue of those provisions, seed of varieties entered in the common catalogue may move freely between all Member States of the Community, even where the variety concerned is not recognised in the Member State of destination.

On the other hand, in order to produce certified seed outside the Member State of first certification, the variety in question must be entered in the national catalogue of the Member State where production is to begin. In other words, the Community directive allows seed to be marketed, but not produced, throughout the Community.

(b) French provisions

- (31) The general technical rules on seed production and marketing in France are to a large extent drawn from Community directives. In order to safeguard product quality these rules require very rigorous enforcement, thus imposing a substantial administrative burden on the public authorities. The central role falls to SOC, which is an arm of the French Ministry of Agriculture and which is managed by the Groupement national interprofessionnel des semences (GNIS).

- (32) Certification is the outcome of a control procedure enabling the Service officiel de contrôle to be sure that seed submitted to it meets minimum genetic or varietal purity requirements.

Seeds can be certified only on the premises of multipliers, who must have been approved for the purpose beforehand. Certification is evidenced by attaching certificates, official labels or in some cases seals issued by the SOC to the packaging of certified seed.

Approval for testing is granted by decision of the Minister for Agriculture, following a proposal from the SOC, for one or more species and, for each species, for one or several categories.

- (33) France's general technical rules provide for the following categories of seeds:

(a) Stock material

The initial material (strains, clones or multiplication stock) thanks to which the variety's maintenance can be resumed or continued each year.

(b) Pre-basic seed (generations predating basic seed)

Seed of a generation occurring between the stock material and basic seed.

(c) Basic seed

Seed produced according to accepted practices for the maintenance of the variety and normally intended for production of certified seed.

(d) Certified seed

Seed of direct descent from the multiplication of basic seed or, in some cases, at the breeder's request and with the approval of the SOC, from pre-basic seed. Certified seed may be subdivided into first-generation certified seed (R1) and second-generation certified seed (R2).

For the purposes of this Decision, the seed described at (a), (b) and (c) above will be collectively referred to as 'basic seed' and that described at (d) will be referred to as 'certified seed'.

- (34) The stock material, pre-basic seed and basic seed are produced under the responsibility of the breeder, who is in charge of the production of his varieties.

Special technical rules specify the conditions under which stock material, pre-basic seed, basic seed and certified seed are to be produced.

In France most of the specific technical rules provide for only one generation of certified seed.

- (35) The situation is different in other Member States, where two or more generations of certified seed may be allowed (see point 26). French certified seed can, in such cases, be exported there and undergo multiplication ('technical seed') — a procedure which would not be allowed in France.

- (36) Accordingly, certified seed can, under French rules, be 'reclassified'. This consists in repacking first-generation seeds by changing the certificate or label, with the result that it will no longer be possible to use the seeds to produce other seeds in the Member State of destination.

The notified agreements concern groups of species, which are thus subdivided:

- cereals,
- fodder plants and high-protein products,
- maize/sorghum, vegetables, oil and fibre plants,
- potatoes.

- (39) The notified agreements provide that the production and marketing of seed are subject to the following requirements:

- (a) the production and reproduction licence for the variety is granted solely for the production and sale of seed within French territory or within another specified territory (Article 2(A))⁽⁶⁾;
- (b) the licence holder may neither export nor import basic seed without express approval from Sicasov (first paragraph of Article 2(C));
- (c) a licence holder selling basic seed must obtain a commitment from the purchaser that the seed will not be exported either direct or indirectly (second paragraph of Article 2(C));
- (d) the licence holder may not export certified seed direct (or through an undertaking belonging to the same group or subject to the same export prohibition) if the variety has been entered in the common catalogue for less than four years (Article 2(D));
- (e) the licence holder may not export certified seed of the first generation to Member States that authorise two or more generations or export certified seed of the second generation to Member States that authorise three or more generations. The licence holder undertakes to impose this obligation on all his purchasers (first paragraph of Article 2(E)). However, the breeder undertakes to give his agreement on the reclassification of seed to the national certification authorities as a matter of course, provided that the exporter informs him of his intention and that the certification authorities inform him (or his assignee) of the quantities of seed reclassified and the country of destination (second paragraph of Article 2(E)). Such systematic authorisation is to be granted only for varieties entered in the common catalogue for more than four years (third paragraph of Article 2(E));

E. THE NOTIFIED AGREEMENTS

- (37) The notified agreements are standard contracts whereby Sicasov organises the production and sale of seed protected by plant variety rights which breeders have entrusted to its management.

There are two types of agreement.

- (a) Where Sicasov acts as the breeder's agent (see point 2(a)), it concludes an agreement with the multiplier known as a *contrat de licence de production et de vente de matériel de reproduction ou de multiplication végétative de variété végétale*.
 - (b) Where Sicasov acts as the breeder's concessionaire (see point 2(b)), it concludes an agreement with the multiplier known as a *contrat de sous-concession de production et de vente de matériel de reproduction ou de multiplication végétative de variété végétale*.
- (38) On the basis of the notified agreements, Sicasov grants the licence holder a non-exclusive licence to reproduce and sell a given plant variety (first paragraph of Article 1). The licence is personal and the rights arising therefrom cannot be transmitted, either in whole or in part (second paragraph of Article 1).

Except with the prior agreement of Sicasov, the licence holder may not allow seed production to be carried out by a third party (third paragraph of Article 1).

⁽⁶⁾ Where the variety is protected by a French breeding certificate, the right of production covers all French territory. By contrast, where the variety is protected by a Community breeding right, the right of production is granted in respect of the whole of the Community. The licence holder is therefore entitled to produce and sell seed freely in all the Member States. The clauses relating to the import and export restrictions provided for by Article 2 of the contract will apply only where the variety in question is protected under Community plant-breeding law (except where non-member countries are concerned).

- (f) the licence holder may not export certified seed to Member States which do not grant legal protection for new plant varieties. The licence holder undertakes to impose this obligation on all his purchasers (first paragraph of Article 2(E));
- (g) the licence holder may not export certified seed to States which are not members of the Community or members of the Union internationale pour la protection des obtentions végétales (UPOV). The licence holder undertakes to impose this obligation on all his purchasers (first paragraph of Article 2(E)).
- (40) The management group may subject the licence holder to any check it feels is necessary in order to ensure that the operations for which it is responsible are being properly carried out; it may also require the licence holder to submit to it each year a statement of sales or certifications, broken down by species.
- (41) In exchange for the rights granted to him, the licence holder undertakes to pay the management group a membership fee and an amount based on the quantities sold or certified in the autumn or spring. The amount in question is payable by licensed multipliers when they entrust to their multiplying farmers seeds under licence produced or packed by them.
- (42) If the subject of the agreement is an annual species the licence is granted only for the harvest resulting from the planting that follows its signing. In the case of a perennial species, the licence is granted for the number of harvests resulting from the planting that follows the signing of the agreement and is specified therein.
- The licence holders are also undertakings since they carry on an economic activity (the production and marketing of seeds).
- (45) From the product standpoint, the notified agreements relate to a very large number of different reference markets. Each plant species constitutes a different market and, within a given species, groups of varieties can very often be identified that are to be regarded as separate markets.
- (46) From the geographic standpoint, the abovementioned markets correspond to the territories of the Member States. It should first be borne in mind that the production and marketing of seeds is governed by national rules (as far as France is concerned, see points 31 to 36), although such national rules must comply with the applicable Community directives. Secondly, it should be stressed that seed distribution structures are organised chiefly along national lines. However, the fact that the reference markets are national markets does not detract from the existence of import and export flows, some of which are on a large scale.
- (47) The notified agreements are 'agreements between undertakings' within the meaning of Article 85 of the Treaty. It is therefore necessary to examine whether the clauses provided for by the said agreements restrict competition and affect trade between Member States.

(a) General

II. LEGAL ASSESSMENT

A. ARTICLE 85(1)

- (43) Article 85(1) of the Treaty prohibits as incompatible with the common market all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market.
- (44) Sicasov is an 'undertaking' within the meaning of Article 85 of the Treaty since it carries on an economic activity consisting in the management and supervision of plant breeders' rights in France.
- (48) However, before assessing whether the clauses of the notified agreements are compatible with Article 85(1) of the Treaty, it is advisable to examine the scope of the plant-variety rights in order to define which clauses of the notified agreements arise from the existence of those rights.
- (49) In this connection, reference should be made both to Regulation (EC) No 2100/94 and to the UPOV Convention, which has been ratified by most Member States.
- Together, they give the breeder the right to subject to his prior authorisation all acts relating to the production, reproduction, conditioning, putting up for sale, marketing, export, import and stocking of seeds of the protected variety.
- It therefore follows that any act relating to the production of basic or certified seeds falls within the breeder's exclusive rights and is accordingly covered by plant-variety rights.

- (50) Consequently, the breeder is entitled to control the destination of all seeds in respect of which an act of production is still legally possible in the light of the public provisions applicable (see points 21 to 27 and 31 to 36). This means that Article 85(1) will not apply to agreements aimed solely at protecting the breeder's right in regard to seeds which, on the basis of the public rules applicable, can lawfully be used to produce other seeds. Thus, for instance, an agreement prohibiting the licence holder from selling or exporting seeds which do not belong to the last generation that may lawfully be reproduced and which have been made available to him solely for the purpose of multiplication is not covered by Article 85(1) of the Treaty⁽⁷⁾.

The above points also apply to 'technical' seeds (see point 27). It must be accepted that, in the absence of any Community harmonisation in this field, a breeder may insert whatever contractual clauses are needed to protect his rights. In order to do so, the breeder may stipulate contractual clauses enabling him to subject to his authorisation and control any seed-production act irrespective of the generation concerned (first generation, second generation, etc.). Such clauses will, however, be approved only if they are essential to protecting the breeder's rights and are compatible with the Community rules on competition. Scrutiny of the case will reveal whether those requirements are fully satisfied.

- (51) By contrast, the breeder's right of control ceases to apply only after he produces (or authorises the production of) seeds which, by virtue of the public provisions applicable, can no longer be lawfully reproduced and after he puts them (or authorises them to be put) into circulation. The seeds may no longer be used to produce other seeds; they may only be sold (direct or via an intermediary) to farmers for the production of consumption goods. The seeds must in such cases be regarded as goods that are comparable to finished industrial products.

⁽⁷⁾ See Case 27/87 *Erauw-Jacquery v. La Hesbignonne* [1988] ECR, p. 1919, at paragraphs 9 and 10 of the judgment. According to the Court, 'the breeder must be entitled to restrict propagation to the growers which he has selected as licensees. To that extent, the provision prohibiting the licensee from selling and exporting basic seed falls outside the prohibition contained in Article 85(1)'.

Any agreement aimed at restricting the production or marketing of the seeds can be scrutinised in the light of Article 85 of the Treaty.

While it is true that the abovementioned seeds are the subject of numerous checks by the public authorities (see points 31 to 36), the legal position of a breeder does not differ from that of a holder of a patent or trade mark on a product subject to control by the public authorities (such as a pharmaceutical product). There are therefore no grounds for regarding seeds protected by plant-variety rights as having specific characteristics which require them to be treated differently from products protected by other industrial property rights. This does not affect the need to take the specific nature of seeds into consideration for the purposes of applying the competition rules⁽⁸⁾.

(b) Clauses not covered by Article 85(1)

- (52) The granting by Sicasov of a non-exclusive right to multiply seeds covered by the agreements in France or on a territory which is the subject of the plant variety rights (which means, in the case of the Community plant-breeding right, the Community as a whole) does not restrict its right to grant licences to all multipliers submitting an application, providing that those multipliers fulfil French legal requirements in terms of seed certification. In this respect, Sicasov's policy has been to grant licences without difficulties to applicants in respect of the selected varieties.

Moreover, the breeder is still free to sell the seeds covered by the contract in France or elsewhere. He may do so direct or via a distributor. Such a clause must therefore be seen as not restricting competition within the meaning of Article 85(1).

- (53) The obligation on the licence holder not (except with Sicasov's approval) to entrust basic seeds to a third party with a view to producing certified seeds is one of the options arising from the existence of plant variety rights. In this connection, it should be emphasised that producing basic seeds entails major costs and may carry with it appreciable risks.

⁽⁸⁾ See Case 258/78 *Nungesser v. Commission* [1982] ECR, p. 2015.

Moreover, basic seeds are produced under the responsibility of the breeder. The latter must therefore be allowed to protect himself against any technical mishandling of those seeds. To that end, he must be allowed to restrict the multiplication of basic seed to the growers which Sicasov has selected as licence holders⁽⁹⁾. This means that the breeder has the right to restrict the movement of basic seed. Accordingly, the obligation on the licence holder not to entrust basic seed to third parties is compatible with Article 85(1) of the Treaty.

(54) The obligation on the licence holder not to export basic seed must also be regarded as the expression of the exercise of one of the rights open to the breeder. The latter (or, as in this case, his assignee) must be recognised as having the right to restrict the destination of basic seed in order to avoid any wrongful handling of the varieties. To that end, he must have the right to prohibit the licence holders he has chosen (or, as in this case, the licence holders his assignee has chosen) from selling and exporting the basic seed⁽¹⁰⁾. Clearly, therefore, a breeder who bears the economic and legal risks involved in the production of seeds must be able to control their destination, including their sale abroad. It may accordingly be felt that the prohibition on the export of basic seed is not covered by the prohibition under Article 85(1) of the Treaty.

(55) Similar considerations may be arrived at as regards the prohibition on imports of basic seeds. Plant-protection rights allow the holder to prohibit third parties from importing protected seed. Those rights may be regarded as having expired only when the breeder has put the seeds into free circulation or has given his consent to that end. In the case of basic seed, the breeder arranges for its production and distribution on the basis of a network of multipliers who cannot freely dispose of the seed. It is therefore permissible for the breeder to underpin that system by means of a prohibition on each licence holder from importing basic seed. That clause should accordingly not be regarded as being covered by Article 85(1) of the Treaty.

(56) The obligation on the licence holder to pass on to the buyer the obligation not to export basic seed must also be regarded as an expression of the rights accruing to the breeder. In that case too, the breeder must be able to control the destination of the basic seed in order to avoid any technical mishandling of the varieties concerned. Such wrongful handling could occur not only when a licence holder exports direct but also when he sells (with Sicasov's approval) to a third party who then exports the basic seed. The breeder must therefore be in a position to control the final destination of the basic seed. It may therefore be felt that the obligation on the part of the licence holder to obtain an undertaking from his buyer that the basic seed will not be exported is not covered by the prohibition under Article 85(1).

(57) The obligation on the licence holder not to export first- or second-generation certified seed if the said seed does not belong to the lowest level of protection afforded by the country of destination ('technical seed') and has not been reclassified beforehand is aimed at ensuring that the breeder is able to control reproduction acts over which he has exclusive rights. In Member States where several generations are allowed, first-generation seed imported into France might be used as basic seed in order to obtain other seed (the same would apply to second-generation seed in the case of Member States that allow three generations or more). Reproduction acts could be carried out therefore by multipliers who have not been selected by the breeder and are outside his control⁽¹¹⁾.

It should be emphasised that reclassification lowers neither the intrinsic value nor the commercial value of the seed. The sole effect of reclassification is to make seed non-reproducible (from the legal point of view). Account must be taken of the fact that it would be almost impossible for the holder to use contractual means alone to prevent reproduction acts from taking place without his agreement in a Member State that allows several generations. In those Member States, reproduction acts towards subsequent generations are quite legal and the national authorities are under no obligation whatsoever to ask the breeder for his authorisation or to communicate to him seed certifications of generations occurring after the first.

⁽⁹⁾ See footnote 7; at paragraph 10 of the judgment.

⁽¹⁰⁾ See footnote 7; at paragraph 10 of the judgment.

⁽¹¹⁾ See footnote 7; at paragraph 10 of the judgment.

Admittedly, the authorisation to reclassify is not granted by the breeder until four years after entry in the common catalogue; meanwhile, licence holders will therefore be unable to export direct to certain Member States. In the absence of Community harmonisation, it must be concluded that such a measure is justified and does not restrict competition.

Accordingly, an obligation on the licence holder to reclassify first-generation seeds (or, where applicable, second-generation seeds) prior to exporting them to Member States that allow two or more other generations does not restrict competition within the meaning of Article 85(1) of the Treaty.

(58) The obligation on the licence holder to pass on the prohibition on exports of the abovementioned seed is aimed at preventing an adverse effect, through one or more third-party buyers, on the breeders' rights in the Member State of destination which would have the consequences described in point 57. Such an obligation must therefore be regarded as compatible with Article 85(1) of the Treaty.

(59) The obligation on the licence holder not to export certified seeds to Member States that do not afford any legal protection to new plant varieties is aimed at preventing third parties from carrying out, without the breeder's authorisation, reproduction acts in order to obtain later generations of those seeds. In those Member States, anyone may reproduce seeds until the last generation allowed under national legislation in accordance with Community directives. The only possibility the breeder has of exercising control over such acts is to restrict the marketing of seeds. Breeders' rights do not cease to apply in the case of seeds that do not belong to self-reproducing plant species.

Self-reproduction is a phenomenon producing a situation different from that obtaining in the field of patents. After being put onto the market (by the holder or with his consent), a patented industrial product can no longer be used to produce large numbers of similar products (regardless of whether or not there is any protection under patent law). On the other hand, prohibiting exports of seeds to Member States that do not recognise any legal protection for the species concerned is tantamount to prohibiting the licence holder from transmitting to third parties in a Member State that does not grant protection in respect of the patent any intermediate machinery used to manufacture a product

protected by a patent in the Member State of origin. This prohibition should not be regarded as restricting competition.

In the light of the above, an obligation on the licence holder not to export seeds to Member States that do not grant any legal protection to the variety in question is not to be regarded as restricting competition under Article 85.

(60) The obligation on the licence holder to pass on to any buyer the obligation referred to in paragraph 59 is also aimed at preventing reproduction acts from taking place outside the breeder's control. That obligation is not, therefore, covered by the prohibition set out in Article 85(1) of the Treaty.

(61) The obligation not to export certified seeds to countries that are not Member States of the Community or members of UPOV is in keeping with the same objectives as are described above (see points 57 to 60).

(c) The clause covered by Article 85(1)

(62) The obligation on licence holders not to export certified seeds from France direct (or through undertakings belonging to the same group, or through other licence holders) for a period of four years from registration of the variety in the common catalogue prevents licence holders not only from conducting an active sales policy outside France but also from meeting unsolicited demand from customers in other Member States. It follows that the licence holder may not supply customers established in Member States other than France, even if the sale of the seed takes place on French territory. It should be emphasised, moreover, that the said obligation also applies where the sale is made through a broker (who acts on behalf and for the account of the customer outside France).

The obligation in question therefore prevents any direct exporting and leaves only the possibility of effecting indirect exports (that is, via a third-party undertaking established in France).

It is clear therefore that the said obligation is designed to eliminate licence holders as direct sellers of seeds to undertakings established in Member States other than France. Thus, undertakings outside France can only buy seeds through intermediaries established on French territory. In

general, such purchases are more difficult and less advantageous than those made direct from licence holders. Consequently, the clause in question reduces the degree of competition in the other Member States, since the breeder (or the undertaking which the latter has authorised to produce and/or sell) is faced only with sales to third parties who bought the seed covered by the agreement in France (from licence holders in the management group or from the breeder himself) and subsequently exported them to the State in question.

- (63) Accordingly, the obligation mentioned in point 62 is designed to restrict competition within the meaning of Article 85(1) of the Treaty, at least in the case of exports to States which do not give the breeder (or his assignees) the right to prevent imports from other Member States. To this extent, the said obligation enables the breeder to achieve a result which he would not be able to attain by relying exclusively on possible rules relating to plant-breeding rights, adopted by the Member States into which the seeds are imported.
- (64) The obligation mentioned in point 62 is likely to eliminate a flow of trade in seeds from France to the other Member States, which might otherwise have expanded. It must therefore be regarded as affecting trade between Member States of the Community.

B. ARTICLE 2 OF REGULATION No 26

- (65) Article 2 of Council Regulation No 26 applying certain rules of competition to production of and trade in agricultural products⁽¹²⁾, as amended by Regulation No 49⁽¹³⁾, provides that Article 85(1) of the Treaty is not to apply to such of the agreements, decisions and practices which concern the production or sale of agricultural products as form an integral part of a national market organisation or are necessary for attainment of the objectives set out in Article 39 of the Treaty.
- (66) Seeds are listed in Annex II to the Treaty and are therefore agricultural products. Consideration should therefore be given to whether the two exceptions provided for by the first sentence of

Article 2 of Regulation No 26 apply to the notified agreements.

- (67) It should be pointed out first of all that the notified agreements do not form an integral part of a national market organisation for seeds. Such a national organisation exists neither in France nor in any other Member State, since the sector is governed by the provisions of Council Regulation (EEC) No 2358/71 of 26 October 1971 on the common organisation of the market in seeds⁽¹⁴⁾, as last amended by Regulation (EC) No 192/98⁽¹⁵⁾.

- (68) It should be examined subsequently whether the notified agreements are necessary for the attainment of the objectives set out in Article 39 of the Treaty.

It should be emphasised in this respect that, since it is a derogation to the general rule of Article 85(1) of the Treaty which is involved, the said exception is to be interpreted restrictively⁽¹⁶⁾.

In addition, the Community courts have consistently held that the exception in question only applies if an agreement promotes the attainment of all the objectives of Article 39 of the Treaty⁽¹⁷⁾.

Lastly, it must be concluded that agreements which are not included among the means provided by the Regulation on the common organisation for the attainment of the objectives set out in Article 39 of the Treaty are not necessary within the meaning of Article 2(1) of Regulation No 26/62. The common organisation of markets in seeds does not provide for the conclusion of licensing agreements.

- (69) Accordingly, an exception under Article 2 of Regulation No 26 must be ruled out in this case and, by the same token, Article 85(1) of the Treaty is applicable.

C. ARTICLE 85(3)

- (70) The provisions of Article 85(1) can, by virtue of Article 85(3), be declared inapplicable in the case of any agreement or category of agreements between undertakings which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

⁽¹⁴⁾ OJ L 246, 5. 11. 1971, p. 1.

⁽¹⁵⁾ OJ L 20, 27. 1. 1998, p. 16.

⁽¹⁶⁾ See Case C-399/93 Oude Luttikhuis [1995] ECR I, p. 4515, at paragraph 23 *et seq.* of the judgment and Joined Cases T-70/92 and T-71/92 Florimex [1997] ECR II, p. 693, at paragraph 152 of the judgment.

⁽¹⁷⁾ See Case 71/74 Frubo [1975] ECR 563, paragraphs 22 to 27 of the judgment, Oude Luttikhuis, see footnote 16, at paragraph 25 and Florimex, see footnote 16, at paragraph 153.

⁽¹²⁾ OJ 30, 20. 4. 1962, p. 993/62.

⁽¹³⁾ OJ 53, 1. 7. 1962, p. 1571/62.

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

(71) The Commission may apply Article 85(3) either by means of an individual decision or by means of a regulation.

(72) Commission Regulation (EC) No 240/96⁽¹⁸⁾ may be applied to certain categories of technology transfer agreements relating to plant breeders' rights (point (h) of Article 8(1)).

Regulation (EC) No 240/96 cannot, however, be applied to the notified agreements since the prohibition on exporting certified seeds does not correspond to any of the obligations mentioned in Article 1(1) of the Regulation: in particular, the notified agreements do not grant territories to licensees (see points 1, 2, 4, 5 and 6 of Article 1(1)) or reserve certain territories for the licensor (see point 3 of Article 1(1)).

(73) Although Regulation (EC) No 240/96 is not applicable as such, it can nevertheless provide criteria that may be used, in the context of this individual Decision, in assessing the prohibition on exporting certified seeds.

Consequently, with a view to assessing whether the prohibition on exporting certified seeds satisfies the tests of Article 85(3) of the Treaty, account must be taken of the following considerations.

(74) The prohibition on exporting certified seeds contributes to improving production and distribution, and to promoting technical and economic progress.

First, it facilitates the dissemination of new varieties in Member States other than France by encouraging undertakings in those Member States to accept the risks involved in producing and/or marketing new varieties selected by the French breeders. Those firms will be more inclined to undertake the dissemination of new varieties if they can be certain that they will not have to contend with direct exports from France during the launch period. It is therefore appropriate to conclude that, during this period, French breeders should have

the right to protect their licence holders and distributors (in Member States other than France) against direct competition from French licence holders by imposing on the latter contractual clauses prohibiting them from exporting certified seeds. Licence holders and distributors in Member States other than France, who will normally have a better knowledge of the respective markets than the French breeders, will be able to market seeds belonging to new varieties in optimum conditions and provide users with regular and adequate supplies.

Secondly, the export prohibition improves the organisation of the production and distribution of seeds in France by encouraging French licence holders to concentrate their efforts on French territory with a view to providing user farmers with regular and adequate supplies.

It should also be stressed that Regulation (EC) No 240/96 exempts obligations on licensees to refrain from both active sales (Article 1(1), point 5) and passive sales (Article 1(1), point 6) since it considers that such prohibitions generally contribute to improving the production of goods and to promoting technical progress.

(75) User farmers, be they in France or in other Member States, will be allowed a fair share of the benefit resulting from the improved supply of seeds referred to in point 74. The protection afforded by the prohibition on exports encourages firms in Member States other than France to conclude production or distribution agreements with French breeders and thereby introduces farmers in those Member States to new varieties that will improve their harvests.

French farmers will also benefit from regular and plentiful supplies, since French licence holders will have to concentrate their efforts above all on the French market.

In order to preserve these beneficial effects, however, parallel exports from French territory must at all times be free. This requirement is met in the case in point since there is no clause in the notified agreements prohibiting licence holders from selling to users and dealers established in French territory, who could then export to other Member States.

⁽¹⁸⁾ OJ L 31, 9. 2. 1996, p. 2.

The foregoing considerations are compatible with Regulation (EC) No 240/96, which states that export prohibitions imposed on licensees, as referred to in Article 1, as a rule allow consumers a fair share of the benefit resulting from the improvement in the supply of goods on the market.

- (76) The prohibition on direct exports of seeds is essential for ensuring the dissemination of new varieties in Member States other than France and, therefore, for achieving the objective of promoting technical and economic progress for the benefit of users situated in those Member States. In particular, it does not seem that a protection period of four years, calculated from the entry in the common catalogue, is excessive compared with the aim of promoting the knowledge and dissemination of a new variety on a market. In this respect, it should be noted that Regulation (EC) No 240/96 allows prohibitions on passive exports for a period of five years, calculated from the date on which the product in question is first placed on the market. As regards the date on which the export prohibition is to begin, it should be borne in mind that, on the whole (that is to say, in cases other than that of parallel entry in the national catalogue of the Member State of destination), a variety may not move freely in the Community until it is entered in the common catalogue. It is therefore advisable to choose the time of such entry as the starting point of the protection period.
- (77) The obligation on the licence holder not to export seeds direct does not enable breeders to eliminate competition. First of all, new varieties of seeds are mostly in competition with existing varieties which are well known to farmers and which therefore constitute an alternative source of supply. Secondly, parallel imports from France are still unrestricted, with the result that any customers established in other Member States will, albeit indirectly, have access to French varieties, even during the launch phase.

D. ARTICLES 6 AND 8 OF REGULATION No 17

- (78) The Commission is required, under Article 6 of Regulation No 17, to indicate the date on which an exemption decision begins to take effect.
- (79) By virtue of Article 8(1) of Regulation No 17 exemption is to be granted for a specific period. In view of technical developments in the field of seeds and the economic situation on the market concerned, it would be reasonable to provide for a 10-year exemption, to begin on 26 October 1994, being the date of notification of the agreements,

HAS ADOPTED THIS DECISION:

Article 1

Pursuant to Article 85(3) of the EC Treaty, Article 85(1) is hereby declared inapplicable to the standard agreements of Sicasov (Société coopérative d'intérêt collectif agricole anonyme à capital variable) covering the production and sale of seeds.

Article 2

The exemption shall apply from 26 October 1994 to 26 October 2004.

Article 3

This Decision is addressed to: Sicasov (Société coopérative d'intérêt collectif agricole anonyme à capital variable) 7, rue Coq-Héron, F-75001 Paris.

Done at Brussels, 14 December 1998.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION

of 16 December 1998

amending Decision 98/439/EC on the eligibility of expenditure to be incurred by certain Member States in 1998 for the purpose of introducing monitoring and control systems applicable to the common fisheries policy

(notified under document number C(1998) 4173)

(1999/7/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS DECISION:

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 95/527/EC of 8 December 1995 on a Community financial contribution towards certain expenditure incurred by the Member States in implementing the monitoring and control systems applicable to the common fisheries policy⁽¹⁾, and in particular Article 6 thereof,

Whereas when Commission Decision 98/439/EC of 30 June 1998 on the eligibility of expenditure to be incurred by certain Member States in 1998 for the purpose of introducing monitoring and control systems applicable to the common fisheries policy⁽²⁾, as amended by Decision 98/727/EC⁽³⁾, was adopted the available budget allocation was insufficient to grant the maximum Community financial contribution to all eligible expenditure;

Whereas the budget allocation has now been increased so that an additional financial contribution is available for certain eligible expenditure;

Whereas Sweden has provided further information on its application for a financial contribution towards expenditure covered by Article 2 of Decision 95/527/EC to be incurred in 1998;

Whereas that information affects the amount of expenditure eligible for a contribution within the meaning of Decision 95/527/EC;

Whereas Decision 98/439/EC should therefore be amended;

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

Article 1

Decision 98/439/EC is hereby amended as follows:

1. In the first sentence of Article 1, the amount of 'ECU 77 788 171' is replaced by 'ECU 77 995 042'.
2. In the third sentence of Article 1, 'ECU 23 530 725' is replaced by 'ECU 31 092 209'.
3. In the second sentence of Article 2(1), '50 %' is replaced by '100 %'.
4. In Article 2(2), the first indent is deleted.
5. In the second indent of Article 2(2), 'or (2)' is added after '(1)'.
6. In the second subparagraph of Article 2(2), 'ECU 6 225 000' is replaced by 'ECU 7 806 000'.
7. In the third sentence of Article 3, 'ECU 7 944 567' is replaced by 'ECU 8 367 432'.
8. Annex I is replaced by Annex I to this Decision.
9. Annex II is replaced by Annex II to this Decision.

Article 2

This Decision is addressed to the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Kingdom of the Netherlands, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 16 December 1998.

For the Commission

Emma BONINO

Member of the Commission

⁽¹⁾ OJ L 301, 14. 12. 1995, p. 30; corrigendum: OJ L 302, 15. 12. 1995, p. 45.

⁽²⁾ OJ L 194, 10. 7. 1998, p. 50.

⁽³⁾ OJ L 345, 19. 12. 1998, p. 55.

*ANEXO I / BILAG I / ANHANG I / ΠΑΡΑΡΤΗΜΑ I / ANNEX I / ANNEXE I / ALLEGATO I /
BIJLAGE I / ANEXO I / LIITE I / BILAGA I*

Estado miembro Medlemsstat Mitgliedstaat Κράτος μέλος Member State État membre Stato membro Lidstaat Estado-membro Jäsenvaltio Medlemsstat	Gastos subvencionables en moneda nacional Støtteberettigede udgifter i national valuta Erstattungsfähige Ausgaben in nationaler Währung Επιλέξιμες δαπάνες σε εθνικό νόμισμα Eligible expenditure in national currency Dépenses admissibles en monnaie nationale Spese ammissibili in moneta nazionale In aanmerking komende uitgaven in nationale valuta Despesas elegíveis em moeda nacional Hyväksyttävät kustannukset kansallisessa valuutassa Bidragsberättigande kostnader i nationell valuta	Gastos subvencionables Støtteberettigede udgifter Erstattungsfähige Ausgaben Επιλέξιμες δαπάνες Eligible expenditure Dépenses admissibles Spese ammissibili In aanmerking komende uitgaven Despesas elegíveis Hyväksyttävät kustannukset Bidragsberättigande kostnader (ECU)	Contribución máxima de la Comunidad Fællesskabets maksimale finansielle bidrag Maximaler Gemeinschaftsbeitrag Μέγιστη κοινοτική συμμετοχή Maximum Community contribution Participation communautaire maximale Contributo massimo della Comunità Maximale bijdrage van de Gemeenschap Contribuição máxima da Comunidade Yhteisön osuus enintään Gemenskapens maximala bidrag (ECU)
België/Belgique	BEF 1 500 000	36 709	3 059
Danmark	DKK 16 000 000	2 122 779	995 053
Deutschland	DEM 22 001 135	11 116 962	5 390 901
Ελλάδα	GRD 2 997 000 000	9 681 014	1 343 778
España	ESP 1 097 866 612	6 576 178	2 132 726
France	FRF 24 098 375	3 612 436	1 686 867
Ireland	IEP 2 647 000	3 587 573	1 194 050
Italia	ITL 11 766 666 667	6 098 141	1 839 802
Nederland	NLG 2 645 000	1 186 754	366 795
Portugal	PTE 2 331 600 000	11 659 924	5 804 959
Suomi	FIM 2 650 000	451 358	161 807
Sverige	SEK 21 606 005	2 518 115	823 988
United Kingdom	GBP 12 777 483	19 347 099	9 348 424
Total / I alt / Σύνολο / Totale / Totaal / Yhteensä / Totalt		77 995 042	31 092 209

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

Estado miembro Medlemsstat Mitgliedstaat Κράτος μέλος Member State État membre Stato membro Lidstaat Estado-membro Jäsenvaltio Medlemsstat	Gastos subvencionables en moneda nacional Støtteberettigede udgifter i national valuta Erstattungsfähige Ausgaben in nationaler Währung Επιλέξιμες δαπάνες σε εθνικό νόμισμα Eligible expenditure in national currency Dépenses admissibles en monnaie nationale Spese ammissibili in moneta nazionale In aanmerking komende uitgaven in nationale valuta Despesas elegíveis em moeda nacional Hyväksyttävät kustannukset kansallisessa valuutassa Bidragsberättigande kostnader i nationell valuta	Gastos subvencionables Støtteberettigede udgifter Erstattungsfähige Ausgaben Επιλέξιμες δαπάνες Eligible expenditure Dépenses admissibles Spese ammissibili In aanmerking komende uitgaven Despesas elegíveis Hyväksyttävät kustannukset Bidragsberättigande kostnader (ECU)	Contribución máxima de la Comunidad Fællesskabets maksimale finansielle bidrag Maximaler Gemeinschaftsbeitrag Μέγιστη κοινοτική συμμετοχή Maximum Community contribution Participation communautaire maximale Contributo massimo della Comunità Maximale bijdrage van de Gemeenschap Contribuição máxima da Comunidade Yhteisön osuus enintään Gemenskapens maximala bidrag (ECU)
België/Belgique	BEF 17 374 310	425 200	247 000
Danmark	DKK 7 929 998	1 052 102	819 011
Deutschland	DEM 610 000	308 227	270 116
Ελλάδα	GRD 348 000 070	1 124 122	720 535
España	ESP 374 178 760	2 232 316	1 743 826
France	FRF 20 909 550	3 134 418	2 085 863
Ireland	IEP 450 000	609 900	601 650
Italia	ITL 2 160 000 000	1 119 432	897 383
Nederland	NLG 567 000	254 400	253 905
Portugal	PTE 0	0	0
Suomi	FIM 1 600 000	272 518	233 291
Sverige	SEK 4 650 000	541 943	485 540
United Kingdom	GBP 820 000	1 241 609	1 139 989
Total / I alt / Σύνολο / Totale / Totaal / Yhteensä / Totalt		12 316 187	9 498 109

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