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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 681/1999
of 29 March 1999
establishing the standard import values for determining the entry price of certain
fruit and vegetables

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

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 1498/98 ⁽²⁾, and in particular Article 4 (1) thereof,

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 30 March 1999.

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

Done at Brussels, 29 March 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ L 198, 15. 7. 1998, p. 4.

ANNEX

to the Commission Regulation of 29 March 1999 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	66,4
	204	45,8
	212	44,2
	999	52,1
0707 00 05	052	117,6
	068	110,5
	999	114,0
0709 10 00	220	209,7
	999	209,7
0709 90 70	052	96,9
	204	157,1
	999	127,0
0805 10 10, 0805 10 30, 0805 10 50	052	38,2
	204	43,7
	212	46,8
	220	38,2
	600	73,1
	624	49,1
0805 30 10	999	48,2
	052	37,8
	600	81,9
0808 10 20, 0808 10 50, 0808 10 90	999	59,9
	039	106,2
	388	84,7
	400	80,1
	404	75,4
	508	84,2
	512	81,4
	524	68,3
	528	70,8
	720	82,5
	999	81,5
	388	62,0
	400	79,8
0808 20 50	512	62,2
	528	65,5
	624	74,4
	720	69,3
	999	68,9

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

COMMISSION REGULATION (EC) No 682/1999

of 29 March 1999

amending Regulation (EC) No 2106/98 laying down special measures derogating from Regulations (EEC) No 3665/87 and (EEC) No 3719/88 as regards beef and veal

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

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organisation of the market in beef and veal ⁽¹⁾, as last amended by Regulation (EC) No 1633/98 ⁽²⁾, and in particular Articles 13(12) and 25 thereof,

Whereas Commission Regulation (EEC) No 1964/82 ⁽³⁾, as last amended by Regulation (EC) No 2469/97 ⁽⁴⁾, lays down the conditions under which special export refunds are granted for some types of boned beef;

Whereas Commission Regulation (EC) No 2106/98 ⁽⁵⁾, as last amended by Regulation (EC) No 2790/98 ⁽⁶⁾, introduces special measures for regularising certain export transactions in the wake of the problems arising on the market in Russia since the second half of August 1998;

Whereas Regulation (EC) No 2790/98 allows in particular certain customs formalities already under way to be cancelled; whereas, to clarify matters, it should be specified that this option also applies to boned beef produced pursuant to Regulation (EEC) No 1964/82 and exported in part;

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

HAS ADOPTED THIS REGULATION:

Article 1

The following Article 2(3) is added to Regulation (EC) No 2106/98:

‘3. Notwithstanding Article 6(1) of Commission Regulation (EEC) No 1964/82 ^(*), should the total quantity of boned meat not have been exported by 29 August 1998, paragraph 2 shall apply and the special refund shall be forfeit for the quantities declared to have been exported and released for consumption in a third country.

^(*) OJ L 212, 21.7.1982, p. 48.’

Article 2

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

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

Done at Brussels, 29 March 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 148, 28. 6. 1968, p. 24.

⁽²⁾ OJ L 210, 28. 7. 1998, p. 17.

⁽³⁾ OJ L 212, 21. 7. 1982, p. 48.

⁽⁴⁾ OJ L 341, 12. 12. 1997, p. 8.

⁽⁵⁾ OJ L 267, 2. 10. 1998, p. 5.

⁽⁶⁾ OJ L 347, 23. 12. 1998, p. 34.

COMMISSION REGULATION (EC) No 683/1999
of 29 March 1999

fixing, for the 1998/99 marketing year, the amounts to be paid to producer organisations and associations thereof recognised under Regulation No 136/66/EEC

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organisation of the market in oils and fats ⁽¹⁾, as last amended by Regulation (EC) No 1638/98 ⁽²⁾, and in particular Article 20d(4) thereof,

Having regard to Council Regulation (EC) No 2799/98 of 15 December 1998 establishing agrimonetary arrangements for the euro ⁽³⁾, and in particular Article 9 thereof,

Whereas Article 20d of Regulation No 136/66/EEC provides for a percentage of production aid to be withheld to help finance the work of recognised producer organisations and associations thereof;

Whereas Article 21(1) of Commission Regulation (EC) No 2366/98 of 30 October 1998 laying down detailed rules for the application of the system of production aid for olive oil for the 1998/99, 1999/2000 and 2000/01 marketing years ⁽⁴⁾ provides that the unit amounts to be paid to producer organisations and associations thereof are to be fixed on the basis of forecasts of the overall sum to be distributed; whereas the amount to be withheld for the 1998/99 marketing year was fixed by Regulation No 136/66/EEC; whereas the funds that will become available in each Member State as a result of the amount withheld as referred to above must be suitably distributed among those eligible;

Whereas the work generated in particular by the administration of aid applications has a relatively stable minimum cost; whereas the ceiling on the total financing for certain Member States may prove too low; whereas the amounts to be paid to beneficiaries in France may consequently

lead to an overrun in the ceiling, to be charged to the Member State in question;

Whereas, in order to ensure that the funds are distributed uniformly among producer organisations and associations, an operative event should be established for the conversion into national currency of the amounts fixed; whereas, given the nature of the measure and in order to facilitate its administration, 1 February 1999 is a suitable date for the operative event;

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 1998/99 marketing year, the amounts provided for in Article 21(1)(a) and (b) of Regulation (EC) No 2366/98 shall be as follows:

- for Greece: EUR 2,2 and EUR 2,2 respectively,
- for Spain: EUR 5 and EUR 2 respectively,
- for France: EUR 1,5 and EUR 1,5 respectively,
- for Italy: EUR 2 and EUR 2 respectively,
- for Portugal: EUR 0 and EUR 6 respectively.

Article 2

The amounts fixed in Article 1 shall be converted into national currency at the exchange rate applicable on 1 February 1999.

Article 3

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

⁽¹⁾ OJ 172, 30. 9. 1966, p. 3025/66.

⁽²⁾ OJ L 210, 28. 7. 1998, p. 32.

⁽³⁾ OJ L 349, 24. 12. 1998, p. 1.

⁽⁴⁾ OJ L 293, 31. 10. 1998, p. 50.

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

Done at Brussels, 29 March 1999.

For the Commission

Franz FISCHLER

Member of the Commission

**COMMISSION REGULATION (EC) No 684/1999
of 29 March 1999**

amending Regulation (EC) No 1484/95 laying down detailed rules for implementing the system of additional import duties and fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and repealing Regulation No 163/67/EEC

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

Having regard to Council Regulation (EEC) No 2771/75 of 29 October 1975 on the common organisation of the market in eggs ⁽¹⁾, as last amended by Commission Regulation (EC) No 1516/96 ⁽²⁾, and in particular Articles 5(4) and 15 thereof,

Having regard to Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organisation of the market in poultrymeat ⁽³⁾, as last amended by Commission Regulation (EC) No 2916/95 ⁽⁴⁾, and in particular Articles 5(4) and 15 thereof,

Having regard to Council Regulation (EEC) No 2783/75 of 29 October 1975 on the common system of trade for ovalbumin and lactalbumin ⁽⁵⁾, as last amended by Regulation (EC) No 2916/95, and in particular Articles 3(4) and 10 thereof,

Whereas Commission Regulation (EC) No 1484/95 ⁽⁶⁾ was recently amended by Regulation (EC) No 493/1999 ⁽⁷⁾ in accordance with the decision taken in the framework of the World Trade Organisation to make it compulsory for the additional duty to be established on the basis of the cif import price; whereas Articles 4(2) and 6 of that Regu-

lation must also be amended in accordance with that decision;

Whereas it is necessary to apply this amendment as soon as possible;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1484/95 is hereby amended as follows:

1. Article 4(2) is deleted;
2. in Article 6, 'laid down in Annex I' is replaced by 'referred to in Article 1'.

Article 2

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

It shall apply with effect from 25 March 1999.

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

Done at Brussels, 29 March 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 282, 1. 11. 1975, p. 49.

⁽²⁾ OJ L 189, 30. 7. 1996, p. 99.

⁽³⁾ OJ L 282, 1. 11. 1975, p. 77.

⁽⁴⁾ OJ L 305, 19. 12. 1995, p. 49.

⁽⁵⁾ OJ L 282, 1. 11. 1975, p. 104.

⁽⁶⁾ OJ L 145, 29. 6. 1995, p. 47.

⁽⁷⁾ OJ L 59, 6. 3. 1999, p. 15.

COMMISSION REGULATION (EC) No 685/1999
of 29 March 1999
on the supply of vegetable oil 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 ⁽¹⁾, 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 vegetable oil 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 ⁽²⁾; 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 for a given lot, provision should be made for tenderers to be able to mobilise either rape-seed oil or sunflower oil; whereas the contract for the supply of each such lot is

to be awarded to the tenderer submitting the lowest tender,

HAS ADOPTED THIS REGULATION:

Article 1

Vegetable oil 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 supply shall cover the mobilisation of vegetable oil produced in the Community. Mobilisation may not involve a product manufactured and/or packaged under inward processing arrangements.

Tenders shall cover either rape-seed oil or sunflower oil. Tenders shall be rejected unless they specify the type of oil 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, 29 March 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 166, 5. 7. 1996, p. 1.

⁽²⁾ OJ L 346, 17. 12. 1997, p. 23.

ANNEX

LOT A

1. **Actions Nos:** 130/98 (A1); 131/98 (A2)
2. **Beneficiary** ⁽²⁾: 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:** Sudan
5. **Product to be mobilised:** vegetable oil: refined rapeseed oil or refined sunflower oil
6. **Total quantity (tonnes net):** 1 031
7. **Number of lots:** 1 in 2 parts (A1: 500 tonnes; A2: 531 tonnes)
8. **Characteristics and quality of the product** ⁽³⁾ ⁽⁴⁾ ⁽⁶⁾: see OJ C 114, 29.4.1991, p. 1 (III.A(1)(a) or (b))
9. **Packaging** ⁽⁷⁾: see OJ C 267, 13.9.1996, p. 1 (10.4. A, B and C(2))
10. **Labelling or marking** ⁽⁵⁾: see OJ C 114, 29.4.1991, p. 1 (III.A(3))
 - Language to be used for the markings: English
 - Supplementary markings: —
11. **Method of mobilisation of the product:** mobilisation of refined vegetable oil produced in the Community.
Mobilisation may not involve a product manufactured and/or packaged under inward-processing arrangements
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: 3. — 23.5.1999
 - second deadline: 17.5 — 6.6.1999
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: 13.4.1999
 - second deadline: 27.4.1999
20. **Amount of tendering guarantee:** EUR 15 per tonne
21. **Address for submission of tenders and tendering guarantees** ⁽¹⁾:
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:** —

Notes:

- (¹) Supplementary information: André Debongnie (tel. (32 2) 295 14 65).
Torben Vestergaard (tel. (32 2) 299 30 50).
- (²) The supplier shall contact the beneficiary or its representative as soon as possible to establish which consignment documents are required.
- (³) 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.
- (⁴) The supplier shall supply to the beneficiary or its representative, on delivery, the following document:
— health certificate.
- (⁵) Notwithstanding OJ C 114 of 29.4.1991, point III.A(3)(c) is replaced by the following: 'the words "European Community"'.

- (⁶) Tenders shall be rejected unless they specify the type of oil to which they relate.
- (⁷) The gross weight of the containers shall not exceed 22 tonnes.

COMMISSION REGULATION (EC) No 686/1999
of 29 March 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⁽¹⁾, 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⁽²⁾; 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, 29 March 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 166, 5. 7. 1996, p. 1.

⁽²⁾ OJ L 346, 17. 12. 1997, p. 23.

ANNEX

LOTS A, B

1. **Action Nos:** 128/98 (A); 129/98 (B)
2. **Beneficiary** ⁽²⁾: 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:** A: Somalia; B: Angola
5. **Product to be mobilised** ⁽⁸⁾: split peas
6. **Total quantity (tonnes net):** 3 000
7. **Number of lots:** 2 (A: 1 000 tonnes; B: 2 000 tonnes)
8. **Characteristics and quality of the product** ⁽³⁾ ⁽⁴⁾ ⁽⁷⁾: —
9. **Packaging** ⁽⁵⁾: see OJ C 267, 13.9.1996, p. 1 (4.0.A(1)(c), (2)(c) and B(4)) or (2.1. A(1)(a), (2)(a) and B(4))
10. **Labelling or marking** ⁽⁶⁾: see OJ C 114, 29.4.1991, p. 1 (IV.A(3))
— Language to be used for the markings: A: English; B: Portuguese
— 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: 10 — 30.5.1999
— second deadline: 24.5 — 13.6.1999
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: 13.4.1999
— second deadline: 27.4.1999
20. **Amount of tendering guarantee:** EUR 5 per tonne
21. **Address for submission of tenders and tendering guarantees** ⁽¹⁾:
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:

- (¹) Supplementary information: André Debongnie (tel. (32 2) 295 14 65),
Torben Vestergaard (tel. (32 2) 299 30 50).
- (²) The supplier shall contact the beneficiary or its representative as soon as possible to establish which consignment documents are required.
- (³) 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.
- (⁴) The supplier shall supply to the beneficiary or its representative, on delivery, the following document:
— phytosanitary certificate.
- (⁵) 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'.
- (⁶) 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'.
- (⁷) 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) or maximum 60 minutes (without soaking).
- (⁸) Tenders shall be rejected unless they specify the type of peas to which they relate.
-

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

COMMISSION REGULATION (EC) No 687/1999
of 29 March 1999
determining the world market price for unginned cotton and the rate for the aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Greece, and in particular paragraphs 3 and 10 of Protocol 4 on cotton, as last amended by Council Regulation (EC) No 1553/95 ⁽¹⁾,

Having regard to Council Regulation (EC) No 1554/95 of 29 June 1995 ⁽²⁾ laying down general rules for the system of aid for cotton and repealing Regulation (EEC) No 2169/81, as last amended by Regulation (EC) No 1419/98 ⁽³⁾, and in particular Articles 3, 4 and 5 thereof,

Whereas Article 3 of Regulation (EC) No 1554/95 requires a world market price for unginned cotton to be periodically determined from the world market price determined for ginned cotton, using the historical relationship between the two prices as specified in Article 1 (2) of Commission Regulation (EEC) No 1201/89 of 3 May 1989 laying down rules for implementing the system of aid for cotton ⁽⁴⁾, as last amended by Regulation (EC) No 1664/98 ⁽⁵⁾; whereas if it cannot be determined in this way it is to be based on the last price determined;

Whereas Article 4 of Regulation (EC) No 1554/95 requires the world market price for ginned cotton to be determined for a product of specific characteristics using the most favourable offers and quotations on the world market of those considered representative of the real market trend; whereas to this end an average is to be calculated of offers and quotations on one or more European exchanges for a cif product to a North European port from the supplier countries considered most representative as regards international trade; whereas these rules for determination of the world market price for ginned cotton provide for adjustments to reflect differences in product quality and the nature of offers and quotations;

whereas these adjustments are specified in Article 2 of Regulation (EEC) No 1201/89;

Whereas application of the above rules gives the world market price for unginned cotton indicated hereunder;

Whereas the second subparagraph of Article 5(3a) of Regulation (EC) No 1554/95 stipulates that the advance payment rate for the aid is to be the guide price less the world market price and less a further amount calculated by the formula applicable when the guaranteed maximum quantity is overrun but with a minimum 7,5 % increase in the revised estimate for unginned cotton production; whereas Commission Regulation (EC) No 2591/98 ⁽⁶⁾ fixes the revised estimate of production of unginned cotton for the 1998/99 marketing year and the relevant percentage increase; whereas application of these rules gives the advance payment rates for each Member State indicated hereunder,

HAS ADOPTED THIS REGULATION:

Article 1

1. The world market price for unginned cotton as indicated in Article 3 of Regulation (EC) No 1554/95 is set at EUR 26,912/100 kg.

2. Advance payment of the aid as indicated in Article 5 (3a), second sentence, of Regulation (EC) No 1554/95 shall be at the rate of:

- EUR 57,278/100 kg in Spain,
- EUR 47,073/100 kg in Greece,
- EUR 79,388/100 kg in other Member States.

Article 2

This Regulation shall enter into force on 30 March 1999.

⁽¹⁾ OJ L 148, 30. 6. 1995, p. 45.

⁽²⁾ OJ L 148, 30. 6. 1995, p. 48.

⁽³⁾ OJ L 190, 4. 7. 1998, p. 4.

⁽⁴⁾ OJ L 123, 4. 5. 1989, p. 23.

⁽⁵⁾ OJ L 211, 29. 7. 1998, p. 9.

⁽⁶⁾ OJ L 324, 2. 12. 1998, p. 25.

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

Done at Brussels, 29 March 1999.

For the Commission

Franz FISCHLER

Member of the Commission

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL RECOMMENDATION

of 22 March 1999

concerning the discharge to be given to the Commission in respect of the implementation of the operations of the European Development Fund (1984) (Sixth EDF) for the financial year 1997

(1999/231/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 206 thereof,

Having regard to the Third ACP-EEC Convention, signed at Lomé on 8 December 1984,

Having regard to Council Decision 86/283/EEC of 30 June 1986 on the association of the overseas countries and territories with the European Economic Community⁽¹⁾,

Having regard to the Internal Agreement on the financing and administration of Community aid⁽²⁾, signed in Brussels on 19 February 1985, as amended by Decision 86/281/EEC⁽³⁾, and in particular Article 29(3) thereof,

Having regard to the Financial Regulation of 11 November 1986 applicable to the Sixth European Development Fund⁽⁴⁾, and in particular Articles 66 to 73 thereof,

Having examined the revenue and expenditure account and the balance sheet relating to the operations of the European Development Fund (1984) (Sixth EDF) as at 31 December 1997 and the Court of Auditors' report relating

to the financial year 1997 together with the Commission's replies⁽⁵⁾,

Whereas, pursuant to Article 29(3) of the Internal Agreement, the discharge for the management of the European Development Fund (1984) (Sixth EDF) must be given to the Commission by the European Parliament on a recommendation from the Council;

Whereas the overall implementation by the Commission of the operations of the European Development Fund (1984) (Sixth EDF) during the financial year 1997 has been satisfactory,

HEREBY RECOMMENDS that the European Parliament give the Commission a discharge in respect of the implementation of the operations of the European Development Fund (1984) (Sixth EDF) for the financial year 1997.

Done at Brussels, 22 March 1999.

For the Council

The President

G. VERHEUGEN

⁽¹⁾ OJ L 175, 1. 7. 1986, p. 1.

⁽²⁾ OJ L 86, 31. 3. 1986, p. 210.

⁽³⁾ OJ L 178, 2. 7. 1986, p. 13.

⁽⁴⁾ OJ L 325, 20. 11. 1986, p. 42.

⁽⁵⁾ OJ C 349, 17. 11. 1998, p. 149.

COUNCIL RECOMMENDATION

of 22 March 1999

concerning the discharge to be given to the Commission in respect of the implementation of the operations of the European Development Fund (1989) (Seventh EDF) for the financial year 1997

(1999/232/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 206 thereof,

Having regard to the Fourth ACP-EEC Convention, signed at Lomé on 15 December 1989,

Having regard to Council Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community ⁽¹⁾,

Having regard to the Internal Agreement on the financing and administration of Community aid ⁽²⁾, signed in Brussels on 16 July 1990, and in particular Article 33(3) thereof,

Having regard to the Financial Regulation of 29 July 1991 applicable to the Seventh European Development Fund ⁽³⁾, and in particular Articles 69 to 77 thereof,

Having examined the revenue and expenditure account and the balance sheet relating to the operations of the European Development Fund (1989) (Seventh EDF) as at 31 December 1997 and the Court of Auditors' report relating to the financial year 1997 together with the Commission's replies ⁽⁴⁾,

Whereas, pursuant to Article 33(3) of the Internal Agreement, the discharge for the management of the European Development Fund (1989) (Seventh EDF) must be given to the Commission by the European Parliament on a recommendation from the Council;

Whereas the overall implementation by the Commission of the operations of the European Development Fund (1989) (Seventh EDF) during the financial year 1997 has been satisfactory,

HEREBY RECOMMENDS that the European Parliament give the Commission a discharge in respect of the implementation of the operations of the European Development Fund (1989) (Seventh EDF) for the financial year 1997.

Done at Brussels, 22 March 1999.

For the Council

The President

G. VERHEUGEN

⁽¹⁾ OJ L 263, 19. 9. 1991, p. 1.

⁽²⁾ OJ L 229, 17. 8. 1991, p. 288.

⁽³⁾ OJ L 266, 21. 9. 1991, p. 1.

⁽⁴⁾ OJ C 349, 17. 11. 1998, p. 149.

COMMISSION

COMMISSION DECISION

of 17 June 1998

on aid measures for farming under Laws Nos 44/89 and 57/92 of the Region of Lazio (Italy)

(notified under document number C(1998) 1893)

(Only the Italian text is authentic)

(Text with EEA relevance)

(1999/233/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having given notice to the parties concerned to submit their comments in accordance with the first subparagraph of Article 93(2) ⁽¹⁾,

Whereas:

I

- (1) By letter of 11 February 1993, Italy's Permanent Representative to the European Communities notified the Commission, pursuant to Article 93(3) of the Treaty, of a draft Law of the Region of Lazio providing for measures in favour of agricultural production.

The notification was recorded under aid No 106/93.

The Italian authorities provided further information by letter of 8 July 1993, and telex of 30 September 1994.

- (2) It transpired during the examination of the measures in question that the text, notified as a draft, had come into force as Lazio Regional Law No 57/92, amending Law No 44/89, which had never been notified pursuant to Article 93(3). The provisions of

both these instruments were then registered as non-notified aid under reference NN 90/93.

- (3) By letter of 21 March 1995, the Commission notified the Italian Government of its decision to initiate the procedure provided for in Article 93(2) of the Treaty with regard to the measures concerned in favour of agricultural crops.

The Commission gave the Italian Government notice under the procedure to submit its comments.

The Commission also gave notice to the other Member States and to other parties concerned to submit their comments, by publishing a notice in the *Official Journal of the European Communities* ⁽²⁾.

- (4) The Italian authorities submitted their comments by fax of 11 May 1995, by letter of 15 December 1995, and, in response to the Commission's telex of 22 July 1996, by letter of 21 August 1996. No other comments were submitted.

II

- (5) The measures in respect of which the Commission initiated the Article 93(2) procedure consist of subsidised loans which the Region of Lazio grants for the purchase of agricultural land, where such purchase is

⁽¹⁾ OJ C 267, 14. 10. 1995, p. 9.

⁽²⁾ OJ C 267, 14. 10. 1995, p. 9.

likely to rationalise the distribution of land-ownership among persons actually working the land (either individually or in partnership), together with reduced-interest loans to cooperatives and groups of cooperatives purchasing land for the purpose of extending or constructing premises for the processing, packaging and marketing of agricultural products from the holdings of the partners.

Differing rates are applied, depending on the location of the land being purchased (mountain areas: 30 % of the reference rate; less-favoured areas: 40 %; other areas: 60 %).

The reference rate for land improvement loans is set every two months by the Ministry of Agriculture.

- (6) The Commission, in its letter of notice, considered that, when assistance such as that provided for in Law No 44/89 is granted at the level of primary production, the rates applied must not exceed the maximum rates set by the Commission, namely 35 % and 75 % in mountain areas and less-favoured areas within the meaning of Council Directive 75/268/EEC of 28 April 1975 on mountain and hill farming and farming in certain less-favoured areas⁽¹⁾, repealed and replaced by Council Regulation (EC) No 950/97 of 20 May 1997 on improving the efficiency of agricultural structures⁽²⁾.

Where the aid is granted to firms processing or marketing agricultural products in regions not covered by Objective 1, the rate must not exceed:

- 55 % for projects included in an operational programme or satisfying at least one of the criteria in Article 1 of Council Regulation (EEC) No 866/90 of 29 March 1990 on improving the processing and marketing conditions for agricultural products⁽³⁾, repealed and replaced by Council Regulation (EC) No 951/97 of 20 May 1997 on improving the processing and marketing conditions for agricultural products⁽⁴⁾;
- 35 % for other projects.

Furthermore, the aid must comply with the sectoral restrictions laid down in the selection criteria set out in point 2 of the Annex to Commission Decision 90/342/EEC on the selection criteria to be adopted for investments for improving the processing and marketing conditions for agricultural and forestry

products⁽⁵⁾ used in the framework of Regulation (EEC) No 866/90 mentioned above. In 1994 these criteria were replaced by those contained in Commission Communication 94/C 189/04⁽⁶⁾.

- (7) The Commission initiated the Article 93(2) procedure in respect of the aid measures in question, noting that Regional Law No 44/89, as amended by Regional Law No 57/92, offers no guarantee of compliance with those sectoral restrictions and does not ensure compliance with the limits set by the Commission on the amount of aid to investment at the level of primary production of agricultural products or at processing and marketing level.

The amount of the interest subsidy (and therefore the net subsidy equivalent) varies, in each case where it is applied and throughout the duration of the loan, as a function of the reference rate set every two months by the Government for land improvement loans.

- (8) As there is no legal provision in these instruments to prevent the degree of aid intensity from exceeding what is permissible, or to ensure compliance with sectoral restrictions at the level of processing, the Commission cannot regard the aid as compatible with the provisions of the Treaty governing State aid.

III

- (9) Under Article 92(1) of the Treaty, any aid granted by a State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market.

The aid measures in question constitute aid within the meaning of Article 92(1) of the Treaty.

They place farming enterprises in a more favourable economic position than their competitors which do not receive assistance. They distort or threaten to distort competition, therefore, in the manner indicated.

- (10) In the case under consideration the aid measures for the purchase of land may be granted for all agricultural products.

⁽¹⁾ OJ L 128, 19. 5. 1975, p. 1.

⁽²⁾ OJ L 142, 2. 6. 1997, p. 1.

⁽³⁾ OJ L 91, 6. 4. 1990, p. 1.

⁽⁴⁾ OJ L 142, 2. 6. 1997, p. 22.

⁽⁵⁾ OJ L 163, 29. 6. 1990, p. 71.

⁽⁶⁾ OJ C 189, 12. 7. 1994, p. 5.

They may harm Community trade, for example, by hampering imports or facilitating exports, namely by disturbing from the outside the market's own regulating forces. There is no need for Community trade actually to be affected; the potential adverse effect is sufficient. Where the beneficiary of a subsidised loan finds himself competing with enterprises from other Member States there are grounds for believing that the Community market is affected.

As the aid measures in question may concern all the product sectors which are subject to a common organisation of the market, all aid is liable to affect trade between Member States and constitute in addition a distortion of competition in the common market.

- (11) It should be underlined in this connection that even the relatively modest scale of an aid scheme or of the recipient enterprises does not automatically mean that trade between Member States will be unaffected.

In the light of the above, the aids in question are State aids which satisfy the terms of Article 92(1) of the Treaty.

The principle of incompatibility laid down in Article 92(1) of the Treaty is subject, however, to exceptions.

IV

- (12) The exceptions to the incompatibility contained in Article 92(2) clearly do not apply, and the Italian authorities have not relied on them as a defence.
- (13) The exceptions contained in Article 92(3) must be interpreted strictly when any regional or sectoral aid programme or individual case of application of a general aid scheme is scrutinised.

They may, in particular, be granted only where the Commission can establish that the aid is necessary for attaining one of the objectives listed in that Article. Granting an exception to an aid that is not designed to attain any of those objectives would amount to permitting trade between Member States to be affected, and to allowing distortions of competition that are unjustified in terms of the Community interest and, at the same time, author-

ising undue benefits for operators in certain Member States.

- (14) In this case, the aid schemes are not designed to attain objectives of this nature. The Italian Government has not provided any evidence to show that they satisfy the requirements for the application of any of the exceptions contained in Article 92(3).

It does not constitute a measure to promote the execution of an important project of common European interest as defined in Article 92(3)(b) given that, in view of the impact it may have on trade, it is contrary to the common interest. Nor is it a measure for remedying a serious disturbance in the economy of the Member State concerned, as defined in that provision.

The aid was not notified as a regional aid within the meaning of Article 92(3)(a) of the Treaty. It does not seek to implement demonstrable investments or to create jobs, and, to that extent, does not contribute to the lasting development of the region. On the contrary, it has a sectoral objective in that it concerns the agricultural sector.

- (15) In the case of the aid to facilitate the development of certain activities (sectoral aid), the Commission is prepared to consider it compatible with the common market under Article 92(3)(c), provided that it:

- does not adversely affect trading conditions to an extent contrary to the common interest, and
- facilitates the development of certain economic activities.

As it is aid within the meaning of Article 92(1), by definition it distorts or threatens to distort competition, but under Article 92(3)(c), it is automatically incompatible only where it does so to an extent contrary to the common interest. In any event, it is necessary that the aid be granted in accordance with the relevant Community rules.

- (16) When evaluating aid of the type referred to in Article 92(3)(c) of the Treaty the Commission applies Council Regulation (EEC) No 2328/91 of 15 July 1991 on improving the efficiency of agricultural structures ⁽¹⁾, as replaced by Regulation (EC) No 950/97 ⁽²⁾, and Regulation (EEC) No 866/90 ⁽³⁾.

V

- (17) As to the aid to promote investment in the processing and marketing of agricultural products referred to in the third paragraph of Article 3 of Regional Law No 44/89, the Italian authorities stated in their fax of 11 May 1995 that they had

⁽¹⁾ OJ L 218, 6. 8. 1991, p. 1.

⁽²⁾ OJ L 142, 2. 6. 1997, p. 1.

⁽³⁾ OJ L 91, 6. 4. 1990, p. 1.

never actually implemented it. By letter of 21 August 1996, they forwarded to the Commission Regional Law No 60 of 19 December 1995 repealing the third paragraph of Article 3 of Regional Law No 44/89.

In view of the above, the Commission concludes that there is no longer any need to initiate the Article 93(2) procedure notified in its letter of 21 March 1995 as regards investment in the processing and marketing of agricultural products.

- (18) As to the investment in primary production, the Italian authorities said, in their letter of 15 December 1995, that the information provided removed all doubt concerning the grant of aid for the purchase of land to encourage direct ownership by the people working the land.

On this point, the Commission informed the Italian authorities, in its telex of 22 July 1996, that the draft Regional Law notified in their letter of 15 December 1995 (later approved and adopted as Regional Law No 60/95 referred to in the preceding point) did not entirely address the comments made by the Commission when initiating the procedure.

Concerning the aid for the purchase of land other than for the purpose of establishing facilities for the processing and marketing of agricultural products (provided for in paragraph 3 of Article 3 of Regional Law No 44/89, now repealed), the Commission, when initiating the procedure, said:

'[...] the wording of Regional Law No 44/89 [...] does not serve to enforce the limits set by the Commission on the intensity of aid to investment at the level of primary production [...].

Consequently, as there is no legal provision in these instruments to prevent the degree of aid intensity from exceeding what is permissible [...] the Commission cannot regard the aid as compatible with the provisions of the Treaty governing State aid. [...]

The Italian authorities did not submit any comments in response to this letter from the Commission.

- (19) The aid for the purchase of land granted before 9 June 1997 is to be studied in the light of Regulation (EEC) No 2328/91. As the measures concerned are

still in force, they are to be examined also in the light of Regulation (EC) No 950/97, replacing Regulation (EEC) No 2328/91, which entered into force on 9 June 1997.

The measures fall within the scope of the first indent of Article 12(5) of Regulation (EEC) No 2328/91, which has been replaced by Article 12(2) of Regulation (EC) No 950/97.

Under the above provision together with Article 35 of Regulation (EEC) No 2328/91, as replaced by Article 37 of Regulation (EC) No 950/97, Articles 92, 93 and 94 of the Treaty apply to the aid measures in question.

- (20) The Commission's established practice ⁽¹⁾ is normally to authorise aid for the purchase of land, under the Regulation referred to in the preceding point, up to 35 % of eligible expenditure in the less-favoured areas.

In setting the maximum rate for aid for the purchase of land at 35 %, the Commission, in line with its established practice, applied by analogy the rate provided for in general for investments in farm holdings, referred to in the proposed relevant measures on aid granted by the Member States in the livestock and livestock-products sector (letter No 75/29416 of 19 September 1975).

- (21) The Commission's established practice further concedes the possibility of increasing the rate of aid from 35 % to a maximum of 75 % for investment in less-favoured areas under Directive 75/268/EEC. In raising the rate to 75 %, the Commission considered that land in less-favoured areas, by its nature, is less productive than that in other areas. This principle, and hence the need for a higher rate in less-favoured areas, were acknowledged in so far as investment in primary production is concerned in Regulation (EEC) No 2328/91 and Council Regulation (EEC) No 797/85 of 12 March 1985 on improving the efficiency of agricultural structures ⁽²⁾.

- (22) However, since it is uncertain, for the reasons set out above, whether the aid measures for the purchase of land provided for in Regional Law No 44/89 and Regional Law No 57/92 amending Regional Law No 44/89 comply with the maximum rates of 35 % and 75 % for the abovementioned less-favoured areas, the Commission has concluded, on the basis of the information available, that the measures concerned cannot be regarded as compatible with the rules of competition set out above,

⁽¹⁾ State aid Nos N 682/97 (OJ C 67, 3. 3. 1998), N 156/97 (OJ C 347, 18. 11. 1997), N 797/96 (OJ C 245, 12. 8. 1997) and N 940/96 (OJ C 231, 30. 7. 1997).

⁽²⁾ OJ L 93, 30. 3. 1985, p. 1.

HAS ADOPTED THIS DECISION:

Article 1

The aid schemes provided for in Regional Law No 44/89 and Regional Law No 57/92 on aid for the purchase of land are unlawful since they have been granted in breach of the procedural rules contained in Article 93(3) of the Treaty.

Those aid schemes are, furthermore, incompatible with the common market under Article 92 of the Treaty and must be abolished where they fail to comply with the maximum rates of 35 % or 75 % in the less-favoured areas defined in Articles 21 to 25 of Regulation (EC) No 950/97.

Article 2

1. Italy shall recover the aid granted under Regional Law No 44/89 as amended by Law No 57/92 where it exceeds the maximum rates of 35 % or 75 %, respectively:

- (a) in the mountainous and less-favoured areas within the meaning of Directive 75/268/EEC in the case of aid granted up to 9 June 1997;
- (b) in the less-favoured areas defined in Articles 21 to 25 of Regulation (EC) No 950/97 in the case of aid granted after 9 June 1997.

2. Aid granted in excess of the abovementioned maximum rates shall be recovered within two months of the date of notification of this Decision. Recovery shall be made in accordance with the procedures and provisions of national law.

Amounts to be recovered shall bear interest from the date on which each aid is granted. Interest shall be calculated on the basis of the commercial rate, with reference to the rate used to calculate the subsidy equivalent for regional aids.

Article 3

Italy shall inform the Commission, within two months of the date of notification of this Decision, of the measures it intends taking to comply with it, and within three months of its date of notification of the measures actually taken to comply with it.

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels, 17 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION DECISION

of 17 March 1999

under the provisions of Council Regulation (EC) No 3286/94 concerning the
Brazilian non-automatic import licensing system and its operation

(notified under document number C(1999) 607)

(1999/234/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 (WTO) ⁽¹⁾, as amended by Regulation (EC) No 356/95 ⁽²⁾, and in particular Articles 13 and 14 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

- (1) On 12 January 1998 the Commission received a complaint pursuant to Article 4 of Council Regulation (EC) No 3286/94 (hereafter the 'Regulation'). The complaint was lodged by Febeltex (Fédération belge du textile — Belgian Textile Federation).
- (2) The complainant alleged that the Brazilian non-automatic import licensing and in particular its enforcement through the imposition of compulsory payment terms and compulsory minimum prices are inconsistent with several provisions of the Agreement establishing the World Trade Organisation (hereafter 'the WTO Agreement') and its annexes. On that basis the complainant asked the Commission to take the necessary actions to convince Brazil to repeal these measures.
- (3) The complaint contained sufficient *prima facie* evidence to justify the initiation of a Community examination procedure pursuant to Article 8 of the

Regulation. Consequently, such procedure was initiated on 27 February 1998 ⁽³⁾.

- (4) Following the initiation of the examination procedure the Commission conducted an in-depth legal and factual investigation into the Brazilian import licensing system as applied to textile products. Based on the findings of this investigation the Commission reached the conclusions which are indicated below.

B. FINDINGS REGARDING THE EXISTENCE OF AN OBSTACLE TO TRADE

- (5) The investigation established that the Brazilian system is a licensing system within the meaning of Article 3(1) of the WTO Agreement on import licensing procedures (ILP) and should therefore comply with the rules laid down by this Agreement as well as by GATT 1994.
- (6) The relevant Brazilian legislation concerning the non-automatic import licensing system is composed of:
 - *Decreto* 660, of 25 September 1992 (which established the *Sistema Integrado de Comércio Exterior*, Siscomex),
 - *Portaria Interministerial* 291 (Ministry of the Treasury/Ministry of Industry and Trade), of 12 December 1996 (concerning the processing of import operations by means of the Siscomex),
 - *Portaria Secex* 21, of 12 December 1996 (concerning the implementation of import operations by means of the Siscomex, including price control) and
 - *Comunicados Decex* listing the goods subject to non-automatic import licensing, which have been consolidated by *Comunicado Decex* 37 of 17 December 1997.

However, the Brazilian system is very flexible: new products can be added to the list of those for which a non-automatic import license is required by simple decision of the Ministry of Industry, Trade and Tourism.

⁽¹⁾ OJ L 349, 31. 12. 1994, p. 71.

⁽²⁾ OJ L 41, 23. 2. 1995, p. 3.

⁽³⁾ Notice of initiation of an examination procedure concerning an obstacle to trade, within the meaning of Council Regulation (EC) No 3286/94, consisting of trade practices maintained by Brazil in relation to trade in textile products (OJ C 63, 27. 2. 98, p. 2).

- (7) The Brazilian licensing system is operated via a computerised instrument called Siscomex. The granting of import licenses for imports of textile products originating in the Community is directly linked to a set of compulsory minimum prices and compulsory payment terms. Should these date of an import declaration not be in accordance with those decided and included by the Brazilian authorities in the Siscomex, applications for import licences are not processed and the importer is asked to contact the local agency of the Foreign Trade Department of the Ministry of Industry, Trade and Tourism (Decex).
- (8) The Brazilian legislation introducing this system does not include any indication of the measure being implemented through the licensing procedure. The Commission services have found the existence of internal administrative rules or guidelines concerning compulsory payment terms and minimum import prices that are used in the administration of Brazil's import licensing system. Such rules are not published. As a consequence, governments and traders cannot become acquainted to them. Furthermore, there is no possibility of appeal against such unofficial regulations.
- (9) When Siscomex does not process import licence applications which do not comply with the requirements on payment terms and minimum prices, no formal decision is taken on the importer's application. It remains indefinitely pending.
- (10) The Brazilian system does not appear to serve to the implementation of any GATT compatible measure, its sole function being the application and administration of import procedures as trade policy tool in order to restrict flows of imports of textile products into Brazil. The examination also demonstrated that this system allows Brazilian authorities to decide in a discretionary and arbitrary manner on the basis of unofficial and not published grounds, the non-granting of import licences. By imposing compulsory payment terms and minimum prices as conditions for the issuance of the licence, Brazil has substantially restricted imports of certain textile products originating in the Community and has discouraged a large number of possible clients for Community producers.
- (11) Brazil has not yet notified part of the relevant legislation (*Comunicado Decex 37*, of 17 December 1997); the remaining part has been notified with a delay of more than one year, only after the initiation by the Commission of the present examination under the Regulation and in this notification some essential information was omitted (for example: the list of products subject to licensing procedures).
- (12) Under these circumstances the Commission considers that the complainant's allegations are well founded and that the Brazilian practices constitute an obstacle to trade within the meaning of Article 2(1) of the Regulation, as they are contrary to the following provisions:
- Article X.1 and XI.1 of the GATT,
 - Article 1(3), 3(2), 3(5)(f) and 5 of the WTO Agreement on import licensing procedures.
- (13) The Commission nonetheless considers that reference to the above legal bases does not rule out recourse to any other pertinent provision of the WTO Agreement and of the Agreements annexed to it, which could be of use in procedures before the WTO.

C. FINDINGS REGARDING ADVERSE TRADE EFFECTS

- (14) The Commission investigation highlighted the enormous potentiality of the Brazilian market for the highly competitive products exported by Community producers. In this regard, the main findings on the adverse trade effects caused by the challenged practices indicate that Brazil's non-automatic import licensing system represents a significant restriction to access the Brazilian market for several Community textile products.
- (15) The investigation covered products contained within Chapters 50 to 63 of the Combined Nomenclature and revealed that the effects of the Brazilian system vary from one sector of products to another. Generally speaking, notwithstanding the great potential of the Brazilian market, Community textile exports to Brazil registered no significant increase between 1996 and 1997, especially when compared to those reported on other similar South American markets.
- (16) In particular, the introduction of the non-automatic import licence system and the way it is implemented through the compulsory payment terms and the imposed minimum price has already caused in 1997 (and, in some cases, in 1996) a decrease of exports of certain European Union textile products, such as mattress ticking (CN codes: 5516 23 10; 5210 49 00), webbing (CN code: 5806 32 10), bedspreads (and related products) (CN codes: 6302 32 90), knitted synthetic fabrics for curtains (CN code: 6002 43 11), technical fabrics for casual wear (e.g. lyocell, elastan) (CN code: 5516 13 00) to Brazil.

(17) The challenged Brazilian practices have caused an important loss of competitiveness in the Brazilian market for Community exporters of certain textile products. Such loss of competitiveness has been particularly drastic in those sectors, such as mattress ticking, curtain fabrics or webbing, that are subject to minimum import prices.

(18) The introduction of the contested measures has led in many cases to a significant loss in the number and importance of Brazilian clients as well as in the number and importance of the orders received or confirmed.

(19) The requirement of minimum prices has also led to a substantial reduction in the range of products that may be exported to Brazil. In other words, products whose export price is far too low, in comparison with the compulsory minimum price required, can no longer be exported because it would no longer be competitive at the higher price. Significantly enough, this consequence often takes place in relation to low price products, for which there is higher local competition. Accordingly, the Brazilian importer will turn to buy the Brazilian product, which, if it were not for the imposition of compulsory minimum prices, would be more expensive than the equivalent Community textile product.

(20) A further adverse trade effect caused on Community producers/exporters of textile products is the need to change the technical specification or composition of a product. This change is required by the need to comply with the required minimum prices. A change in the technical specification of the product will in some cases be the only way to obtain a product whose price meets the required minimum one and that it is still economically viable. In this regard, the Commission services have been provided with examples where, in the case of mattress ticking, the percentage of cotton, rayon, polyester, etc. in a product had to be altered, e.g. by using a new raw material (such as rayon) or by using a new raw material which results in a different weight per square metre (such as polypropylene).

(21) The use of Brazil's non-automatic import licensing system as a trade policy tool to control trade flows has resulted, in some textile sectors, in a complete alteration of the market conditions which in some cases has led to an almost closing of the Brazilian market to Community textile exporters. As an

example, the minimum import price of USD 20/kg imposed by the Brazilian authorities on imports of jacquard mattress ticking under CN code 5516 23 10 is more than the double of the normal sale price of this product (i.e. to USD 8 to 11/kg). Such an increase of price has caused an important loss of competitiveness in the Brazilian market for Community exporters of this home textile product

(22) Therefore, the Commission concluded that the abovementioned effects do constitute adverse trade effects within the meaning of Article 2(4) of the Regulation.

D. COMMUNITY INTEREST

(23) In the last couple of years, European exporters and producers have lodged three cases against Brazilian practices having restrictive effects on Community exports of different products (steel plates, textiles, and sorbitol). These measures seem to be directed at specific sensitive sectors, in a non-transparent way, and through a very flexible decisional process. For this reason, it is of major importance for the Community to tackle in a comprehensive way the Brazilian system.

(24) Moreover, ensuring that WTO partners fully comply with their obligations is of the utmost importance for the Community, which has committed itself to the same obligations. It is fundamental for the good functioning of a multilateral trade system to consistently tackle all allegedly WTO incompatible practices.

(25) As regards the Febeltex case, given the importance of the textile industry for the Community as a whole and the need to ensure a fair access to third country markets for Community textile products, the Community should immediately challenge the Brazilian non-automatic licensing system, pursuant to the relevant provisions of the Agreement on import licensing procedures, GATT 1994 and the WTO Dispute Settlement Understanding.

E. CONCLUSIONS AND MEASURES TO BE TAKEN

(26) Meetings have been held and letters have been exchanged with the relevant Brazilian authorities to discuss this matter further aimed at finding an amicable solution, but the Brazilian authorities did not forward any proposal in view of such solution.

(27) In these circumstances, it appears that the interests of the Community call for initiation of WTO dispute settlement proceeding,

2. The Community will commence action against Brazil under the Understanding on the rules and procedures for the settlement of disputes and other relevant WTO provisions with a view to securing removal of the obstacle to trade.

HAS DECIDED:

Article 1

1. The Brazilian non-automatic licensing system, compulsory minimum prices and compulsory payment terms appears to be inconsistent with the obligations of that country under the Marrakech Agreement establishing the World Trading Organisation and constitutes an 'obstacle to trade' within the meaning of Article 2(1) of Regulation (EC) No 3286/94.

Article 2

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

Done at Brussels, 17 March 1999.

For the Commission

Leon BRITTAN

Vice-President
