

# Official Journal

## of the European Communities

ISSN 0378-6978

L 14

Volume 42

19 January 1999

English edition

## Legislation

### Contents

#### I *Acts whose publication is obligatory*

Commission Regulation (EC) No 110/1999 of 18 January 1999 establishing the standard import values for determining the entry price of certain fruit and vegetables 1

★ **Commission Regulation (EC) No 111/1999 of 18 January 1999 laying down general rules for the application of Council Regulation (EC) No 2802/98 on a programme to supply agricultural products to the Russian Federation ....** 3

Commission Regulation (EC) No 112/1999 of 18 January 1999 on the supply of cereals as food aid ..... 17

Commission Regulation (EC) No 113/1999 of 18 January 1999 on the supply of split peas as food aid ..... 20

Commission Regulation (EC) No 114/1999 of 18 January 1999 laying down to what extent applications for issue of export licences submitted during January 1999 for beef and veal products which may benefit from special import treatment in a third country may be accepted ..... 23

#### II *Acts whose publication is not obligatory*

##### **Commission**

1999/42/EC:

★ **Commission Decision of 22 December 1998 confirming the measures notified by Austria pursuant to Article 6(6) of Directive 94/62/EC of the European Parliament and of the Council on packaging and packaging waste <sup>(1)</sup> (notified under document number C(1998) 3940).....** 24

<sup>(1)</sup> Text with EEA relevance

- ★ **Commission Decision of 22 December 1998 recognising in principle the completeness of the dossiers submitted for detailed examination in view of the possible inclusion of CGA 279 202 (trifloxystrobin), clefoxydim (BAS 625H), etoxazol and ferric phosphate in Annex I to Council Directive 91/414/EEC concerning the placing of plant-protection products on the market<sup>(1)</sup> (notified under document number C(1998) 4355) .....** 30

- ★ **Commission Decision of 6 January 1999 pursuant to Council Regulation (EC) No 3286/94 concerning the Brazilian import licensing regime for steel plates (notified under document number C(1998) 4468) .....** 32

#### Corrigenda

- ★ **Corrigendum to Commission Decision 1999/34/EC of 9 December 1998 on the procedures for implementing Council Directive 95/57/EC on the collection of statistical information in the field of tourism (OJ L 9 of 15.1.1999).....** 35

## I

*(Acts whose publication is obligatory)*

**COMMISSION REGULATION (EC) No 110/1999**  
**of 18 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 <sup>(1)</sup>, as last amended by Regulation (EC) No 1498/98 <sup>(2)</sup>, 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 <sup>(3)</sup>, as last amended by Regulation (EC) No 150/95 <sup>(4)</sup>, and in particular Article 3 (3) thereof,

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

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

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

HAS ADOPTED THIS REGULATION:

*Article 1*

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

*Article 2*

This Regulation shall enter into force on 19 January 1999.

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

Done at Brussels, 18 January 1999.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

---

<sup>(1)</sup> OJ L 337, 24. 12. 1994, p. 66.

<sup>(2)</sup> OJ L 198, 15. 7. 1998, p. 4.

<sup>(3)</sup> OJ L 387, 31. 12. 1992, p. 1.

<sup>(4)</sup> OJ L 22, 31. 1. 1995, p. 1.

## ANNEX

to the Commission Regulation of 18 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 <sup>(1)</sup> | Standard import value |
|------------------------------------------------|-----------------------------------|-----------------------|
| 0702 00 00                                     | 052                               | 88,0                  |
|                                                | 204                               | 61,6                  |
|                                                | 999                               | 74,8                  |
| 0707 00 05                                     | 052                               | 112,5                 |
|                                                | 053                               | 102,9                 |
|                                                | 999                               | 107,7                 |
| 0709 10 00                                     | 220                               | 68,8                  |
|                                                | 999                               | 68,8                  |
| 0709 90 70                                     | 052                               | 136,2                 |
|                                                | 204                               | 146,3                 |
|                                                | 628                               | 136,9                 |
|                                                | 999                               | 139,8                 |
| 0805 10 10, 0805 10 30, 0805 10 50             | 052                               | 35,6                  |
|                                                | 204                               | 41,6                  |
|                                                | 212                               | 44,4                  |
|                                                | 220                               | 37,0                  |
|                                                | 624                               | 43,6                  |
|                                                | 999                               | 40,4                  |
| 0805 20 10                                     | 052                               | 34,1                  |
|                                                | 204                               | 63,3                  |
|                                                | 999                               | 48,7                  |
| 0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90 | 052                               | 56,1                  |
|                                                | 204                               | 61,0                  |
|                                                | 464                               | 90,0                  |
|                                                | 624                               | 91,3                  |
|                                                | 999                               | 74,6                  |
|                                                | 052                               | 52,1                  |
| 0805 30 10                                     | 600                               | 78,1                  |
|                                                | 999                               | 65,1                  |
|                                                | 052                               | 59,6                  |
| 0808 10 20, 0808 10 50, 0808 10 90             | 060                               | 43,0                  |
|                                                | 400                               | 70,0                  |
|                                                | 404                               | 83,4                  |
|                                                | 720                               | 90,6                  |
|                                                | 728                               | 100,8                 |
|                                                | 999                               | 74,6                  |
|                                                | 052                               | 148,4                 |
|                                                | 064                               | 55,6                  |
| 0808 20 50                                     | 400                               | 80,6                  |
|                                                | 720                               | 40,2                  |
|                                                | 999                               | 81,2                  |
|                                                |                                   |                       |

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

**COMMISSION REGULATION (EC) No 111/1999**  
**of 18 January 1999**

**laying down general rules for the application of Council Regulation (EC) No 2802/98 on a programme to supply agricultural products to the Russian Federation**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2802/98 of 17 December 1998 on a programme to supply agricultural products to the Russian Federation <sup>(1)</sup>, and in particular Article 4(2) thereof,

Having regard to Council Regulation (EC) No 2799/98 of 15 December 1998 establishing agrimonetary arrangements for the euro <sup>(2)</sup>,

Whereas Regulation (EC) No 2802/98 provides for measures relating to the free supply of agricultural products to Russia; whereas, with a view to implementing those measures, general rules on its application, and in particular rules on participation in tenders, the award of contracts for supplies, and the obligations to be met by successful tenderers should be laid down;

Whereas the supplies cover agricultural products from intervention stocks without further processing and products not available from intervention stocks but belonging to the same group of products; whereas specific detailed rules should also be laid down for supplies of processed products; whereas the latter should be allowed to be paid for in raw materials from intervention stocks;

Whereas, to ensure satisfactory competition between the various operators in the Community, in the case of the supply of processed products and of products not available in intervention that must be mobilised on the Community market, these supplies should be organised in two stages and contracts awarded separately for the manufacture of the processed product or the mobilisation of the product on the market, as appropriate, and then for delivery to the delivery stage laid down for supply to the recipient country;

Whereas pursuant to Article 14 of Commission Regulation (EC) No 2808/98 of 22 December 1998 laying down detailed rules for the application of the agrimonetary system for the euro in agriculture <sup>(3)</sup>, amounts quoted in tenders submitted in response to invitations to tender organised under an instrument forming part of the common agricultural policy must be expressed in euros; whereas Article 5(1) of that Regulation provides that in

such cases the operative event for the agricultural exchange rate is the final day for the submission of tenders; whereas paragraphs 3 and 4 of that Article specify the operative events applicable to advances and securities;

Whereas these rules on application must also include, prior to exit from the Community territory and at sea ports and frontier points of destination of the products, a system of controls and the lodging of securities to ensure that the supply operation is properly conducted; whereas, furthermore, proof that the products concerned have been taken over by the Russian authorities is to be provided by way of a special take-over certificate;

Whereas it is appropriate to provide for the possibility of allowing a certain tolerance in the case of losses to take account of particular difficulties;

Whereas products held by intervention agencies and intended for export are subject to the provisions of Commission Regulation (EEC) No 3002/92 of 16 October 1992 laying down common detailed rules for verifying the use and/or destination of products from intervention <sup>(4)</sup>, as last amended by Regulation (EC) No 770/96 <sup>(5)</sup>;

Whereas it should be specified that Commission Regulation (EEC) No 2220/85 of 22 July 1985 laying down common detailed rules for the application of the system of securities for agricultural products <sup>(6)</sup>, as last amended by Regulation (EC) No 3403/93 <sup>(7)</sup>, is to apply to supplies governed by this Regulation;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the relevant management committees,

HAS ADOPTED THIS REGULATION:

*Article 1*

This Regulation shall apply to the free supply for agricultural products to Russia pursuant to Regulation (EC) No 2802/98, without prejudice to any additional provisions adopted in Regulations opening invitations to tender for awarding contracts for individual supplies.

<sup>(1)</sup> OJ L 349, 24. 12. 1998, p. 12.

<sup>(2)</sup> OJ L 349, 24. 12. 1998, p. 1.

<sup>(3)</sup> OJ L 349, 24. 12. 1998, p. 36.

<sup>(4)</sup> OJ L 301, 17. 10. 1992, p. 17.

<sup>(5)</sup> OJ L 104, 27. 4. 1996, p. 13.

<sup>(6)</sup> OJ L 205, 3. 8. 1985, p. 5.

<sup>(7)</sup> OJ L 310, 14. 12. 1993, p. 4.

*Article 2*

1. An invitation to tender is opened to determine the costs of supply, to the sea ports and frontier points of take over by the recipient laid down in the notice of invitation to tender, of products either withdrawn from intervention stores or mobilised on the Community market.

- (a) Such costs may relate to the supply of goods from the loading bay of the intervention agency store, or loaded onto the means of transport, to a point of take over at the delivery stage laid down.
- (b) Such costs may relate to the supply of a product, from a Community store, port or railway station, loaded onto the means of transport, to the point of take over at the delivery stage laid down.

2. The invitation to tender may cover the quantity of products to be removed physically from intervention stocks as payment for the supply of processed products from the same group of products. In that case, the costs shall in particular cover the processing, packaging and labelling of the products to be delivered to the delivery stage laid down in the notice of invitation to tender, in accordance with the individual invitation to tender.

3. The invitation to tender may cover the determination of the costs of the supply of products to be mobilised on the Community market. For such supplies, the costs shall cover in particular the price of the product and the costs of packaging and labelling the products to be delivered to the delivery stage laid down in the notice of invitation to tender, in accordance with the individual invitation to tender.

*Article 3*

Participation in tendering procedures shall be open on equal terms to any natural person who is a national of a Member State and established in the Community and to any company which is established in accordance with the laws of a Member State and whose registered office, central administration or main establishment is in a Member State.

*Article 4*

1. Tenders shall be submitted in writing to the intervention agency at the address given in the notice of invitation to tender before the date and time indicated.

Tenders shall be placed inside two sealed envelopes. The inner envelope shall bear, in addition to the address given in the notice of invitation to tender, the number of the regulation announcing the invitation to tender and the following: 'Submission from (business name of the tenderer) — To be opened only by the committee responsible for opening tenders'.

Tenders submitted by fax, telex or electronic mail shall not be admissible.

2. Tenders shall be opened in public and the body responsible shall publicise the amounts or quantities, as appropriate, tendered for each lot.

3. The intervention agencies shall satisfy themselves that tenderers and the subcontractors indicated in their tenders have the technical and financial capacity to meet the obligations under the supply operations for which they submit tenders.

*Article 5*

1. Tenders shall be admissible only where they:

- (a) clearly indicate the regulation announcing the individual invitation to tender and the number of the lot to which they relate;
- (b) give the name and address of the tenderer, who must be established in the Community, together with his VAT identification number and telex and/or fax number;
- (c) cover one single, entire lot (net weight);
- (d) in the case of the tenders referred to in Article 2(1) and (3), express the various amounts quoted in euros;
- (e) indicate, where Article 2(1)(a) or (b) applies:
  - (1) the amount per tonne gross tendered for each destination allowing for all of the possible departure points provided for in the invitation to tender;
  - (2) the names and addresses of all forwarding agents and subcontractors to be used in executing the supply on Community territory and in third countries;
  - (3) the means of transport to be used, specifying their capacity;
  - (4) the route, including border crossing points and indicating any points at which the goods are to be transferred from one means of transport to another; in such cases the tenderer undertakes to communicate, in writing, at least three days in advance, the points at and the dates on which these transshipments are to take place as well as the probable dates of the principal operations, in particular loading and arrival at destination;
  - (5) a precise breakdown of the tender in accordance with the headings given in Annex II;
  - (6) the undertaking by the tenderer to submit, in the event of his tender being successful, the original of the insurance policy taken out to cover all risks relating to transport;

(f) indicate, where Article 2(2) applies, in the case of rice supplies:

- (1) the proposed quantity of product, expressed in tonnes (net weight), to be exchanged for one tonne net of finished product to be delivered under the conditions and at the delivery stage laid down in the invitation to tender;
- (2) the exact address(es) of the store(s) at which the goods are to be kept prior to dispatch;
- (3) the name(s) and address(es) of all subcontractors and forwarding agents to be used in the operation;
- (4) the amount per tonne (net) per day required to cover all costs (waiting, insurance, security, guarantees, etc.) in the event that the transporter is unable to take over the goods within the time limits laid down;

(g) indicate, where Article 2(3) applies, in the case of pigmeat supplies:

- (1) the amount tendered per tonne (net), taking account of the cost of processing, packaging and transport to the delivery stage specified in the invitation to tender;
- (2) the exact address(es) of the store(s) at which the goods are to be kept prior to dispatch;
- (3) the name(s) and address(es) of all subcontractors and forwarding agents to be used in the operation;
- (4) the amount per tonne (net) per day required to cover all costs (waiting, insurance, security, guarantees, etc.) in the event that the transporter is unable to take over the goods within the time limits laid down;

(h) are accompanied by proof that the tenderer has lodged, in favour of the intervention agency designated for submission of tenders, a tendering security for the unitary amount laid down in the notice of invitation to tender in accordance with Article 8(1) of Title III of Regulation (EEC) No 2220/85. Proof shall be furnished by means of the original of the document issued by the financial body providing the security drawn up in accordance with Annex III;

(i) are accompanied by the original of the written undertaking by the financial body concerned to provide the supply security provided for in Article 7 drawn up in accordance with Annex III.

The securities provided for in this Regulation shall be lodged by credit institutions approved by the Member States and included on the list drawn up by the Commis-

sion<sup>(1)</sup> in accordance with Articles 3(7) and 10(2) of Council Directive 77/780/EEC<sup>(2)</sup>.

2. Tenders submitted which are not in accordance with the requirements of this Article or, where applicable, the additional requirements of a regulation opening an individual tender, or which contain conditions other than those laid down, shall be inadmissible.

3. Tenders shall be valid for 15 days after the final date for the submission of tenders.

4. Once submitted, tenders may be neither changed nor withdrawn.

#### Article 6

1. The intervention agency or agencies concerned shall send the Commission by fax or written telecommunication, within 24 hours of the end of the period for the submission of tenders, a communication, quoting the Regulation opening the invitation to tender, for each lot comprising:

- (a) the names and addresses of the tenderers who have submitted admissible tenders pursuant in particular to Articles 3, 4 and 5;
- (b) and for each admissible tender, the amount or quantity tendered, as appropriate.

2. On the basis of the tenders submitted, it may be decided, with regard to each lot:

- not to award any contract for supply,
- or
- to award the supply contract as appropriate on the basis of the price or quantity offered.

3. The Commission shall inform the successful tenderer and the intervention agency that received the tender accepted of the award of the contract as soon as possible. It shall send the intervention agencies concerned details of the tender accepted required to monitor execution of the supply.

4. The intervention agencies that received tenders shall inform tenderers as soon as possible, by fax or electronic mail if necessary, of the outcome of their participation in the tender.

5. The intervention agency referred to in paragraph 3 shall immediately communicate to the Commission the tender submitted by the successful tenderer in full.

#### Article 7

1. In the case of supplies as referred to in Article 2(1)(a) or (b), at least three working days before removal the successful tenderer shall lodge a supply security of an amount equal to the quantities to be removed for each ship or for each destination, multiplied by the unitary amount laid down in the notice of invitation to tender.

<sup>(1)</sup> OJ C 237, 28. 7. 1998, p. 1.

<sup>(2)</sup> OJ L 322, 17. 12. 1977, p. 30.

2. In the case of supplies as referred to in Article 2(2), within five working days of the notification of the award of the contract, the successful tenderer shall lodge a supply security of an amount equal to the net quantities to be taken over for each lot, multiplied by the unitary amount laid down in the notice of invitation to tender.

3. In the case of supplies as referred to in Article 2(3), within five working days of the award of the contract, the successful tenderer shall lodge a supply security of an amount equal to 10 % of the tender, multiplied by the net quantities to be supplied.

4. The supply security shall be lodged in accordance with Article 8(1) of Title III of Regulation (EEC) No 2220/85 in favour of the intervention agency responsible for payment.

Proof of the lodging of the supply security shall be provided by means of the original of the document issued by the financial body providing the security drawn up in accordance with Annex III.

#### Article 8

1. Except in cases of *force majeure*, successful tenderers shall bear all risks to which the goods may be subject, and in particular their loss or deterioration, up to the specified supply stage.

2. The successful tenderer responsible for transport shall have delivery carried out by means of transport providing adequate assurance, in particular in terms of hygiene, of proper preservation and conveyance of the goods. In the case of transport by sea, the vessels used shall be listed in the larger classes in international classification registers.

3. In the event of difficulties arising in the course of execution of supply, after the products have been taken over by the successful tenderers, and except in cases of emergency, the Commission alone shall have the power to give instructions to facilitate completion of supply.

4. The Commission may, at the request of the intervention agency concerned, allow a tolerance in so far as unidentifiable losses are concerned, to take account of particular difficulties.

#### Article 9

1. Successful tenderers shall undergo, prior to exit of the goods from the Community territory, any controls requested and conducted by or on behalf of the Commission at the time of production, packaging, storage or

loading. Such controls shall relate to the quantity, quality, health status, packaging and labelling of the supply. The results of these controls are opposable by all interested parties to the extent that the latter have had the possibility to participate in the controls.

Where samples are taken, the agency responsible for controls shall keep additional samples at the Commission's expense for the event of any subsequent disputes.

On completion of the controls, a certificate of conformity, or of non-conformity, shall be issued to the successful tenderer.

2. Where, in the case of the supplies provided for in Article 2(2) and (3), the quality of the goods provided by the intervention agency or suppliers does not meet the standards laid down in the notice of invitation to tender, the agency responsible for the controls shall immediately inform the Commission and loading shall be suspended.

3. Where the quality of the goods provided by the intervention agency does not meet the minimum standards laid down for intervention buying in or, in the case of beef and veal, the standards laid down for intervention storage, the intervention agency shall immediately provide goods meeting the requirements laid down for the supply.

The additional costs incurred by the successful tenderers (additional transport costs, demurrage, etc.) shall be borne by the intervention agency.

Where this paragraph is applied, Article 2(3)(c) of Commission Regulation (EEC) No 3597/90<sup>(1)</sup> shall apply.

4. Where, in the case of the supplies provided for in Article 2(2) and (3), the goods provided by the suppliers do not meet the quality standards laid down in the notice of invitation to tender, the additional transport costs incurred by the successful tenderer shall be borne by those suppliers, without prejudice to Article 12(2).

5. In the case of the supply of beef/veal and pigmeat, the successful tenderer shall undergo any controls requested and conducted by agents designated by the recipient country on Community territory.

6. The agency responsible for the controls shall seal the means of transport at the time of loading. In the case of transshipment, the agency designated by the Commission shall verify that the seals on the means of transport arriving at the points of transshipment are intact, and shall seal the new means of transport used after transshipment.

7. Successful tenderers shall undergo, at the sea ports and frontier points of destination of the products laid down in the notice of invitation to tender, any controls requested and conducted by or on behalf of the Commission.

<sup>(1)</sup> OJ L 350, 14. 12. 1990, p. 1.

A certificate of conformity, or of non-conformity, detailing the checks made and the results, shall be issued to the successful tenderer on completion of the controls. The agency responsible for the controls shall send a copy of this certificate to the Commission.

8. The costs of the controls shall be borne by the Community, except for costs relating to the controls referred to in paragraph 5.

#### Article 10

1. Applications for payment of the supply shall be submitted to the intervention agency referred to in Article 4 within two months of the end of the period laid down for the supply in the notice of invitation to tender. Except in cases of *force majeure*, where this provision is not complied with the amount of the payment shall be reduced by 10 %. A reduction of 5 % for each additional month of delay shall be applied.

2. Applications for payment shall be accompanied by the following supporting documents:

(a) where Article 2(1)(b) applies:

- a copy of the transport documents,
- the original of the take-over certificate issued by the representative of the recipient country given in the annex to the regulation opening the invitation to tender for the supply. That document shall be drawn up in accordance with Annex I and endorsed by the control agency at the delivery stage,
- the certificate of conformity at the delivery stage referred to in Article 9(7);

(b) where Article 2(1)(a) applies, in addition to the documents indicated under (a) applications shall be accompanied by:

- the export licence referred to in Article 14(1),
- the single administrative document and the control document referred to in Article 14(2).

3. In the case of supplies as referred to in Article 2(1)(a) or (b), payment of the tender shall be made in respect of the quantity stated in the take-over certificate issued by the representative of the recipient country. That document shall be drawn up in accordance with Annex I and endorsed by the agency responsible for controls at the delivery stage.

4. In the case of supplies as referred to Article 2(2), the quantity of intervention product awarded shall be made available to the successful tenderer on presentation of proof of lodging of the security pursuant to Article 7(1).

5. In the case of supplies as referred to Article 2(3), payment of the tender of the successful tenderer for mobilisation of the product shall be made on presentation of the removal certificate drawn up in accordance with

Annex V issued by the designated transporter after complete loading of the lot.

6. Where take over by the recipient's representative at the delivery stage is delayed owing to circumstances beyond the control of the successful tenderer, the additional costs borne by the latter shall be reimbursed by the recipient country following an examination of the supporting documents.

#### Article 11

1. For the tendering security, the primary requirements within the meaning of Article 20 of Regulation (EEC) No 2220/85 shall be the following:

- (a) a requirement not to withdraw the tender;
- (b) the lodging of the supply security in accordance with Article 7;
- (c) additionally, for a supply as referred to in Article 2(2), the physical removal from intervention stocks of the quantities awarded. On expiry of the time limit laid down for removal, the security shall be forfeited for those quantities not yet removed in accordance with Article 23(2) of Regulation (EEC) No 2220/85. In addition, the quantity to be removed shall be reduced by 10 % for each month of delay.

2. The tendering security shall be released:

- if the tender is not accepted,
- in the case of supplies as provided for in Article 2(1)(a) or (b) and Article 2(3), upon presentation of proof of the lodging of the supply security in accordance with Article 7,
- in the case of supplies as referred to in Article 2(2), upon presentation of the certificate of removal issued by the intervention agency for all of the quantities awarded.

#### Article 12

1. For the supply security, the primary requirements within the meaning of Article 20 of Regulation (EEC) No 2220/85 shall be the supply of the full quantity of the product, of a quality substantially unchanged as compared with:

- that ascertained at the time of removal from the intervention store, in the case of a supply as referred to in Article 2(1)(a),
- that ascertained at the time of take over by the transporter, in the case of a supply as referred to in Article 2(1)(b),
- that specified in the notice of invitation to tender, in the case of a supply as referred to in Article 2(2) and (3).

2. The supply security shall be released when the successful tenderer provides proof of execution of the supply in accordance with the requirements of this Regulation and the Regulation opening the individual invitation to tender.

Such proof shall be provided:

- (a) in the case of supplies as provided for in Article 2(1)(a) or (b), by presenting the documents referred to in Article 10(2)(a) or (b) as appropriate.

The security shall be forfeited for quantities in respect of which no proof is supplied;

- (b) in the case of supplies as provided for in Article 2(2) and (3), by presenting:

- the removal certificate issued by the transporter, drawn up in accordance with Annex V,
- the export licences referred to in Article 14,
- the single administrative document and the control document referred to in Article 14(2).

The security shall be forfeited:

- for quantities not meeting the conditions laid down for the supply,
- for quantities lost in particular as a result of packaging which is inappropriate for the type of transport foreseen,
- up to an amount of EUR 1 per tonne per day, multiplied by the quantities not loaded, where the loading rate stipulated by the invitation to tender has not been respected.

3. Where delays occur in take over by the transporter or in delivery by the transporter or producer, the supply security shall be forfeited in respect of those quantities not taken over within the time limits or delivered outside of the time limits, up to an amount of EUR 0,75 per tonne per day of delay. With effect from the 11th day of delay the amount forfeited shall be increased to EUR 1,00 per tonne per additional day. These provisions shall apply where the delay in take over or delivery is attributable to the successful tenderer.

4. In the case of supplies as provided for in Article 2(1)(a) or (b), the supply security shall be released in accordance with the conditions laid down above or in instalments of 20 % each time proof is presented that 20 % of the quantity of a lot has been delivered in a condition substantially unchanged as compared with the product taken over from intervention stocks or at the take over stage laid down in the invitation to tender.

### *Article 13*

Where Article 2(1)(a) or (b) applies, the successful tenderer may on request receive a payment on account equal to 90 % of the amount obtained by multiplying the net quantities taken over for a product, a destination and a delivery date by the unitary amounts indicated in his tender.

The payment on account shall be made upon presentation of a removal certificate, drawn up in accordance with Annex V or VI, issued, as appropriate, by the intervention agency of the Member State holding the product or by the successful tenderer for the manufacture of the processed product or the mobilisation of the product on the Community market, and on presentation of proof of the lodging of a payment-on-account security for an amount equal to the amount to be paid, in favour of the intervention agency responsible for payment. The security shall be lodged in accordance with Annex III.

### *Article 14*

1. Box 20 of the export licences applied for and issued for execution of the supplies shall contain the following entry:

- ‘Council Regulation (EC) No 2802/98. Not eligible for export refunds.’

2. The single administrative document and the control document issued pursuant to Article 3 of Regulation (EEC) No 3002/92 shall indicate the following:

- ‘Commission Regulation (EC) No 111/1999 laying down general rules for the application of Council Regulation (EC) No 2802/98 on a programme to supply agricultural products to the Russian Federation. Not eligible for export refunds.’

### *Article 15*

Upon request, the operator may obtain from the intervention agency referred to in Article 4 the relevant provisions, in English or Russian, of the Memorandum of Understanding between the European Community and the Russian Federation applicable to individual invitations to tender for supply contracts opened pursuant to Regulation (EC) No 2802/98.

### *Article 16*

The Court of Justice of the European Communities shall be competent to resolve any dispute resulting from the implementation or the non-implementation or from the interpretation of the rules governing supply operations carried out in accordance with this Regulation.

*Article 17*

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

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

Done at Brussels, 18 January 1999.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

---

## ANNEX I(a)

## Transport by sea

Regulation (EC) No 111/1999

## TAKE-OVER CERTIFICATE

I, the undersigned .....  
(Name/first name/position)

acting on behalf of .....

hereby certify that I have taken over the following goods:

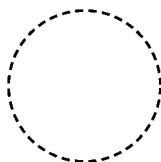
|                                                                |  |
|----------------------------------------------------------------|--|
| Product:                                                       |  |
| Packaging:                                                     |  |
| Total quantity in tonnes (net):<br>(gross):                    |  |
| Number of bags (rice/milk powder):<br>Boxes (boned beef/veal): |  |
| Place and date of take over:                                   |  |
| Name of vessel:                                                |  |
| Seal numbers on arrival:                                       |  |
| Name and address of firm responsible for transport:            |  |

Name and address of control company: .....

Name and signature of their local representative: .....

Observation or reservations:

.....  
.....



.....  
(Signature and stamp of recipient)

\_\_\_\_\_

## ANNEX I(b)

## Transport by rail or truck

Regulation (EC) No 111/1999

Train No .....

Certificate of take-over on arrival of wagons or trucks at the designated frontier points.

I, the undersigned .....  
(Name/first name/position)

acting on behalf of .....

hereby certify that I have taken over the following goods:

Type of product: .....

Place and date of take over: .....

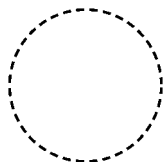
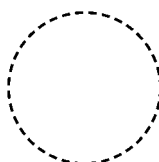
| Wagon numbers/truck registration numbers                                             | Seal numbers | Quantities (net weight) | Date of border crossing | Quantities <sup>(1)</sup><br>Signature and remarks |
|--------------------------------------------------------------------------------------|--------------|-------------------------|-------------------------|----------------------------------------------------|
| 1 .....                                                                              | .....        | .....                   | .....                   | .....                                              |
| 2 .....                                                                              | .....        | .....                   | .....                   | .....                                              |
| 3 .....                                                                              | .....        | .....                   | .....                   | .....                                              |
| 4 .....                                                                              | .....        | .....                   | .....                   | .....                                              |
| 5 .....                                                                              | .....        | .....                   | .....                   | .....                                              |
| 6 .....                                                                              | .....        | .....                   | .....                   | .....                                              |
| 7 .....                                                                              | .....        | .....                   | .....                   | .....                                              |
| 8 .....                                                                              | .....        | .....                   | .....                   | .....                                              |
| 9 .....                                                                              | .....        | .....                   | .....                   | .....                                              |
| 10 .....                                                                             | .....        | .....                   | .....                   | .....                                              |
| <sup>(1)</sup> To be completed for wagons or trucks checked — enter weight measured. |              |                         |                         |                                                    |

Name and address of transport company: .....

Name and address of control company: .....

Observations and reservations: .....

Representative of control company

.....  
(Name, signature  
and stamp).....  
(Name, signature and stamp  
of recipient)

*ANNEX II***Break-down of tender in EUR/tonne**

Pursuant to Article 5(1)(e) point 5 of Regulation (EC) No 111/1999

1. Handling and loading costs
2. Forwarding costs
3. Costs of placing fob
4. Sea freight
5. Cost of loading onto wagons
6. Rail costs prior to transshipment
7. Cost of transshipment onto wagons
8. Rail costs after transshipment up to Russian border
9. Cost of land transport by truck up to Russian border
10. Cost of land transport by truck on Russian territory  
(See technical appendix to Memorandum)
11. Cost of transport insurance
12. Cost of bank guarantees
13. Administrative costs (certificates, customs documents, etc.)
14. Miscellaneous costs

Total EUR/tonne .....

\_\_\_\_\_

## ANNEX III

## Lodging of securities

Tendering security (\*) No ..... (Article 5(1)(h) of Regulation (EC) No 111/1999)

Supply security (\*) No ..... (Article 7 of Regulation (EC) No 111/1999)

Payment security (\*) No ..... (Article 13 of Regulation (EC) No 111/1999)

Commission Regulation (EC) No ...../.... of .../.../....<sup>(1)</sup>

Tenderer:

Goods/quantity:

Destination:

Amount of security:

We, the undersigned ..... (name, address, fax and telephone numbers of bank),  
represented by Mr/Mrs/Ms ..... (position), hereby guarantee jointly and severally in favour  
of the intervention agency ..... (address) the amount of:

Currency and amount in figures  
(Currency and amount in letters)

to guarantee that the company ..... (name and address) will carry out its obligations  
resulting from the tender of ...../...../..... relating to ..... (number and title of the tender  
regulation).

This guarantee:

1. is of unlimited validity;
2. is payable to the intervention agency upon its first request, on the basis of a simple declaration that the company ..... has not respected its obligations;
3. may be released only by the intervention agency by:
  - returning the original of this guarantee,
  - the explicit release (possibly in part) by the intervention agency.

Done at ....., .....

To be attached: A list of the persons authorised to sign the guarantees with specimen signatures.

(\*) As applicable.

(1) Regulation opening the invitation to tender.

*ANNEX IV***Undertaking to lodge a supply security**

In accordance with Article 7 of Regulation (EC) No 111/1999

Tenderer: .....

Lot No: .....

Goods/quantities: .....

Amount of security: .....

We, the undersigned ..... (name, address, fax and telephone numbers of bank),  
represented by Mr/Mrs/Ms ..... (position), hereby irrevocably undertake to issue a  
supply guarantee jointly and severally for ..... (company) for an amount of  
EUR ..... in favour of the intervention agency ..... (address) in the event of that  
company being a successful tenderer.

Our guarantee will be issued in accordance with Article 5(1)(i) and Article 7 of and Annex IV to Regulation  
(EC) No 111/1999.

.....  
(Signature)

\_\_\_\_\_

## ANNEX V

## REMOVAL CERTIFICATE

(supply referred to in Article 2(2) or (3) of Regulation (EC) No 111/1999)

I, the undersigned .....  
 (name/first name/position)

acting on behalf of .....

hereby certify that I have taken over the following goods:

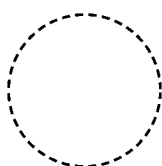
|                                                 |  |
|-------------------------------------------------|--|
| Product:                                        |  |
| Packaging:                                      |  |
| Number of bags:                                 |  |
| Total quantity in tonnes:<br>— net:<br>— gross: |  |
| Place and date of take over:                    |  |
| Name of vessel:                                 |  |

Name/address of control company: .....

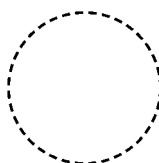
Name and signature of local representative: .....

Observations or reservations:

.....  
 .....  
 .....



.....  
 (Signature and stamp  
 of manufacturer<sup>(1)</sup>)



.....  
 (Signature and stamp  
 of transporter)

Certificate to be completed in duplicate, one copy for the manufacturer for obtaining release of the supply security, the other for the transporter for submitting the application for the payment on account referred to in Article 13 of Regulation (EC) No 111/1999.

(<sup>1</sup>) The operator responsible, as appropriate, for processing or mobilisation on the market.

## ANNEX VI

REMOVAL CERTIFICATE  
for products from intervention stocks

(supply referred to in Article 2(1)(a) or (2) of Regulation (EC) No 111/1999)

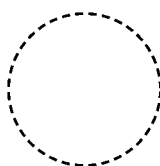
Store: .....

Tender Regulation (EC) No: .....

Product: .....

Lot No: .....

| Type of product and dates of removal | Quantities removed |
|--------------------------------------|--------------------|
| Total                                |                    |



(Date, stamp and signature of store official)

**COMMISSION REGULATION (EC) No 112/1999**  
**of 18 January 1999**  
**on the supply of cereals as food aid**

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

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

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

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

Whereas it is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EC) No 2519/97 of 16 December 1997 laying down general rules for the mobilisation of products to be supplied under Council Regulation (EC) No 1292/96 as Community food aid <sup>(2)</sup>; whereas it is necessary to specify

the time limits and conditions of supply to determine the resultant costs,

HAS ADOPTED THIS REGULATION:

*Article 1*

Cereals shall be mobilised in the Community, as Community food aid for supply to the recipient listed in the Annex, in accordance with Regulation (EC) No 2519/97 and under the conditions set out in the Annex.

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

*Article 2*

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

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

Done at Brussels, 18 January 1999.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

---

<sup>(1)</sup> OJ L 166, 5. 7. 1996, p. 1.

<sup>(2)</sup> OJ L 346, 17. 12. 1997, p. 23.

## ANNEX

## LOT A

1. **Action No:** 86/98
2. **Beneficiary** <sup>(2)</sup>: WFP (World Food Programme), via Cristoforo Colombo 426, I-00145 Roma  
tel. (39-6) 65 13 29 88; fax 65 13 28 44/3; telex 626675 WFP I
3. **Beneficiary's representative:** to be designated by the recipient
4. **Country of destination:** Kenya
5. **Product to be mobilised:** common wheat flour
6. **Total quantity (tonnes net):** 5 000
7. **Number of lots:** one
8. **Characteristics and quality of the product** <sup>(3)</sup> <sup>(5)</sup>: see OJ C 114, 29.4.1991, p. 1 (II.B(1)(a))
9. **Packaging** <sup>(7)</sup>: see OJ C 267, 13.9.1996, p. 1 (2.2, A(1)(d), (2)(d) and B(1))
10. **Labelling or marking** <sup>(6)</sup>: see OJ C 114, 29.4.1991, p. 1 (II.B(3))
  - Language to be used for the markings: English
  - Supplementary markings: —
11. **Method of mobilisation of the product:** the Community market
12. **Specified delivery stage:** free at port of shipment — fob stowed
13. **Alternative delivery stage:** —
14. (a) **Port of shipment:** —  
(b) **Loading address:** —
15. **Port of landing:** —
16. **Place of destination:** —
  - port or warehouse of transit: —
  - overland transport route: —
17. **Period or deadline of supply at the specified stage:**
  - first deadline: 22.2 — 14.3.1999
  - second deadline: 8 — 28.3.1999
18. **Period or deadline of supply at the alternative stage:**
  - first deadline: —
  - second deadline: —
19. **Deadline for the submission of tenders (12 noon, Brussels time):**
  - first deadline: 2.2.1999
  - second deadline: 16.2.1999
20. **Amount of tendering guarantee:** EUR 5 per tonne
21. **Address for submission of tenders and tendering guarantees** <sup>(1)</sup>:  
Bureau de l'aide alimentaire, Attn Mr T. Vestergaard, Bâtiment Loi 130, bureau 7/46, Rue de la Loi/  
Wetstraat 200, B-1049 Bruxelles/Brussel  
telex 25670 AGREC B; fax (32-2) 296 70 03/296 70 04 (exclusively)
22. **Export refund** <sup>(4)</sup>: refund applicable on 29.1.1999, fixed by Commission Regulation (EC) No 2753/98  
(OJ L 345, 19.12.1998, p. 23)

*Notes:*

- (<sup>1</sup>) Supplementary information: André Debongnie (tel. (32 2) 295 14 65),  
Torben Vestergaard (tel. (32 2) 299 30 50).
- (<sup>2</sup>) The supplier shall contact the beneficiary or its representative as soon as possible to establish which consignment documents are required.
- (<sup>3</sup>) The supplier shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.
- (<sup>4</sup>) Commission Regulation (EC) No 259/98 (OJ L 25, 31.1.1998, p. 39), is applicable as regards the export refund. The date referred to in Article 2 of the said Regulation is that indicated in point 22 of this Annex.  
The supplier's attention is drawn to the last subparagraph of Article 4(1) of the above Regulation. The photocopy of the export licence shall be sent as soon as the export declaration has been accepted (fax (32 2) 296 20 05).
- (<sup>5</sup>) The supplier shall supply to the beneficiary or its representative, on delivery, the following document:  
— phytosanitary certificate.
- (<sup>6</sup>) Notwithstanding OJ C 114 of 29.4.1991, point II.B(3)(c) is replaced by the following: 'the words "European Community"'.  
'
- (<sup>7</sup>) Since the goods may be rebagged, the supplier must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.
-

**COMMISSION REGULATION (EC) No 113/1999**  
**of 18 January 1999**  
**on the supply of split peas as food aid**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

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

Whereas it is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EC) No 2519/97 of 16 December 1997 laying down general rules for the mobilisation of products to be supplied under Council Regulation (EC) No 1292/96 as Community food aid<sup>(2)</sup>; whereas it is necessary to specify the time limits and conditions of supply to determine the resultant costs;

Whereas, in order to ensure that the supplies are carried out, provision should be made for tenderers to be able to mobilise either green split peas or yellow split peas,

HAS ADOPTED THIS REGULATION:

*Article 1*

Split peas shall be mobilised in the Community, as Community food aid for supply to the recipients listed in the Annex, in accordance with Regulation (EC) No 2519/97, and under the conditions set out in the Annex.

Tenders shall cover either green split peas or yellow split peas. Tenders shall be rejected unless they specify the type of peas to which they relate.

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

*Article 2*

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

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

Done at Brussels, 18 January 1999.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

---

<sup>(1)</sup> OJ L 166, 5. 7. 1996, p. 1.

<sup>(2)</sup> OJ L 346, 17. 12. 1997, p. 23.

## ANNEX

## LOTS A and B

1. **Action Nos:** 94/98 (A); 95/98 (B)
2. **Beneficiary** <sup>(2)</sup>: WFP (World Food Programme), via Cristoforo Colombo 426, I-00145 Roma  
tel. (39-6) 65 13 29 88; fax 65 13 28 44/3; telex 626675 WFP I
3. **Beneficiary's representative:** to be designated by the recipient
4. **Country of destination:** North Korea
5. **Product to be mobilised** <sup>(8)</sup>: split peas
6. **Total quantity (tonnes net):** 6 000
7. **Number of lots:** two (A: 3 000 tonnes; B: 3 000 tonnes)
8. **Characteristics and quality of the product** <sup>(3)</sup> <sup>(4)</sup> <sup>(7)</sup>: —
9. **Packaging** <sup>(5)</sup>: see OJ C 267, 13.9.1996, p. 1 (2.1, A(1)(a), (2)(a) and B(4)) or (4.0 A(1)(c), (2)(c) and B(4))
10. **Labelling or marking** <sup>(6)</sup>: see OJ C 114, 29.4.1991, p. 1 (IV.A(3))  
— Language to be used for the markings: English  
— Supplementary markings: —
11. **Method of mobilisation of the product:** the Community market  
The product must originate from the Community
12. **Specified delivery stage:** free at port of shipment
13. **Alternative delivery stage:** —
14. (a) **Port of shipment:** —  
(b) **Loading address:** —
15. **Port of landing:** —
16. **Place of destination:** —  
— port or warehouse of transit: —  
— overland transport route: —
17. **Period or deadline of supply at the specified stage:**  
— first deadline: 8 — 28.3.1999  
— second deadline: 22.3 — 11.4.1999
18. **Period or deadline of supply at the alternative stage:**  
— first deadline: —  
— second deadline: —
19. **Deadline for the submission of tenders (12 noon, Brussels time):**  
— first deadline: 2.2.1999  
— second deadline: 16.2.1999
20. **Amount of tendering guarantee:** EUR 5 per tonne
21. **Address for submission of tenders and tendering guarantees** <sup>(1)</sup>:  
Bureau de l'aide alimentaire, Attn Mr T. Vestergaard, Bâtiment Loi 130, bureau 7/46, Rue de la Loi/Wet-  
straat 200, B-1049 Bruxelles/Brussel  
telex 25670 AGREC B; fax (32-2) 296 70 03/296 70 04 (exclusively)
22. **Export refund:** —

*Notes:*

- (<sup>1</sup>) Supplementary information: André Debongnie (tel. (32 2) 295 14 65),  
Torben Vestergaard (tel. (32 2) 299 30 50).
- (<sup>2</sup>) The supplier shall contact the beneficiary or its representative as soon as possible to establish which consignment documents are required.
- (<sup>3</sup>) The supplier shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.
- (<sup>4</sup>) The supplier shall supply to the beneficiary or its representative, on delivery, the following document:  
— phytosanitary certificate.
- (<sup>5</sup>) Since the goods may be rebagged, the supplier must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.
- (<sup>6</sup>) Notwithstanding OJ C 114 of 29.4.1991, point IV.A(3)(c) is replaced by the following: 'the words "European Community"' and point IV.A(3)(b) by the following: 'Split peas'.
- (<sup>7</sup>) Tenders shall be rejected unless they specify the type of peas to which they relate.
- (<sup>8</sup>) Yellow or green peas (*Pisum sativum*) for human consumption of the most recent crop. The peas must not have been coloured artificially. The split peas must be steam-treated for at least two minutes or have been fumigated(\*) and meet the following requirements:
- moisture: maximum 15 %,
  - foreign matters: maximum 0,1 %,
  - broken split peas: maximum 10 % (pea fragments passing through a sieve of circular mesh of 5 mm diameter),
  - percentage of discoloured seeds or of different colour: maximum 1,5 % (yellow peas), maximum 15 % (green peas),
  - cooking time: maximum 45 minutes (after soaking for 12 hours).
- 

(\*) The successful tender shall supply to the beneficiary or its representative, on delivery a fumigation certificate.

## COMMISSION REGULATION (EC) No 114/1999

of 18 January 1999

laying down to what extent applications for issue of export licences submitted during January 1999 for beef and veal products which may benefit from special import treatment in a third country may be accepted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1445/95 of 26 June 1995 on rules of application for import and export licences in the beef and veal sector and repealing Regulation (EEC) No 2377/80 <sup>(1)</sup>, as last amended by Regulation (EC) No 2648/98 <sup>(2)</sup>, and in particular Article 12(8) thereof,

Whereas Regulation (EC) No 1445/95 lays down, in Article 12, detailed rules for export licence applications for the products referred to in Article 1 of Commission Regulation (EEC) No 2973/79 <sup>(3)</sup>, as last amended by Regulation (EEC) No 3434/87 <sup>(4)</sup>;

Whereas Regulation (EEC) No 2973/79 fixed the quantities of meat which might be exported on special terms for the first quarter of 1999;

Whereas the quantities for which licence applications have been lodged for the first quarter of 1999 are lower

than those available; whereas these applications can, therefore, be met in full,

HAS ADOPTED THIS REGULATION:

*Article 1*

The applications for export licences lodged in January 1999 for the beef and veal referred to in Regulation (EEC) No 2973/79 for the first quarter of 1999 shall be met in full.

*Article 2*

Applications for licences in respect of the meat referred to in Article 1 may be lodged in accordance with Article 12 of Regulation (EC) No 1445/95 during the first 10 days of the second quarter of 1999 the total quantity available being 2 500 tonnes.

*Article 3*

This Regulation shall enter into force on 19 January 1999.

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

Done at Brussels, 18 January 1999.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 143, 27. 6. 1995, p. 35.

<sup>(2)</sup> OJ L 335, 10. 12. 1998, p. 39.

<sup>(3)</sup> OJ L 336, 29. 12. 1979, p. 44.

<sup>(4)</sup> OJ L 327, 18. 11. 1987, p. 7.

## II

*(Acts whose publication is not obligatory)*

## COMMISSION

## COMMISSION DECISION

of 22 December 1998

confirming the measures notified by Austria pursuant to Article 6(6) of Directive 94/62/EC of the European Parliament and of the Council on packaging and packaging waste

*(notified under document number C(1998) 3940)*

**(Only the German text is authentic)**

**(Text with EEA relevance)**

(1999/42/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 94/62/EC of the European Parliament and of the Council of 20 December 1994 on packaging and packaging waste<sup>(1)</sup>, and in particular Article 6(6) thereof,

Having consulted the committee set up by Directive 94/62/EC,

Whereas:

internal market and to avoid obstacles to trade as well as distortions and restrictions of competition within the Community. To this end, Article 6(1) of the Directive lays down, *inter alia*, quantified targets to be achieved by Member States for recovery and recycling of packaging waste.

Article 6(1)(a) establishes that, no later than 30 June 2001, between 50 % as a minimum and 65 % as a maximum by weight of the packaging waste will be recovered. Pursuant to Article 6(1)(b), within this general target, and within the same time limit, between 25 % as a minimum and 45 % as a maximum by weight of the totality of packaging materials contained in packaging waste will be recycled with a minimum of 15 % by weight for each packaging material.

## I. PROCEDURE

## 1. Directive 94/62/EC

Directive 94/62/EC, based on Article 100a of the Treaty, aims to harmonise national measures concerning the management of packaging and packaging waste in order to prevent any impact thereof on the environment or to reduce such impact, thus providing a high level of environmental protection, and to ensure the functioning of the

Article 6(6) introduces a monitoring procedure to ensure coherence between the different strategies chosen by Member States, particularly with a view to ensure that targets set in one Member State do not hinder compliance by other Member States with the Directive or represent distortions of the internal market.

Under that provision, the Commission is to confirm such measures after appropriate verification.

<sup>(1)</sup> OJ L 365, 31. 12. 1994, p. 10.

## 2. The measures notified

On 23 December 1994 the Austrian Government notified to the Commission, under Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations<sup>(1)</sup>, a draft of national measures to be adopted in the field of packaging and packaging waste (notification 94/9059/A). The draft measures were intended to bring Austrian legislation (Ordinance 645 of 1992 on packaging waste and Ordinance 646 of 1992 setting targets for packaging waste) in line with the contents of Directive 94/62/EC, which was to be transposed into national legislation before 30 June 1996. On 29 May 1995, in the context of the correspondence with the Commission regarding this notification, the Austrian Government communicated its intention to exceed the recycling target laid down in Article 6(1)(b) of Directive 94/62/EC. In this communication, the Austrian Government announced that the maximum target for recycling was already exceeded in 1994 and statistical findings showed that this target would be exceeded in 1995 as well. Since programmes had been established to exceed such targets in the following years, the Austrian Government sought confirmation by the Commission. In particular, in light of the amendment of the Austrian packaging legislation, the Austrian Government referred to the year 1998 as well as to the year 2001 (the legislation provides for a revision or increase of the recycling target for 2001 by the year 1999).

On 17 July 1995 the draft amendment to the Austrian legislation on packaging and packaging waste was notified once more to the Commission under Article 16 of Directive 94/62/EC. That Article provides that Member States are to notify the drafts of measures that they intend to adopt within the framework of Directive 94/62/EC to the Commission, excluding measures of a fiscal nature, but including technical specifications linked to fiscal measures which encourage compliance with such technical specifications, in order to permit the latter to examine them in the light of existing provisions following in each case the procedure under Directive 83/189/EEC.

In a letter to the Austrian authorities dated 19 October 1995, sent in the context of notification 94/9059/A, the Commission took note of the intention of Austria to make use of Article 6(6) and requested additional information concerning, in particular, the expected recycling rate, the appropriate capacities provided for in order to achieve this target and the measures taken in order to avoid distortions of the internal market as well as compliance problems of other Member States with Directive 94/62/EC. The answer to this letter was received on 20 June 1996. No precise expected recycling rate was in-

dicated, although Austrian authorities mentioned that a slight exceeding of the maximum recycling target was expected for the next years, concerning mainly paper and glass packaging. It was added that the availability of appropriate recycling capacities was demonstrated by a report ordered by the Federal Ministry for Environment, and which was subsequently transmitted to the Commission in September 1996. This report contains figures on recycling of the different packaging materials for the year 1994. As regards the measures envisaged in order to avoid market distortions and compliance problems for other Member States with the Directive, the letter indicated that the implementation of the legislation had shown that such problems did not arise.

A revised version of the packaging Ordinance and of the Ordinance setting targets for packaging waste was notified under Directive 83/189/EEC and under Article 16 of Directive 94/62/EC on 26 August 1996 (notification 96/332/A) and on 25 March 1997 (notification 97/156/A). These Ordinances have been published respectively on 29 November 1996 (numbers 648 and 649) and on 13 August 1997 (number 232).

Paragraph 11(7) of Ordinance 648/96 lays down targets for economic operators (manufacturers, importers, fillers and distributors) which take part in a collection and recycling system agreed by public authorities. The target for recycling for these economic operators is 25 % by weight of the packaging waste (with a minimum of 15 % for each packaging material) starting from the year 1997, to be achieved every calendar year. These targets correspond to the minimum targets for recycling set by Directive 94/62/EC.

Paragraph 10 of Ordinance 648/96 lays down recycling targets for economic operators not participating in an agreed system. These targets, to be achieved in every calendar year, are, by weight:

|                                               |      |
|-----------------------------------------------|------|
| Paper, board, cardboard, corrugated cardboard | 90 % |
| Glass                                         | 93 % |
| Ceramic                                       | 95 % |
| Metals                                        | 95 % |
| Plastics                                      | 40 % |
| Beverage composites                           | 40 % |
| Other composites                              | 15 % |

Percentages are calculated out of the total amount of each packaging material.

<sup>(1)</sup> OJ L 109, 26. 4. 1983, p. 8; Directive replaced by Directive 98/34/EC (OJ L 204, 21. 7. 1998, p. 37).

Each economic operator not participating in an agreed system has to collect or take back 90 % of the packaging material he has put on the market. If he actually collects or takes back a proportion of less than 90 % but more than 50 % of the packaging material he has put on the market, he is obliged to participate in an agreed collection and recycling system in respect of the difference between that proportion and 90 %. For this amount, the targets of paragraph 11(7) apply. If he collects or takes back a proportion of less than 50 % of the packaging material he has put on the market, he is obliged to participate in an agreed collection and recycling system in respect of the difference between that proportion and 100 %.

For this amount also the targets of paragraph 11(7) apply.

Further targets for drinks packaging are set out by Ordinance 649/96, as follows.

Paragraph 2 establishes that, in order to prevent and recover waste from drinks packaging, the following ratios of drinks packaging as a proportion of the bottling volume sold on the domestic market is to be met through re-filling, environmentally compatible recycling and energy recovery:

|                                                                                                | (%)  |      |      |      |
|------------------------------------------------------------------------------------------------|------|------|------|------|
|                                                                                                | 1993 | 1994 | 1997 | 2000 |
| Mineral water, table water, soda water                                                         | 90   | 92   | 92   | 96   |
| Beer                                                                                           | 90   | 91   | 92   | 94   |
| Alcohol-free refreshment drinks (such as lemonade), including alcohol-free hop and malt drinks | 80   | 80   | 80   | 83   |
| Fruit juices, fruit-juice drinks, nectars                                                      | 40   | 45   | 60   | 80   |
| Milk and liquid milk products                                                                  | 25   | 40   | 60   | 80   |
| Wine                                                                                           | 60   | 65   | 80   | 80   |
| Champagne-type drinks and spirits                                                              | 60   | 65   | 70   | 80   |

Targets are expressed in weight and percentages are calculated out of the totality of all packaging material used for each product.

In addition, paragraph 3 establishes absolute maximum quantities of residues of other packaging waste (packaging waste other than drink packaging) that may be treated in waste treatment facilities, other than material recycling or thermal recovery facilities.

(tonnes)

|                                              | 1994    | 1998    | 2001   |
|----------------------------------------------|---------|---------|--------|
| Glass                                        | 70 000  | 54 000  | 38 000 |
| Plastics                                     | 160 000 | 90 000  | 60 000 |
| Paper, card, cardboard, corrugated cardboard | 209 000 | 140 000 | 99 000 |
| Metals                                       | 55 000  | 36 000  | 17 000 |
| Composites                                   | 81 000  | 50 000  | 30 000 |

### 3. Opinions

Article 6(6) states that the Commission is to take a decision, after a verification of the measures in cooperation with Member States. To this end, the Commission consulted the Member States on the notification in question in the context of the Committee established by Article 21 of Directive 94/62/EC. This procedure was deemed to be the most appropriate and no Member State expressed disagreement in this respect. A first exchange of views took place during the Committee meeting of 21 April 1997. Member States were then invited to send written comments to the Commission by 31 May 1997. Austria, Belgium, Denmark, France, Ireland, the Netherlands and the United Kingdom submitted written contributions. The matter was discussed again during the Committee meeting of 4 September 1997.

No Member State contended that the Austrian measures could create internal market distortions or hinder compliance by other Member States with the Directive.

Several Member States made the point that a specific procedure, laying down the kind of information that Member States should provide when notifying a measure under Article 6(6), should be agreed upon between them and the Commission. However, a number of difficulties were recognised, particularly pertaining to the assessment of recovery and recycling capacities which exist on the open international market and to the fact that it is not always possible to foresee whether certain measures will have as an effect that the maximum targets of Directive 94/62/EC will be exceeded.

France considered it difficult for the Commission and for Member States to take a position on this matter in the absence of the common methodology to be used for setting up the database (in accordance with Article 12 of Directive 94/62/EC), since until that moment there will

be difficulties in calculating the achieved targets. France therefore suggested to wait until the common methodology was available in order to take a decision on the notification from Austria<sup>(1)</sup>.

In the Committee-meeting there was a general consensus on the need to constantly monitor the effect of measures in order to identify and face possible trade distortions, should any arise. The United Kingdom indicated that providing information on economic aspects such as past-levels and projections of reprocessing and of reprocessing capacities, of imports and exports of packaging waste, as well on historical prices over time would be useful. However, there was also general consensus on the fact that, in the procedure, a primary role was to be played by Member States which feared their compliance with the Directive would be hindered by measures which were adopted by other Member States. Should a measure exceeding the maximum targets of the Directive result in compliance problems for another Member State, it was primarily up to the latter to make this situation known so that appropriate counter-measures could be taken. The Commission invites Member States to immediately submit any information on adverse effects as set out in Article 6(6) on their territory, whenever such a situation arises.

The United Kingdom also suggested that the effects of any higher target in existence should be examined during the planned review of Article 6(1) targets, to be completed no later than 1 January 2001.

## II. ASSESSMENT

In view of the delay which would be caused if the Commission was to wait for the data in accordance with Commission Decision 97/138/EC<sup>(2)</sup>, and taking into account the fact that no adverse effect concerning the elements mentioned in Article 6(6) has been reported, the Commission considers it unnecessary to postpone the present decision as suggested by France.

Article 6(6) of Directive 94/62/EC allows Member States to go beyond targets set in Article 6(1)(a) and 6(1)(b) if the Member State provides to this effect appropriate capacities for recycling and recovery. The measures must be taken in the interest of a high level of environmental protection and on the condition that they avoid distortions of the

internal market and do not hinder compliance by other Member States with the Directive. Nor may they constitute an arbitrary means of discrimination or a disguised restriction on trade between Member States.

In this case, Austria has asked for a derogation from Article 6(1)(b).

The Commission has consulted the Member States and no objections to the Austrian measures have been raised.

### (a) Appropriate capacities for recycling

This requirement is interpreted by the Commission as not imposing on Member States total self-sufficiency with respect to recycling and recovery. Member States may also have recourse to capacities located in other Member States and third countries in order to fulfil their recycling and recovery targets. This, however, makes it difficult to carry out a precise quantification of available capacities, since recycling takes place in an open international market.

This criterion serves also the purpose of ensuring that measures taken in one Member State do not result in problems of compliance with the Directive for other Member States; therefore it should be seen in conjunction with the other criteria laid down in Article 6(6). In practice, compliance with this criterion is a signal for compliance with criteria (b) and (c) below. In particular, if targets are set exceeding those laid down in Article 6(1), it should be ensured that this is not to the detriment of collection and recycling schemes in other Member States.

As regards the Austrian notified measures, the Austrian Government stated that exceeding the maximum target for recycling in 1998 would primarily depend on paper recycling (paper accounts for 44 % of the total packaging in circulation). At present, over-capacities exist for recycling paper and glass as well as primary metal and plastic packaging and commercial packaging. Austria estimated that capacities for recycling will remain available, despite the increase in the collection/recycling of used packaging. This information appears in the report provided to the Commission in September 1996 and which the Commission circulated to all other Member States. This report shows that in 1994 about 55 % of packaging waste put in circulation was recovered (481 000 tonnes out of 876 300) — 52 % in the form of material recycling (456 700 tonnes) and 3 % in the form of energy recovery — but drinks packaging is not taken into account in these calculations. The recovery rate for glass was 69 %, paper and cardboard 72 %, metal 44 %, plastics 25 % and

<sup>(1)</sup> As regards this question, it is established that the completion of databases is to be developed in line with Commission Decision 97/138/EC to ensure compliance with the objectives of the Directive and the future setting up of a common methodology, but this is not a condition for confirming measures in the context of Article 6(6).

<sup>(2)</sup> OJ L 52, 22. 2. 1997, p. 22.

composites 4 %. On the basis of similar production in the coming years, Austria expects, disregarding drink packaging, a slight exceeding of the target set out in Article 6(1)(b) of Directive 94/62/EC. This mainly concerns glass and paper. This means that capacities are available within Austria. The Commission finds that Austria provides appropriate capacities for recycling.

**(b) Potential distortions of the internal market**

The Commission has assessed the measures as notified by Austria and finds that the collecting and recycling system imposed on the operators by the Austrian legislation does not cause distortions of the internal market.

The Austrian Government has declared that the application of these measures in the past has proved that there are no market distortions. The consultation of the other Member States revealed that no Member State considers that the Austrian measure could lead to market distortions. The Commission does not dispose of any other element showing that the Austrian measures would lead to market distortions.

**(c) Non-hindrance of compliance by other Member States with the Directive**

The purpose of this criterion is to avoid recycling and recovery capacities of Member States being filled up by packaging waste collected in other Member States. This is particularly relevant for those Member States which have not yet started recycling of packaging waste on a large scale and where the infrastructure for collection is still to be set up or completed.

The assessment of the notified measures in light of this criterion should primarily be made taking into account the opinion of the Member States whose compliance with the targets of the Directive could be endangered by measures set up in other Member States. No Member State expressed concern that the compliance with the Directive could be hindered by the measures notified by Austria. The Commission has not either become aware or been made aware of any compliance problem caused by the Austrian measures to other Member States.

In assessing whether exceeding the recycling target by Austria could result in recycling capacities in other Member States being exploited, thereby resulting in potential compliance problems by other Member States with the targets of the Directive, the Commission also takes into account the fact that Austria only produces about 1 % of the packaging waste produced in the Community. Therefore, in the Commission's view, there is no real risk that this would result in problems for other Member States in complying with the targets of Directive 94/62/EC.

**(d) No arbitrary means of discrimination**

The Austrian measures apply without distinction to all packaging waste, whether arising from domestic or imported products. The Commission has never received any complaint alleging that the Austrian legislation entails arbitrary discrimination. The Commission has consulted the Member States: the information obtained is not indicative of any discrimination.

**(e) No disguised restriction on trade between Member States**

This concept refers to possible restrictions on imports of products from other Member States and to indirect protection of domestic production. Wastes are goods which fall under the scope of Articles 30 to 36 of the Treaty and consequently measures taken in the field of waste management are also capable, in certain circumstances, of restricting trade or protecting domestic production. However, the content of the Austrian measures and the circumstances surrounding their application do not allow for such a conclusion to be drawn. The recycling targets apply to all packaging waste without distinction whether arising from domestic products or imported products. The conditions for participating in a system of collection and recycling agreed by public authorities apply to domestic and foreign producers without distinction. No complaint in this respect has ever been received by the Commission.

**III. CONCLUSION**

The Commission, in the light of the information provided by Austria and of the outcome of the consultation of the Member States described in the above considerations, concludes that the measures notified by Austria pursuant to Article 6(6) of Directive 94/62/EC should be confirmed since it has been verified that:

- appropriate capacities for recycling exist in Austria,
- the measures do not lead to distortions of the internal market,
- the measures do not hinder compliance by other Member States with the Directive,
- the measures do not constitute an arbitrary means of discrimination,
- the measures do not constitute a disguised restriction on trade between Member States,

HAS ADOPTED THIS DECISION:

*Article 1*

The measures notified by Austria which exceed the maximum recycling target laid down in Article 6(1)(b) of Directive 94/62/EC are hereby confirmed.

*Article 2*

This Decision is addressed to the Republic of Austria.

Done at Brussels, 22 December 1998.

*For the Commission*

Ritt BJERREGAARD

*Member of the Commission*

---

## COMMISSION DECISION

of 22 December 1998

**recognising in principle the completeness of the dossiers submitted for detailed examination in view of the possible inclusion of CGA 279 202 (trifloxystrobin), clefoxydim (BAS 625H), etoxazol and ferric phosphate in Annex I to Council Directive 91/414/EEC concerning the placing of plant-protection products on the market**

*(notified under document number C(1998) 4355)*

(Text with EEA relevance)

(1999/43/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant-protection products on the market<sup>(1)</sup> as last amended by Commission Directive 98/47/EC<sup>(2)</sup> and in particular Article 6(3) thereof,

Whereas Directive 91/414/EEC (hereinafter 'the Directive') has provided for the development of a Community list of active substances authorised for incorporation in plant protection products;

Whereas applicants have submitted dossiers for four active substances to Member States' authorities in view of obtaining the inclusion of the active substances in Annex I to the Directive;

Whereas a dossier for the active substance CGA 279 202 (trifloxystrobin) was submitted by Novartis Crop Protection UK Ltd to the United Kingdom authorities on 28 January 1998;

Whereas a dossier for the active substance clefoxydim (BAS 625H) was submitted by BASF AG to the Spanish authorities on 2 April 1998;

Whereas a dossier for the active substance etoxazol was submitted by Sumitomo Chemical Agro Europe SA to the French authorities on 21 April 1998;

Whereas a dossier for the active substance ferric phosphate was submitted by W. Neudorff GmbH to the German authorities on 27 August 1998;

Whereas the said authorities indicated to the Commission the results of a first examination of the completeness of the dossier with regard to the data and information requirements provided for in Annex II and, for at least one plant protection product containing the active substance concerned, in Annex III to the Directive;

whereas subsequently, in accordance with the provisions of Article 6(2), the dossiers were submitted by the applicant to the Commission and other Member States;

Whereas the dossiers for CGA 279 202 (trifloxystrobin), clefoxydim (BAS 625H), etoxazol and ferric phosphate were referred to the Standing Committee on Plant Health on 15 October 1998;

Whereas Article 6(3) of the Directive requires it being confirmed at the level of the Community that each dossier is to be considered as satisfying, in principle, the data and information requirements provided for in Annex II and, for at least one plant protection product containing the active substance concerned, in Annex III to the Directive;

Whereas such confirmation is necessary in order to pursue the detailed examination of the dossier as well as in order to open to Member States the possibility of granting provisional authorisation for plant protection products containing this active substance in due respect of the conditions laid down in Article 8(1) of the Directive, and in particular the condition to make a detailed assessment of the active substances and the plant protection products with regard to the requirements of the Directive;

Whereas such Decision does not prejudice that further data or information may be requested from the applicant where it would appear during the detailed examination that such information or data are required for a Decision to be taken;

Whereas it is understood between the Member States and the Commission that the United Kingdom will pursue the detailed examination for the dossier for CGA 279 202 (trifloxystrobin), that Spain will pursue the detailed examination for the dossier for clefoxydim (BAS 625H), that France will pursue the detailed examination for the dossier for etoxazol, and that Germany will pursue the detailed examination for the dossier for ferric phosphate;

<sup>(1)</sup> OJ L 230, 19. 8. 1991, p. 1.

<sup>(2)</sup> OJ L 191, 7. 7. 1998, p. 50.

Whereas the United Kingdom, Spain, France and Germany will report the conclusions of their examinations accompanied by any recommendations on the inclusion or non-inclusion and any conditions related thereto to the Commission as soon as possible and at the latest within a period of one year; whereas on receipt of this report the detailed examination will be continued with the expertise from all Member States within the framework of the Standing Committee on Plant Health;

Whereas the measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plant Health,

HAS ADOPTED THIS DECISION:

*Article 1*

The following dossiers satisfy in principle the data and information requirements provided for in Annex II and, for at least one plant protection product containing the active substance concerned, in Annex III to the Directive, taking into account the uses proposed.

1. The dossier submitted by Novartis Crop Protection UK Ltd to the Commission and the Member States with a view to the inclusion of CGA 279 202 (trifloxystrobin) as active substance in Annex I to Directive 91/414/EEC and which was referred to the Standing Committee on Plant Health on 15 October 1998.

2. The dossier submitted by BASF AG to the Commission and the Member States with a view to the inclusion of clefoxydim (BAS 625H) as active substance in Annex I to Directive 91/414/EEC and which was referred to the Standing Committee on Plant Health on 15 October 1998.
3. The dossier submitted by Sumitomo Chemical Agro Europe SA to the Commission and the Member States with a view to the inclusion of etoxazol as active substance in Annex I to Directive 91/414/EEC and which was referred to the Standing Committee on Plant Health on 15 October 1998.
4. The dossier submitted by W. Neudorff GmbH KG to the Commission and the Member States with a view to the inclusion of ferric phosphate as active substance in Annex I to Directive 91/414/EEC and which was referred to the Standing Committee on Plant Health on 15 October 1998.

*Article 2*

This Decision is addressed to the Member States.

Done at Brussels, 22 December 1998.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

## COMMISSION DECISION

of 6 January 1999

pursuant to Council Regulation (EC) No 3286/94 concerning the Brazilian import licensing regime for steel plates

(notified under document number C(1998) 4468)

(1999/44/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3286/94 of 22 December 1994 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organisation <sup>(1)</sup>, as last amended by Regulation (EC) No 356/95 <sup>(2)</sup>, and in particular Articles 11 and 14 thereof,

After consulting the Advisory Committee,

Whereas:

## A. Procedural background

(1) On 30 April 1997 Eurofer (European Confederation of Iron and Steel Industries) lodged a complaint under Article 4 of Regulation (EC) No 3286/94 (hereinafter, the Regulation) on behalf of its members, which are both national federations and individual companies located in 12 out of 15 European Union Member States and represent more than 90 % of European Coal and Steel Community crude steel production.

(2) The complainant alleged that the importation of flat stainless steel products into Brazil was subject to non-automatic import licensing. In the view of Eurofer, in May 1996 the practice of the Brazilian authorities responsible for issuing import licences was changed, to the effect that licences began to be granted only if a payment term of maximum 30 days was foreseen for the merchandise to be imported. The complainant pointed out that no announcement of this change or explanation of the legal basis authorising the dismissal of licence applications experienced by importers of Community products was provided by Brazilian authorities, and that the change appeared to result from internal guidelines of the Brazilian administration.

(3) According to the complainant, enforcement of the new financing deadline was progressively tightened in November 1996, when a written commitment to respect it began to be required of importers of steel products, and again in January 1997, when a new computerised monitoring system for the issuance of import licences (Siscomex) entered into force.

(4) Finally, the complainant pointed out that a general regime on exchange rate contracts for payment of imports (requiring advance settlement of exchange rate contracts for payment of imports for which payment terms are below 360 days) was adopted on 25 March 1997 through Brazilian President's *Medida Provisória* No 1569, which in turn was implemented by the Bank of Brazil by means of Circular No 2747, also adopted on 25 March 1997. Eurofer contended that this legislation did not replace the special rules applicable to the granting of import licences to steel products, but allowed Brazilian authorities to enforce the measures specific to steel products more strictly and effectively.

(5) The complainant alleged that the abovementioned Brazilian practices constituted obstacles to trade within the meaning of Article 2(1) of the Regulation as they were in violation of Brazil's international commitments under the WTO and that such obstacles were producing adverse trade effects for the complainant.

(6) In particular, the complainant alleged that the Brazilian import licensing regime applicable to stainless steel products was in violation of Articles XI, III:4 and X of GATT 1994 as well as Articles 1(4), 3(3), 5 and 1(9) of the WTO Agreement on import licensing procedures.

(7) As far as adverse trade effects are concerned, the complainant alleged that Community producers' and exporters' business was severely disrupted. With the introduction of the import licensing regime in question, a number of imports were held up at the port of entry, incurring substantial supplementary costs. In addition, the elimination of the customary payment terms of 180 days meant

<sup>(1)</sup> OJ L 349, 31. 12. 1994, p. 71.

<sup>(2)</sup> OJ L 41, 23. 2. 1995, p. 3.

that importers were no longer in a position to buy goods unless the producer or exporter was willing to bear the cost of a longer payment terms period which placed further financial burdens on the producer or exporter, rendering their sales unprofitable. The uncertainty generated by this import regime meant that orders were delayed and potential new orders lost to the detriment of the Community industry.

- (8) The complaint contained sufficient *prima facie* evidence to justify the initiation of a Community examination procedure pursuant to Article 8 of the Regulation. Consequently, the Commission initiated an examination procedure<sup>(1)</sup>, on 27 June 1997.

#### **B. Response of the Brazilian Government to the 30-day payment term requirement for the granting of non-automatic licences**

- (9) Following the initiation of the investigation the Brazilian Government, responding to a questionnaire, informed the Commission services that the list of products subject to non-automatic import licensing would be modified soon to exclude those falling within CN codes 7219 and 7220 as mentioned in the complaint under Regulation (EC) No 3286/94. This was confirmed on 25 August 1997 by the Brazilian authorities through the transmission of a copy of a measure (*Comunicado* No 23 by the *Departamento de Operações de Comércio Exterior* (DECEX) of 11 August 1997, published on 13 August and taking effect on publication) by which this change had been achieved. The confirmation was detailed on 11 December 1997 when the Brazilian authorities explained that the products in question are now subject to the automatic import licensing system and that no special payment term requirement is associated with the granting of such automatic licences.
- (10) This removal from the list of products subject to non-automatic licensing was essential since the non-automatic import licensing was the only tangible administrative means of enforcing the requirement related to the specific 30-day payment term. Written evidence of the obligation to respect such a payment term was collected by the complainant only by means of individual decisions that refused to grant non-automatic import licenses.

- (11) Under these circumstances, it can be considered that the removal of the products mentioned in the complaint from the list of products subject to non-automatic import licensing equates to the removal of the obstacle to trade challenged in the complaint in relation to the specific payment term requirement.

#### **C. Brazilian legislation on a general regime on exchange rate contracts for payment of imports**

- (12) The Brazilian legislation on a general regime on exchange rate contracts for payment of imports, adopted on 25 March 1997, provides that importers are obliged to contract exchange operations at a local bank within certain deadlines according to the payment terms for the goods concerned, where these payment terms are less than 360 days. This means that importers must make a deposit in the bank concerned until such time as the invoice is paid, or pay a premium for the exchange rate contract to a local bank.
- (13) According to the Brazilian authorities, neither the granting of the import licence nor the clearance of goods at customs is dependent on compliance with this regime. The consequence of non-compliance would be the imposition of fines by the Brazilian Central Bank. With a view to clarifying its scope and effects and to determining its compatibility with international trade rules, the Commission has been closely monitoring the abovementioned Brazilian legislation since its adoption. In this context, the European Community has acted at the multilateral level by initiating consultations under the relevant WTO provisions in January 1998.

#### **D. Recent developments**

- (14) Since 1996 there appears to be a trend by the Brazilian authorities both to enforce trade measures having restrictive effects on specific sensitive sectors, in a non-transparent way, and to adopt horizontal legislation which has at the least the potential of affecting imports in a negative manner. The growing number of examination procedures initiated or envisaged under Regulation (EC) No 3286/94, further to complaints by European exporters, is a clear indication of such a trend.
- (15) In particular, further to a complaint by Febeltex, the Belgian textiles industry association, the Commission initiated an examination procedure under the Regulation on 27 February 1998<sup>(2)</sup>. This

<sup>(1)</sup> OJ C 197, 27. 6. 1997, p. 2.

<sup>(2)</sup> OJ C 63, 27. 2. 1998, p. 2.

procedure is related to the non-automatic import licensing system and the way the system is developed through, notably, compulsory import payment terms and the imposition of minimum prices on imports.

- (16) Although the abovementioned procedure focuses on the system's effects on certain textile products, it is however covering a practice which is similar to the practice which is the subject of the present Decision. Thus, despite the termination of the procedure, the Commission will be in a position to continue monitoring the import licensing regime for steel plates actually applied in Brazil.

#### **E. Recommendation**

- (17) The examination procedure concerning the Brazilian import licensing regime for steel plates should therefore be terminated,

HAS DECIDED:

#### *Article 1*

The examination procedure concerning the Brazilian import licensing regime for steel plates initiated on 27 June 1997 is hereby terminated.

#### *Article 2*

This Decision shall apply from the day of its publication in the *Official Journal of the European Communities*.

Done at Brussels, 6 January 1999.

*For the Commission*

Leon BRITTAN

*Vice-President*

---

**CORRIGENDA**

**Corrigendum to Commission Decision 1999/34/EC of 9 December 1998 on the procedures for implementing Council Directive 95/57/EC on the collection of statistical information in the field of tourism**

*(Official Journal of the European Communities L 9 of 15 January 1999)*

On page 2 of the cover, in the Contents, and on page 23, under the title, the number '1999/34/EC' shall be replaced by '1999/35/EC'.

---