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Legislation

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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 119/97

of 20 January 1997

imposing definitive anti-dumping duties on imports of certain ring binder mechanisms originating in Malaysia and the People's Republic of China and collecting definitively the provisional duties imposed

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁽¹⁾, and in particular Articles 9 and 23 thereof,

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

Whereas:

- (5) Parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties and the definitive collection of amounts secured by way of provisional duties. They were also granted a period within which to make representations subsequent to this disclosure.
- (6) The oral and written comments submitted by the interested parties were considered, and, where deemed appropriate, taken into account in the Commission's definitive findings.

I. PROVISIONAL MEASURES

- (1) By Commission Regulation (EC) No 1465/96⁽²⁾ (hereinafter referred to as the provisional duty Regulation) provisional anti-dumping duties were imposed on imports into the Community of certain ring binder mechanisms falling within CN code ex 8305 10 00 and originating in Malaysia and the People's Republic of China.

II. SUBSEQUENT PROCEDURE

- (2) Following the imposition of the provisional anti-dumping measures, certain interested parties submitted comments in writing.
- (3) Those parties who so requested were granted an opportunity to be heard by the Commission.
- (4) The Commission continued to seek and verify all information deemed necessary for its definitive findings.

III. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

- (7) For the purpose of its preliminary findings, the Commission considered ring binder mechanisms (hereinafter referred to as RBM) produced and sold in the Community, RBM produced and sold in Malaysia, and those exported to the Community from Malaysia and the People's Republic of China as 'like products', within the meaning of Article 1 (4) of Regulation (EC) No 384/96 (hereinafter referred to as the basic anti-dumping Regulation), because they are either identical or have characteristics closely resembling each other.
- (8) One importer, also a producer of the downstream product (that is, manufacturer of ring binder files and other stationery products) reiterated arguments it had made previously, namely that mechanisms with 17 and 23 rings are not like products in relation to 'standard' two- to four-ring mechanisms and should, therefore, be excluded from the scope of the proceeding.
- (9) In support of its claim, the importer argued that only mechanisms with two to four rings were mentioned in the complaint, leaving aside 17- and

⁽¹⁾ OJ No L 56, 6. 3. 1996, p. 1.

⁽²⁾ OJ No L 187, 26. 7. 1996, p. 47.

23-ring mechanisms from the list of allegedly dumped products.

Although it is true that, in the calculations set out in the complaint as *prima facie* evidence of dumping and resulting injury, only models with two to four rings were used as examples, it should also be recalled that, in the product description outlined in the complaint, all ring mechanisms, with two rings or more, were included. In this respect, it should be noted that RBM with e.g. six, 13 or 16 rings are sold on the Community market.

- (10) It has been argued that, in addition to the number of rings, 17- and 23-ring mechanisms have distinguishing physical characteristics, in particular higher base length and width, which make them more wear resistant than other mechanisms, and therefore significantly different.

Following an examination of this issue, it was found that variations, if any, could be considered comparable to the ones already existing among the different models of two- or four-ring mechanisms themselves. Therefore, it is considered that there is no other significant physical difference than the number of rings between 17- to 23-ring mechanisms, on the one hand, and other ring mechanisms, on the other hand.

- (11) It has been further argued that the manufacturing methods used and the costs of production of 17- and 23-ring mechanisms differed significantly from those relating to other mechanisms.

It should be noted that the operations and the machinery necessary to manufacture the rings, fix them to the blades and assemble the blades into the mechanism's cover are essentially the same for all types of RBM. The higher content of raw materials and the ring fixing operation which has to be repeated in the case of 17- and 23-ring mechanisms cause a difference in production costs. However, this difference, although significant, is not out of proportion to those observed between small and large types of mechanisms with fewer rings. Therefore, the particular manufacturing operations, if any, and the resulting costs relating to 17- and 23-ring mechanisms are not such as to alter their similarity to other mechanisms. In any event, with regard to differences in the manufacturing process that may have been used, following consistent practice of the Community institutions, all such differences are irrelevant in the analysis of the like product.

- (12) It has also been alleged that mechanisms with 17 or 23 rings were expensive enough for them to be

considered as belonging to a separate market segment.

Although a significant price difference between mechanisms with 17 or 23 rings and similar mechanisms with fewer rings could be established, it is considered that given the similarity in use and customer, substitution effects could take place if the products were to experience sufficiently diverging price evolutions. It should therefore be concluded that the market segment for mechanisms with 17 or 23 rings does not possess sufficiently separate characteristics to be excluded altogether from the scope of the investigation.

- (13) It was argued that differences also arose in the use of binders with different mechanisms. Whereas binders with 'standard' mechanisms are allegedly primarily aimed at paper where the customer himself punches holes, binders with 17- and 23-ring mechanisms are used to collect pre-punched paper due both to the price of the special hole puncher and the few pages it can punch at a time.

However, it should be noted that certain types of binders such as organizers or catalogues, using ring mechanisms with two to six rings covered by this proceeding, also use pre-punched paper already inserted in the finished product, or pre-punched additional pages, and that punchers for some of these are not necessarily available to the customer. In addition, pre-punched paper for two- to four-ring mechanisms is available and sold in significant quantities in the Community, in particular for school use (which is also the main market for the 17- and 23-ring mechanisms). It can therefore be concluded that 17- and 23-ring mechanisms have a similar use as other types of mechanisms.

- (14) It was also argued that lever arch mechanisms which fall within the same CN code as RBM and are excluded from the scope of this proceeding, are more similar to two-ring mechanisms than 17- and 23-ring mechanisms.

In this respect, the physical characteristics and the market for lever arch mechanisms were found to be sufficiently distinct from those of ring mechanisms to justify these lever arch mechanisms being excluded from the complaint and from the scope of the proceeding.

- (15) Following an examination of the arguments put forward, it is confirmed that 17- and 23-ring binder mechanisms have characteristics closely resembling those of other RBM, and are therefore like products to other RBM within the meaning of Article 1 (4) of the basic anti-dumping Regulation. Accordingly, the above claim is rejected.

IV. DUMPING

B. Malaysia

A. Market economy third country

- (16) At the time of initiation, one importer had objected to the choice of Malaysia as analogue market for the establishment of normal value with respect to the People's Republic of China. As his arguments were not substantiated nor any alternative country was proposed, the Commission notified this interested party on 22 November 1995 that his objections had to be rejected. In a letter which reached the Commission on 27 November 1995, the same importer proposed to use cost of production of an Italian producer, which was not part of the Community industry, for the establishment of normal value in the People's Republic of China.

Since this letter was received 20 days beyond the deadline set out in the Notice of Initiation, the suggestion could not be taken into account. After having disclosed the essential facts and considerations underlying the imposition of provisional measures, the importer repeated his arguments. Although the request was made beyond any time limit applicable to the selection of a market economy third country, the Commission examined whether a change in methodology would have an impact on the level of the duty. For this purpose, and given the fact that the cost of production of one single producer could not be considered representative for the situation of other Community producers, the Commission interpreted the claim as a request to use the Community as analogue market for the establishment of normal value for the exports from the People's Republic of China. The Commission then compared the target prices established for the Community industry (its actual prices being below cost of production) of an average-to-average basis with the Chinese export prices. This dumping calculation showed that adopting this methodology would have no impact on the level of the duty finally proposed by the Commission since, under either method, the dumping margin found clearly exceeded the injury elimination level finally established.

Given the above considerations and taking into account that, in accordance with Article 2 (7) of the basic anti-dumping Regulation, if appropriate, a market economy country subject to the same investigation could be used, the Commission concluded that the selection of Malaysia was not unreasonable for the establishment of normal value and that there was no reason to change this choice of analogue country.

1. *Normal value*

- (17) One importer argued that the Malaysian domestic sales, representing 5,8 % of quantities exported to the Community, were not sufficiently representative for the establishment of normal value. In this respect, the Commission applied Article 2 (2) of the basic anti-dumping Regulation, according to which a domestic sales volume of 5 % is considered as a sufficient quantity, for the representativeness of the domestic market.
- (18) It was also argued by the same importer that there is only a limited competition on the Malaysian market and that consequently domestic prices are higher than they would be under normal competitive conditions. The Commission had already looked into that matter when selecting Malaysia as an appropriate analogue country and addressed the argument in recital 10 of the provisional duty Regulation. As no new argument nor evidence was put forward, the Commission confirmed that a certain degree of competition on the Malaysian market is warranted by the presence of RBM originating in the People's Republic of China. Therefore, it could be concluded that Malaysia is a reasonable choice for the establishment of normal value in the People's Republic of China.

2. *Dumping margin*

- (19) No other arguments having been presented which could lead to a modification of the dumping determination, the Commission considers that the methodology of the dumping calculation and the provisional findings as described in recitals (18) to (26) of the provisional duty Regulation are to be confirmed. Consequently, the dumping margin for Malaysia is definitively established at 42,8 %.

C. People's Republic of China

1. *Normal value*

- (20) Two Chinese exporters claimed an adjustment to normal value because of difference in the cost structure due to low labour costs in the People's Republic of China and differences in the technology of the production operations.

As far as labour costs are concerned, the Commission services note that the reason for using a third market economy country is the lack of reliable cost and price information in the non-market economy country concerned. Therefore, it is groundless to argue that certain costs are lower in the non-market economy country than in the analogue country and that adjustments to normal value should be made, when applying this normal value to the non-market economy country.

With respect to the different technology, the Commission services consider that the production process employed to manufacture a particular product is irrelevant as long as the physical characteristics and use of the product are similar. In this case, the alleged differences did not lead to any significant differences in the essential physical characteristics of the product concerned. Therefore, in accordance with Article 2(10)(a) of the basic anti-dumping Regulation, the claim had to be rejected.

- (21) Two interested parties argued that they were not able to comment on the Commission's calculation of normal value, as the absolute figures regarding the calculation of normal value established in the analogue country were not disclosed to the Chinese exporters, on the grounds of confidentiality. In its disclosure letter to these parties, the Commission had attached all calculation sheets relevant for these companies and set out in detail the methodology applied by the Commission for the establishment of normal value, due regard being given to the protection of confidential information, in accordance with Article 20(4) of the basic anti-dumping Regulation. The disclosure of the detailed absolute figures would violate the legitimate right of an interested party to confidential treatment and was not necessary for the understanding of the calculation. Therefore, the argument could not be accepted.

2. Export price

- (22) One exporter claimed that excessive amounts were deducted from the export price for deferred rebates found at the related importer's premises.

The Commission notes that this company, in replying to the Commission's questionnaire, had failed to report such rebates, which were found by the Commission's officials during the on-the-spot investigation. Therefore, the Commission had to determine the deductions on the basis of the data collected there. Moreover, the exporter's claim refers to an estimated figure of such rebates, whereas the amounts actually deducted by the Commission were those verified in the investigation.

- (23) One exporter claimed that the margin of profit deducted by the Commission was too high, in comparison with the actual net profit realized by its related importer.

Due to the association agreement between the two companies, the Commission could not take into

account for the construction of a reliable export price the profit margin shown in the related importer's accounts. In line with the Commission's practice, it was considered reasonable to use actual data of independent companies importing the product concerned into the Community. In determining the profit margin normally achieved by these companies, only the product concerned was taken into account. Therefore, the 7,8 % profit margin does not include any profit margins achievable on stationery products other than RBM. The determination of the profit margin was made on the basis of the independent importers' data which were verified at their premises, due account being taken of their different sale volumes.

3. Comparison

- (24) Two interested parties enquired about and partly disputed the level of trade adjustment which the Commission took into account, to compare the Malaysian Normal Value and Chinese export prices. One party claimed that such allowance should have been more substantial.

The Commission notes that none of the exporters concerned had ever claimed such an allowance during the different phases of the investigation and that the Commission considered on its own initiative that, in view of a fair comparison, it was appropriate to grant it in this case. In the absence of any specific evidence provided by any of the exporters concerned, the Commission considered it appropriate, in order to determine the amount of such an allowance in a reasonable way, to base its calculation on its practice in similar situations.

4. Individual treatment

- (25) World Wide Stationery (hereinafter referred to as WWS), which had at a very early stage applied for individual treatment, reiterated its request after the imposition of provisional measures.

After a further evaluation of the facts, the Commission services concluded, after verification in Hong Kong, that individual treatment could be granted to this company, in view of the substance and implementing modalities of the production agreement between WWS and the representatives of the local authorities in the People's Republic of China. According to this agreement, the company based in Hong Kong seemed to master the production operations in the People's Republic of China, since it only paid to the local Chinese authorities a transformation fee per ton for the products exported. The machinery used in the operations in the People's Republic of China was owned by WWS

and appeared as assets in its financial accounts. WWS also seemed to be in control of the supply of raw materials as well as of all sales of the product concerned. In these circumstances, it was considered appropriate to establish for WWS an individual dumping margin and to determine an individual anti-dumping duty.

- (26) The related companies Champion Stationery Manufacturing CO., Ltd and Sun Kwong Metal Manufacturer CO., Ltd, considered by the Commission as one single company for the reason explained in recital 5(b) of the provisional duty Regulation, did not reiterate their request of individual treatment and did not submit any further argument in this respect after the imposition of provisional measures. Therefore, the Commission confirms its provisional findings as reported in recitals (37) to (39) of the provisional duty Regulation, by which the request of individual treatment had been rejected.
- (27) In its reply to the final disclosure, Bensons criticised in the name of Wah Hing Stationery (hereinafter referred to as WHS) Hong Kong that WWS alone should benefit from individual treatment. It alleged that WHS would have also fulfilled the conditions set by the Commission for individual treatment and would therefore also be eligible for this treatment. The Commission, however, notes that WHS did not ask for individual treatment within the specified time limits, and only raised the question of individual treatment at a very late stage of the investigation. Thus, the Commission was not in a position to verify, with regard to WHS, the substantive conditions applicable, in view of the statutory deadlines applicable to this proceeding. Consequently, the Commission was unable to propose individual treatment for WHS.

5. *Dumping margin*

- (28) The Commission considers that the methodology of the dumping calculation and the provisional findings as described in recitals (27) to (36) of the provisional duty Regulation are to be confirmed.

WWS's individual dumping margin amounts to 96,6 %. The definitive dumping margin for the other exporters of the People's Republic of China as a whole amounts to 129,22 %.

V. COMMUNITY INDUSTRY

- (29) As regards the Community industry, the treatment of imports from Hungary made by one EC producer, including the issue of the non-preferential rules of origin, has been questioned by several

exporters and one importer, without, however, their claims in this respect being substantiated.

As explained in recital (43) of the provisional duty Regulation, the Commission accepts the fact that a majority of the products in question clearly originate in Hungary: this is the case, for instance, when all parts used come from Hungary and/or substantial processing takes place there. Accordingly, these products were excluded from the Community production, and, consequently, played no role in the definition of the Community industry. Sales of these products (which are, in fact, made in Hungary) have indeed not been taken into account amongst the sales of the Community industry when assessing the injury this industry suffered.

Conversely, products merely assembled in Hungary from Austrian parts were considered part of Community production, since the assembly operation which the products had undergone in Hungary did not confer Hungarian origin on the finished products. This determination was based on the non-preferential rules of origin applicable, as it is the Community institutions' practice to base in principle their conclusions in anti-dumping investigations on these rules. The use of the preferential rules of origin set out in Article 1 of protocol 4 to the EU-Hungary Association Agreement would be neither appropriate nor warranted in the context of an anti-dumping proceeding.

- (30) In conclusion, the finding in the provisional duty Regulation that the two complainant Community producers constitute the Community industry in accordance with Article 4(1) of the basic anti-dumping Regulation is confirmed.

VI. INJURY

A. Preliminary remark

- (31) As regards the methodology used for the establishment of injury, set out in recital (46) of the provisional duty Regulation, it should be recalled that the Commission analysed data relating to the period 1992 to September 1995, and the geographical scope of the investigation over this period was the Community as composed at the time of the initiation i.e. including all fifteen Member States.
- (32) Several exporters repeated the argument, which the Commission had already addressed in recital 46 of the provisional duty Regulation, that, for the purpose of determining injury, data relating to the Austrian industry can only be taken into account insofar as they relate to the period after 1 January 1995, when Austria became a Member of the Euro-

pean Union. One exporter argued that the combined provisions of Articles 3(4) and 4 of the Agreement on Implementation of Article VI of GATT 1994 would exclude non-member countries from the definition of the domestic industry, and several exporters argued that neither Article VI of GATT 1994, nor the EEA Agreement, would justify the Commission's decision to establish injury relying, in part, on data concerning Austria and relating to the period between January 1992 and December 1994.

In addressing this argument, it should be noted that the Agreement on Implementation of Article VI of GATT 1994 requires that any imposition of measures on a given territory be based on a formal investigation into the effects of the alleged dumping within the same territory. Thus, the investigation carried out in this case covered all fifteen Member States. This was made possible in particular given the integration of the market subject to the analysis prior to the enlargement of the Community.

It is confirmed, therefore, that the Austrian producer has been rightly considered as part of the Community industry (as defined in accordance with Article 4(1) of the basic anti-dumping Regulation) and as being entitled to act as complainant. For this reason, it is confirmed that, in order to assess the injury suffered, trends had to be established for the Community industry as defined at the time of initiation of this proceeding, over a number of years.

B. Community consumption

- (33) On the basis of estimates for the annual per head consumption of binders, one importer argued that the consumption of RBM on the Community market was 400 million units and not 283 million units as stated in the provisional duty Regulation.

It should be recalled that the Commission based its provisional findings on the information received from the exporters, importers and Community producers. Due to the high level of cooperation in this case, the data for all major companies present on the market have been analysed, no party being able to give indications on a producer/importer which would have been overlooked during the investigation period and whose sales could explain the difference between the Commission's evaluation and the different alleged market size. It is therefore considered that the data obtained from the companies in this case offer a more accurate base for the calculation of the Community consumption than a mere estimate based on per-head consumption rates. Therefore, the findings set out in recital (47) of the provisional duty Regulation are confirmed.

C. Factors and considerations relating to the dumped imports

- (34) One exporter submitted that a quality difference should be taken into account in order to ensure a fair comparison between its export sales of the like product in the Community and sales by the Community industry. The exporter claimed that it produces RBM with a narrower base which are allegedly some 12 to 17,5 % cheaper than the wide base mechanisms sold by the complainants. The exporter concerned claimed that this should be taken into account in the form of adjustments when calculating the degree of price undercutting.

Having examined the exporter's allegation, the Commission has verified that only models with similar width (within 1 mm difference) were compared, and found that, in any event, no consistent price differences could be established between mechanisms with different widths. For these reasons, the findings outlined in recitals (52) to (54) and the methodology described at recital (84) of the provisional duty Regulation are confirmed.

D. Situation of the Community industry

- (35) One exporter argued that the Community industry's negative trends on production, sales and employment were caused by the progressive relocation of a former British producer to the Far East.

It should be noted that, as the producer in question ceased its manufacturing operations in the Community in 1991, it has not been included in the definition of the Community industry for the purpose of this proceeding, and the injury indicators established in this case do not rely on its data. Consequently, this argument was rejected.

- (36) No additional substantiated arguments have been presented in relation to the findings set out in recitals (55) to (62) of the provisional duty Regulation.

E. Conclusion on injury

- (37) In the light of the above and in the absence of other arguments, it is confirmed that the Community industry has suffered material injury within the meaning of Article 3 of the basic anti-dumping Regulation.

VII. CAUSATION

- (38) One exporter argued that the injury suffered by the Community industry was due to the restructuring it had undergone.

As explained in the provisional duty Regulation, and in particular in its recitals 61 and 65, the actual situation shows rather that the Community industry has been prevented from benefiting from its restructuring since, in the face of the dumped imports, it could neither achieve positive financial results nor obtain stability of market share. It is therefore considered that the injury suffered has not been caused by the Community industry's restructuring, and this argument was, for this reason, rejected.

- (39) The same exporter reiterated its argument that the injury suffered by the Community industry was caused by the partial shift to Hungary of one of the Community producer's operations.

As no new evidence substantiating this allegation has been submitted, the findings set out in recital (71) of the provisional duty Regulation are confirmed.

- (40) The allegation that the injury suffered is resulting from past anti-competitive practices which had been put forward before the provisional duty Regulation, has been reiterated by a number of parties.

The parties making these allegations did not provide any evidence in this respect, and it should be recalled that no complaint has been lodged with any competition authority within the Community. For this reason such an allegation could not be taken into account.

- (41) In conclusion, as no new arguments were received in connection with the findings in recitals (67) to (74) of the provisional duty Regulation, these findings are confirmed.

VIII. COMMUNITY INTEREST

A. General

- (42) It should be recalled from recital 75, *et seq.*, of the provisional duty Regulation that an appreciation of all the various interests, including the interests of the Community industry and users, was made, and that the Commission provisionally concluded that there were no compelling reasons not to take action against the imports in question. Subsequently, a further examination of matters deemed relevant in analysing the issue of Community interest took place.

B. Impact on users

1. Introduction

- (43) Several interested parties reiterated their arguments, presented in recitals (77) to (80) of the provisional

duty Regulation, that anti-dumping measures would affect the situation of EC binder manufacturers.

2. Information collection

- (44) The conclusions set out below are based on submissions received from a variety of interested users, twenty seven companies overall, the quantitative data existing or being meaningful for nine of these which represented 17 % of the annual apparent Community consumption of RBM. The reliability of this data, where possible, was verified during company visits.

3. Industrial impact of the downstream industry

- (45) In establishing the size of the downstream industry which could be affected by measures on RBM, the part of the stationery companies dealing with office products other than binders should be excluded. On the basis of the annual Community binder production and of the productivity ratios found in the submissions, it is considered that the employment in the Community binder industry amounts to 6 000 employees.
- (46) As to the structure of the binder industry, the existence of two categories of products, standard and custom made, was established. On the basis of the productivity level for these two categories, and on the market shares of the users concerned, it is considered that the custom-made binder business represents one third of the Community binder industry in volume and 50 % of its total turnover.

- (47) Some parties argued that anti-dumping measures on RBM would exclude the imported RBM from the Community market, so that the sources of supply would be reduced to the two Community producers. It has been further argued that, due to the large size of one of the two Community producers, the supply market could become a monopoly in the near future. It should be noted, however, that the difference in size of the two Community producers is limited and not such as to lead to the disappearance of one of them being likely. Moreover, no new evidence in respect of the first part of this argument was received. The findings set out in recital (78) of the provisional duty Regulation are therefore confirmed.

4. Direct financial impact on the downstream industry

- (48) First, it has been alleged that for certain particular types of binders, the RBM was the source of up to 30 % of the manufacturing cost of a binder.

In this respect, it was found that the mechanism is a major component of a finished binder, and that the number of rings and size have a strong influence on its proportion of the cost of the finished binder. Given this variety, it is considered that a meaningful analysis of the cost influence of the RBM could not be based on any particular model of binder, but should be done on a global basis for each company, taking into account the actual product mix of its sales.

It was therefore considered that the total cost for the RBM supply for a given company should be examined in the light of the total value of its binder sales. This resulted in a weighted average ratio of 10,8 % (cost ratio), which was fairly homogeneous for the companies examined. Although differences existed between companies dedicated to the production of standard binders in comparison with others dedicated to custom-made production, no company showed, on average, a ratio higher than 13 %.

- (49) As far as the possible price impact of the RBM on standard made products is concerned, one submission received after the final disclosure refers to a 14,4 % cost ratio. This is allegedly derived from the fact that the price of a custom-made binder is twice as high as that of a standard made binder, and that the cost ratio for them should therefore be half of the one for standard made.

This approach totally neglects the fact that these two categories of binders are not necessarily manufactured with the same mechanisms. Special types of mechanisms, in small series, are expensive and used in custom-made binders. This means that both terms of the cost ratio are different, and that although the cost ratio for standard made binders is higher than the one for custom-made binders, it is not twice as high. As explained in recital (48) above, no higher cost ratio than 13 % could be found. Furthermore, some companies are exclusively dedicated to standard made products.

- (50) Secondly, and partly on the basis of the abovementioned allegation on the cost ratio, it has been alleged that the imposition of anti-dumping measures would have a serious adverse impact on the financial situation of the binder manufacturers.

These allegations concerning the foreseeable impact of measures have been examined in detail. As far as selling prices for RBM are concerned, it is likely that the Community industry, with a 35 %

market share, would not be able to increase its prices above a certain limited level, (which can be estimated below 10 %), without running the risk of strengthening its current downward trend in respect of market share. In addition, imports from countries not concerned by this proceeding represent 9 % of the RBM market, and it is expected that these producers will not be willing or able to command price increases. As for the imports from Malaysia, it should be recalled that the injury elimination level foreseen for this country is considerably lower than for the People's Republic of China. The market share of mechanisms with Chinese origin being 45 %, it was established that even if these mechanisms were to experience a 20 % price increase at resale level and those originating in countries other than the People's Republic of China the price increases assumed in this paragraph, the average price increase on the market as a whole would be an estimated 12 %.

Consequently, in view of the average cost ratio established in recital (48), it is considered that the overall impact on the turnover likely to be experienced by the binder industry following the imposition of measures would be 12 % of 10,8 %, i.e. 1,3 %. Even in the unlikely event of a full reflection of the highest anti-dumping duty proposed in the RBM resale price, i.e. 39,4 % on CIF or 29,9 % at RBM resale level, an impact of not more than 3,2 % on the binder producers' selling prices can be foreseen.

- (51) It has also been argued that the increased costs for binders could not be reflected in price increases of the final product due to the binder offer exceeding the market demand, to the changes in the binder distribution and to the fear of reduction in demand.

In the light of the fact that the average binder price increase which would take place at a retail or business customer level would be below 1 % (see recital (50), where ex-factory price increase for binders is estimated at 1,3 %), it is considered that no significant contraction in demand is likely to be caused and that the impact, if any, on the situation of the consumers of the binders will be minimal. In addition, it should be noted that substitutes for binders which would be in such a competitive situation that they would replace them following the slightest price evolution do not appear to exist. Some companies in the binder business have even confirmed that no change of the pattern of consumption could be foreseen in the next five to 10 years.

It is concluded, therefore, that neither the relatively strong competition amongst binder producers nor the emergence of substitute products within the EC are likely to prevent the binder producers from increasing their prices in line with their costs, in consideration in particular of the limited size of the increase needed to reflect the impact of the anti-dumping duties of the magnitude proposed.

5. Competition from third countries

- (52) Several interested parties reiterated their arguments, outlined in recital (79) of the provisional duty Regulation, that anti-dumping measures would affect EC binder manufacturers' competitive position *vis-à-vis* binder producers located in third countries. These exporters could benefit from lower mechanism costs and global supply policies of certain large standard binder distributors whose influence on the market is increasing. It was alleged that this could result in the Community downstream industry losing market share and thus being tempted to relocate its production in neighbouring countries. In addressing this allegation it should be recalled that the binder market can be divided into two segments, namely the custom-made and standard made binders.

(a) Custom-made products

- (53) It should be stressed again that, for the part of the market which is business-to-business oriented, it is fundamental that producers are situated close to the customers, and have flexibility in production in order to meet the required demand and service. Moreover, for this type of product, the impact of the RBM on the final price can be lower than the calculated average established at recital 48. It should be stressed, therefore, that the issue of the competitive position for this segment of the market is mainly relevant in terms of the existence of imported standard products for later customization. In this context, there are imports of finished polypropylene presentation products from the Far East, including the smallest binder models. As to the substitutability which could exist between these products and the custom-made binders, however, it should be stressed that a custom-made binder is not simply a standard binder with a printed logo. Custom-made binders indeed rely on a variety of different raw materials and assembling techniques used to produce a small number of totally individualized products. For public relations purposes, a switch from this particular custom-built product to

a standard binder after the mere addition of a logo would require such an important price difference that such evolution is not likely to be caused by the effect of anti-dumping measures.

(b) Standard made products

- (54) As far as the standard binder manufacturers in the Community are concerned, it has been alleged that their market was driven by the influence of binder distribution. This distribution is increasingly marked by large chains of superstores running supply policies taking advantage of the world lowest purchase price for comparable products, these policies being only limited by the transportation costs. In this respect, it was established that road transport costs over a normal distance within one Member State or between a neighbouring non-EC country and the Community would not be below 5 % of the value of the product. Over a longer distance, between non-EC countries and the Community, if maritime transport had to be used, transport costs could reach 10 % of the product value.
- (55) As a consequence of the maximum cost ratio referred to at recital (49), it is considered that the foreseeable price impact on the standard made binder industry would be limited to 13 % (standard made maximum cost ratio) times 12 % (average price increase), equal to 1,6 %.

On this basis, the analysis should distinguish between competition from Norway, the Central and Eastern European Countries (CEEC), and Far Eastern countries.

(b.1) Competition from Norway

- (56) It has been alleged that imports from Norway constituted the greatest current threat to the EC binder industry, as imports from this country were already significant and increasing.

No complaint or substantiated evidence having been submitted in respect of unfair trading practices, it would seem reasonable to consider that the EC-binder industry has ex-factory costs which are identical or similar to those of their competitors in Norway. The Commission considers that the cost increase that the EC binder producers could experience would still allow them to be competitive, since the transport costs for the EC sales of their Norwegian competitors in this case would be at least three times higher (5 %) than this foreseeable cost increase (1,6 %).

(b.2) Competition from the CEEC

- (57) The CEEC have been alleged to be in a competitive situation to build up a binder industry able to compete on the EC market.

In this respect, it should be noted that until now the size of the binder industry in these countries has remained small and the import statistics for office products show low imports. Nevertheless, neither the growth of this industry nor its comparative advantage in terms of labour costs can be denied. The reduction in the manufacturing cost which can be obtained in these countries in comparison to the Community outweighs the necessary transportation costs to the Community market.

However, it should be considered that the creation of an export-oriented binder industry in neighbouring countries would result from the relocation of EC producing operations. Although reference to business plans for a production shift to these countries has been made, the elements received by the Commission only consisted of the comparison of current labour costs and transportation costs. On this basis, even before the introduction of any anti-dumping measure on RBM, these comparisons would militate in favour of immediate relocation of the binder industry. This shows that, in taking a management decision to relocate production, a firm also weighs other important factors. In this context, the cost of shifting production facilities in themselves and, above all, the uncertainty linked with rapidly expanding countries have to be factored in.

It is considered that in such decisions to shift production to the CEEC, the possible impact of a price increase on RBM, due to its limited amount of 1,6 % on average, could play only a minor role, if any. Consequently, no compelling evidence has been received showing that the imposition of a duty on RBM would lead to the relocation of the binder industry in the CEEC and to an important surge of imports originating in these countries.

(b.3) Competition from the Far East

- (58) One exporter submitted information according to which finished binders from the Far East could be imported below their Community cost of production.

Eurostat import statistics show that imports of plastic office products originating in these countries are relatively low and stable. Accordingly, nearly all binder manufacturers in the Community,

small companies as well as important ones, minimize the competitive impact of these imports.

It is therefore considered that the competitive situation between Far Eastern and EC binder producers described above is unlikely to be altered by the imposition of measures on the Community imports of RBM.

(c) Conclusion on competition from third countries

- (59) In conclusion, it could not be established that the imposition of anti-dumping measures on RBM would be such as to affect significantly the EC binder manufacturers' competitive situation *vis-à-vis* binder producers located outside the Community. This conclusion stands both in respect of custom-made and standard made binders.

C. Impact on the Community industry

- (60) Concerning the consequences for the Community industry of an absence of anti-dumping measures, it was established at the provisional stage (recital 76 of the provisional duty Regulation) that this would lead to a further worsening of the Community industry's financial situation. The recurrent losses since 1992 would continue despite the far-reaching restructuring already carried out.

It should be added that the heavily depressed net equity situation and the amount of short-term debt would become unsustainable. From a commercial point of view, any reduction in the product range offered by the Community industry in reaction to depressed prices could be no solution. Indeed, should Community producers be tempted to do so, they would lose one of their competitive advantages and, because of a dispersed customer industry, would not be able to reach the high volumes in production and sales necessary in this type of industry. Industrially, the investments in automation have been both important and successful, resulting in a highly competitive industry at a world level. With the level of automation and integration reached, certain equipment such as metal treatment installations being unique in each company, it would not be sustainable to abandon certain product lines without worsening the situation of the remainder.

For these reasons, and as a consequence of the unfair competition from the dumped imports, production in the Community would, within a short period of time, no longer have viable prospects and would cease altogether.

D. Conclusion

- (61) In the light of the above, the conclusions drawn by the Commission in the provisional duty Regulation concerning Community interest are confirmed. Indeed, having examined a wide variety of aspects and the various interests involved, no compelling reasons have come into light which would lead to the conclusion that adopting definitive measures would not be in the interest of the Community, in accordance with Article 21 of the basic anti-dumping Regulation.

It has to be noted in this respect that the calculation method used in this case complies with the requirements of Article 9 (4) of the basic anti-dumping Regulation and with previous practice concerning the calculation of a duty lower than the dumping margin in cases where such a duty is adequate to remove the injury to the Community industry. This approach is justified by the fact that the present anti-dumping investigation covers sales of one like product within which various categories and models have been found to compete with each other.

- (64) Under these conditions, the injury elimination level methodology as set out in recitals (82) to (84) of the provisional duty Regulation are confirmed.

IX. ANTI-DUMPING MEASURES

A. General

- (62) It should be recalled that the detailed calculations used to establish the injury elimination level at the provisional stage were based on the price level, per category of models with the same specific characteristics, (based on a weighted average cost of production including profit) of the Community industry's best selling models (60 % by volume). This was then compared to the resale price of the imported products or, where appropriate, to the cif import price adjusted to customer delivered level, for each corresponding category. In order to ensure a fair comparison, only categories with the same basic characteristics were compared, and it was considered that for matching categories the duty should cover the difference between the calculated non-injurious price level and the actual selling prices of the imports into the Community. The per-category price increase thus established was then expressed as a percentage of the free-at-Community frontier price of the imported goods for each category. A single injury elimination level for each country subject to the proceeding was then established by calculating the weighted average of the per-category injury elimination level.
- (63) In this regard, one importer claimed that the Commission, by using for the comparison between the dumping margin and the injury elimination level an approach based on an average, failed to examine the different situations prevailing in the various market segments. It asked the Commission to compare, for each segment of the market (e.g. two-ring mechanisms), the injury elimination level found with the dumping margin, and to retain only the lesser margin per segment in the calculation of the final average of a single duty for all segments.

B. Level and form of the duties

- (65) Based on the above conclusions on dumping, injury, causal link and Community interest, an examination was carried out on what form and level the anti-dumping measures would have to take in order to remove the trade-distorting effects of injurious dumping and to restore fair competitive conditions on the Community RBM market.
- (66) Since the level of prices at which the injurious effects of the imports would be removed was lower than the dumping margin of both exporting countries concerned, the injury elimination level was used in order to determine the level of measures.
- (67) The granting of individual treatment to WWS was found to affect the provisional findings. The methodology described above has been applied to calculate the individual injury elimination level of this company, for which a 32,5 % injury elimination level was established.
- (68) The reduced injury elimination level for WWS resulted in an increase, from 35,4 % to 39,4 %, of the injury elimination level for all other exporters from the People's Republic of China.
- (69) On this basis, definitive anti-dumping duties, in the form of ad valorem duties, would be imposed as follows:

Rate of duty

— Malaysia:	10,5 %
— People's Republic of China:	
— WWS:	32,5 %
— Residual duty for all other companies:	39,4 %.

C. Form of the duty for mechanisms with 17 and 23 rings

- (70) It has however been submitted that the imposition of an ad valorem duty on 17 and 23 ring mechanisms, at the same rate as the one applicable to other mechanisms, was inappropriate in the light of the difference in price between these two categories.

In this context, it should be noted that the import price in respect of mechanisms with 17 or 23 rings is substantially higher than the average import price for all mechanisms. In these circumstances, in the light of the exclusive nature of some of the uses of these mechanisms and the ease with which these products can be identified, it is considered that, on balance, in calculating the injury elimination level, due consideration should be given to the particularly high price of mechanisms with 17 and 23 rings and to the intensity of competition between certain segments of the market by ensuring that it is not affected by disproportionate price discrepancies. This could be achieved by ensuring that 17 and 23 ring mechanisms are imported above a certain price level adequate, as for other RBM, to remove the injury caused by the dumped imports. In these circumstances, the setting up of measures in a form different from an ad valorem duty was considered appropriate. Based on the price comparisons which were carried out (see recital 62) it is considered that, by ensuring that the cif import price for mechanisms with 17 or 23 rings be raised at the minimum of ECU 325 per 1 000 pieces, the requirements mentioned above are fulfilled.

X. UNDERTAKING

- (71) In accordance with Article 8 (2) of the basic anti-dumping Regulation, the deadline for the representations following the final disclosure was also applicable to possible undertaking offers. The Chinese exporter which had been granted an individual treatment sent a letter shortly after this deadline indicating its willingness to offer an undertaking.

In this respect, it is considered that, due to the high number of RBM types exported by the company concerned, an undertaking in this case would be virtually impossible to set up and to monitor. No formal undertaking offer from the part of the exporter was finally received.

XI. COLLECTION OF THE PROVISIONAL DUTIES

- (72) In view of the magnitude of the dumping margins found for the exporting producers and countries, and in light of the seriousness of the injury caused

to the Community industry, it is considered necessary that the amounts secured by way of provisional anti-dumping duties for transactions involving the product concerned should be definitively collected at the level of the definitive duties.

- (73) As regards WWS, the collection of provisional anti-dumping duties should be limited to the rate of duty definitively imposed, i.e. 32,5 %.
- (74) Where it could be shown, to the satisfaction of customs authorities, that the securities were made in relation to 17- or 23-ring mechanisms, the collection of the amounts secured should be limited to the duty definitively imposed for these types of RBM, if lower than the one secured

HAS ADOPTED THIS REGULATION:

Article 1

1. Definitive anti-dumping duties are hereby imposed on imports of certain ring binder mechanisms falling within CN code ex 8305 10 00 originating in Malaysia and the People's Republic of China.

For the purpose of this Regulation, ring binder mechanisms shall consist of two rectangular steel sheets or wires with at least four half rings made of steel wire fixed on it and which are kept together by a steel cover. They can be opened either by pulling the half rings or with a small steel-made trigger mechanism fixed to the ring binder mechanism.

2. The rate of duty applicable to the net free-at-Community-frontier price, before duty, shall be as follows:

- (a) for mechanisms with 17 and 23 rings (Taric code: 8305 10 00*20) originating in the People's Republic of China and Malaysia, the amount of duty shall be equal to the difference between the minimum import price of ECU 325 per 1 000 pieces and the free-at-Community-frontier not cleared through customs price;
- (b) for mechanisms other than those with 17 or 23 rings (Taric code: 8305 10 00*10)

	Rate of duty	Taric additional code
Malaysia	10,5 %	—
People's Republic of China:		
— WWS	32,5 %	8934
— all other companies	39,4 %	8900

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

1. The amounts secured by way of provisional anti-dumping duty under Regulation (EC) No 1465/96 shall be definitively collected as follows:

(a) for the amounts secured for which it can be established, to the satisfaction of the customs authorities, that they related to imports mechanisms with 17 or 23 rings, the amount collected shall be equal to the one secured, but limited to an amount calculated in accordance with the provisions of Article 1 (2) (a), if lower than the one secured. If it can not be esta-

blished that the amounts secured related to mechanisms with 17 or 23 rings, subparagraph (b) below shall apply;

(b) for the amounts secured in respect of mechanisms other than those with 17 and 23 rings, the collection shall be at the duty rate definitively imposed if lower or equal to the one secured. In the other case, the collection shall be limited to the one secured.

2. Amounts secured in excess of the definitive rate of anti-dumping duty shall be released.

Article 3

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, 20 January 1997.

For the Council

The President

H. VAN MIERLO

COUNCIL REGULATION (EC) No 120/97

of 20 January 1997

amending Regulation (EC) No 259/93 on the supervision and control of shipments of waste within, into and out of the European Community

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130s (1) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Acting in accordance with the procedure laid down in Article 189c ⁽³⁾,

Having regard to Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community ⁽⁴⁾, and in particular Article 16 thereof,

Whereas the European Community has been a Party to the Basle Convention on the control of transboundary movements of hazardous waste and their disposal since 7 February 1994;

Whereas at the Second Conference of the Parties to the Basle Convention a Decision ('Decision II/12') was adopted by consensus to prohibit immediately all exports of hazardous wastes which are destined for final disposal from OECD to non-OECD States and to prohibit as of 1 January 1998, all exports of hazardous wastes which are destined for recycling or recovery operations from OECD to non-OECD States;

Whereas at the Third conference of the Parties to the Basle Convention a Decision ('Decision III/1') was adopted by consensus to amend the Convention to prohibit all exports of hazardous wastes which are destined for disposal from States listed in Annex VII to the Convention to States not so listed, and to prohibit as of 1 January 1998 all exports of hazardous wastes referred to in Article 1 (1) (a) of the Convention which are destined for recovery operations from States listed in Annex VII to the Convention to States not so listed;

Whereas Community definitions of hazardous waste do not entirely concur at the present time with those of the Basle Convention and as this could result in waste covered by the Basle Convention's export ban still being exported from the Community, the Community definitions and lists in this respect must be adjusted;

Whereas it is necessary to establish an Annex V to Regulation (EEC) No 259/93, comprising hazardous wastes to which the Basle Convention's export ban shall apply;

Whereas the Commission should, not later than 1 January 1998, review and amend the said Annex V, taking into full consideration those wastes featuring on the list of wastes adopted in accordance with Article 1 (4) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste ⁽⁵⁾ and any lists of wastes characterized as hazardous for the purposes of the Basle Convention; whereas exports of wastes listed in the said Annex V for recovery, except exports to countries to which the OECD Decision applies, should be prohibited from 1 January 1998 onwards;

Whereas it may be necessary from time to time to review and amend the said Annex V to reflect agreement among the Parties to the Basle Convention as to what wastes should be characterized as hazardous for the purposes of the Convention;

Whereas the Parties are requested to cooperate and work actively to ensure the effective implementation of Decisions II/12 and III/1 of the conferences of the Parties to the Basle Convention;

Whereas with respect to waste destined for final disposal, Article 14 of Regulation (EEC) No 259/93 already prohibits all exports of such kind of waste to non-OECD States; whereas Article 18 of that Regulation prohibits all exports of waste to ACP States;

Whereas currently the said Regulation does not provide for a total prohibition of exports of hazardous waste destined for recycling or recovery operations to non-OECD States;

Whereas the said Regulation should therefore be amended,

⁽¹⁾ OJ No C 164, 30. 6. 1995, p. 8.

⁽²⁾ OJ No C 18, 22. 1. 1996, p. 18.

⁽³⁾ Opinion of the European Parliament of 16 January 1996 (OJ No C 32, 5. 2. 1996, p. 32), Council Common Position of 28 May 1996 (OJ No C 219, 27. 7. 1996, p. 19) and Decision of the European Parliament of 18 September 1996 (OJ No C 320, 28. 10. 1996, p. 75).

⁽⁴⁾ OJ No L 30, 6. 2. 1993, p. 1. Regulation as amended by Commission Decision 94/721/EC (OJ No L 288, 9. 11. 1994, p. 36).

⁽⁵⁾ OJ No L 377, 31. 12. 1991, p. 20. Directive as amended by Directive 94/31/EC (OJ No L 168, 2. 7. 1994, p. 28).

HAS ADOPTED THIS REGULATION:

Article 1

Article 16 (1) of Regulation (EEC) No 259/93 shall be replaced by the following:

'1. All exports for recovery of waste listed in Annex V for recovery shall be prohibited except those to:

(a) countries to which the OECD Decision applies;

(b) other countries:

- which are Parties to the Basle Convention and/or with which the Community, or the Community and its Member States, have concluded bilateral or multilateral or regional agreements or arrangements in accordance with Article 11 of the Basle Convention and paragraph 2 of this Article. Any such exports shall however be prohibited from 1 January 1998 onwards,
- with which individual Member States have concluded bilateral agreements and arrangements prior to the date of application of this Regulation, insofar as these are compatible with Community legislation and in accordance with Article 11 of the Basle Convention and paragraph 2 of this Article. These agreements and arrangements shall be notified to the Commission within three months of the date of application of this Regulation or of the date that such agreements are brought into effect, whichever is earlier, and shall expire when agreements or arrangements are concluded in accordance with the first indent. Any such exports shall however be prohibited as from 1 January 1998 onwards.

The Commission, in accordance with the procedure laid down in Article 18 of Directive 75/442/EEC, shall, as soon as possible, and at the latest before 1 January 1998, review and amend Annex V to this Regulation taking into full consideration those wastes featuring on the list of wastes adopted in accordance with Article 1 (4) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (*) and any lists of wastes characterized as hazardous for the purposes of the Basle Convention.

Annex V shall be reviewed and further amended as appropriate under the same procedure. In particular, the Commission shall review the Annex in order to give effect to decisions of the Parties to the Basle Convention as to what waste should be characterized as hazardous for the purposes of the Convention and to amendments of the list of wastes adopted in accordance with Article 1 (4) of Directive 91/689/EEC.

(*) OJ No L 377, 31. 12. 1991, p. 20. Directive as amended by Directive 94/31/EC (OJ No L 168, 2. 7. 1994, p. 28).'

Article 2

The following shall be inserted as Annex V to Regulation (EEC) No 259/93:

'ANNEX V

Wastes listed in Annex III to this Regulation.

Wastes listed in Annex IV to this Regulation.'

Article 3

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

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

Done at Brussels, 20 January 1997.

For the Council

The President

J. VAN AARTSEN

COMMISSION REGULATION (EC) No 121/97
of 23 January 1997
on issuing A2 export licences for 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 2190/96 of 14 November 1996 on detailed rules for implementing Council Regulation (EEC) No 1035/72 as regards export refunds on fruit and vegetables⁽¹⁾, as amended by Regulation (EC) No 26/97⁽²⁾, and in particular Article 3 (4) thereof,

Whereas Commission Regulation (EC) No 27/97⁽³⁾ sets the indicative refund rates and the indicative quantities for A2 export licences, other than those applied for in the context of food aid;

Whereas, for oranges and apples, in view of the economic situation in the various destination groups indicated in the Annex to Regulation (EC) No 2196/96 and taking account of information received by operators via their applications for A2 licences, the definitive refund rates should be set at a different rate from the indicative rates; whereas the percentages for the issuing of licences for the quantities applied for should also be set; whereas the definitive rates may not be more than double the indicative rates;

Whereas, pursuant to Article 3 (5) of Regulation (EC) No 2190/96, applications for rates in excess of the corresponding definitive rates shall be considered null and void,

HAS ADOPTED THIS REGULATION:

Article 1

1. For A2 export licences for which applications have been submitted pursuant to Article 1 of Regulation (EC) No 27/97, the actual date of application referred to in the second subparagraph of Article 3 (1) of Regulation (EC) No 2190/96 is hereby set at 24 January 1997.

2. The licences referred to in the first paragraph shall be issued at the definitive refund rates and at the percentages for the quantities applied for as indicated in the Annex to this Regulation.

3. Pursuant to Article 3 (5) of Regulation (EC) No 2190/96, applications referred to in the first paragraph for rates in excess of the corresponding definitive rates set out in the Annex shall be considered null and void.

Article 2

This Regulation shall enter into force on 24 January 1997.

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

Done at Brussels, 23 January 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 292, 15. 11. 1996, p. 12.

⁽²⁾ OJ No L 6, 10. 1. 1997, p. 9.

⁽³⁾ OJ No L 6, 10. 1. 1997, p. 11.

ANNEX

Product	Destination or group of destinations	Definitive refund rates (ECU/tonne net)	Percentages for the issuing of licences
Oranges	XC	80	94 %
	Y	120	100 %
Apples	X	20	80 %
	Y	8	98 %
	ZD	40	100 %

COMMISSION REGULATION (EC) No 122/97
of 23 January 1997
amending Regulation (EEC) No 3567/92 as regards detailed rules for the use and
transfer of rights in the sheepmeat and goatmeat sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3013/89 of 25 September 1989 on the common organization of the market in sheepmeat and goatmeat⁽¹⁾, as last amended by Council Regulation (EC) No 1589/96⁽²⁾, and in particular Article 5a (4) thereof,

Whereas the rules covering transfer of premium rights, as laid down in Article 7 of Commission Regulation (EEC) No 3567/92⁽³⁾, as last amended by Regulation (EC) No 1847/95⁽⁴⁾, mean that the competent authority cannot recognize a change in the number of rights of a producer, through a transfer, where a producer notifies that authority after the date on which he made a premium application; whereas, in the event of such a late notification of transfer, both the producer intending to receive the rights and the producer transferring out the rights, are subject to the foreseen penalties which, in this case, may be considered disproportionately severe for the error committed;

Whereas, to provide more equitable conditions for such transfers but without prejudice to the need for proper control of premium applications, it is necessary to allow the competent authorities more flexibility in the implementation of the transfer rules; whereas Member States should therefore be allowed to permit notification of transfers until the last day of the premium application period, that is, before controls take place;

Whereas Regulation (EEC) No 3567/92 should be amended accordingly;

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

HAS ADOPTED THIS REGULATION:

Article 1

Article 7 (2) of Regulation (EEC) No 3567/92 is replaced by the following:

'2. Transfers of premium rights and temporary leasing of such rights shall be effective only after they have been notified to the competent authorities of the Member State by the producer transferring and/or leasing the rights and by the producer receiving the rights.

Such notification shall be made within a deadline set by the Member State and not later than the date on which the premium application period ends in that Member State except in those cases where the transfer of rights takes effect through an inheritance. In that case, the producer who receives the rights must be in a position to furnish appropriate legal documents to prove that he or she is the beneficiary of the deceased producer.'

Article 2

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

It shall apply to premium rights relating to 1997 and subsequent marketing years.

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

Done at Brussels, 23 January 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 289, 7. 10. 1989, p. 1.

⁽²⁾ OJ No L 206, 16. 8. 1996, p. 25.

⁽³⁾ OJ No L 362, 11. 12. 1992, p. 41.

⁽⁴⁾ OJ No L 177, 28. 7. 1995, p. 32.

COMMISSION REGULATION (EC) No 123/97

of 23 January 1997

supplementing the Annex to Commission Regulation (EC) No 1107/96 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Regulation (EEC) No 2081/92

(Text with EEA relevance)

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

Having regard to Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs ⁽¹⁾, and in particular Article 17 (2) thereof,

Whereas additional information was requested concerning certain designations notified by the Member States under Article 17 of Council Regulation (EEC) No 2081/92 in order to make sure that they complied with Articles 2 and 4 of that Regulation; whereas this additional information shows that the designations comply with the said Articles; whereas they should therefore be registered and added to the Annex to Commission Regulation (EC) No 1107/96 ⁽²⁾, as amended by Regulation (EC) No 1263/96 ⁽³⁾;

Whereas, following the accession of three new Member States, the six-month period provided for in Article 17 of Council Regulation (EEC) No 2081/92 is to begin on the date of their accession; whereas some of the designations

notified by those Member States comply with Articles 2 and 4 of that Regulation and should therefore be registered;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Regulatory Committee on Geographical Indications and Designations of Origin,

HAS ADOPTED THIS REGULATION:

Article 1

The designations in the Annex to this Regulation are hereby added to the Annex to Regulation (EC) No 1107/96.

Article 2

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

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

Done at Brussels, 23 January 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 208, 24. 7. 1992, p. 1.

⁽²⁾ OJ No L 148, 21. 6. 1996, p. 1.

⁽³⁾ OJ No L 163, 2. 7. 1996, p. 19.

ANNEX

A. PRODUCTS INTENDED FOR HUMAN CONSUMPTION LISTED IN ANNEX II TO THE TREATY**Meat-based products**

GERMANY

- Ammerländer Dielenrauschschinken/Ammerrländer Katenschinken (PGI)
- Ammerländer Schinken/Ammerrländer Knochenschinken (PGI)
- Schwarzwälder Schinken (PGI)

Cheeses

GERMANY

- Allgäuer Bergkäse (PDO)
- Allgäuer Emmentaler (PDO)⁽¹⁾
- Altenburger Ziegenkäse (PDO)

AUSTRIA

- Gailtaler Almkäse (PDO)

Olive oils

ITALY

- Riviera Ligure (PDO)

Fruit, vegetables and cereals

GREECE

- Cherries
Κεράσια τραγανά Ροδοχωρίου (Kerasia Tragana Rodochoriou) (PDO)
- Table olives
Κονσερβολιά Πηλίου Βόλου (Konservolia Piliou Volou) (PDO)⁽²⁾

FINLAND

- Potato
Lapin Puikula (PDO)

Fresh fish, molluscs and crustaceans and products derived therefrom

UNITED KINGDOM

- Whitstable oysters (PGI)

B. FOODSTUFFS LISTED IN ANNEX I TO REGULATION (EEC) No 2081/92**Bread, pastry, cakes, confectionery, biscuits and other baker's wares**

GERMANY

- Aachener Printen (PGI)

Natural gums and resins

GREECE

- Τσίικλα Χίου (Tsikla Chiou) (PDO)
- Μαστίχα Χίου (Masticha Chiou) (PDO)

C. AGRICULTURAL PRODUCTS LISTED IN ANNEX II TO REGULATION (EEC) No 2081/92**Essential oils**

GREECE

- Mastic oil
Μαστιχέλαιο Χίου (Mastichelaio Chiou) (PDO)

⁽¹⁾ Protection of the name 'Emmentaler' is not sought.

⁽²⁾ Protection of the name 'Πηλίου' (piliou) is not sought.

COMMISSION REGULATION (EC) No 124/97
of 23 January 1997
amending Regulation (EC) No 116/97 fixing the agricultural conversion rates

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

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⁽¹⁾, as last amended by Regulation (EC) No 150/95⁽²⁾, and in particular Articles 3 (2) and 12 thereof,

Whereas the agricultural conversion rates were fixed by Commission Regulation (EC) No 116/97⁽³⁾;

Whereas an error has been discovered in the Annex to this Regulation; whereas the Regulation in question should therefore be corrected;

Article 1

The Annexes to Regulation (EC) No 116/97 are replaced by the Annexes to this Regulation.

Article 2

This Regulation shall enter into force on 24 January 1997.

At the request of the party concerned, shall apply from 23 January 1997.

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

Done at Brussels, 23 January 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽²⁾ OJ No L 22, 31. 1. 1995, p. 1.

⁽³⁾ OJ No L 20, 23. 1. 1997, p. 32.

ANNEX I

Agricultural conversion rates

ECU 1 =	40,2861	Belgian and Luxembourg francs
	7,49997	Danish kroner
	1,95423	German marks
	311,761	Greek drachmas
	198,202	Portuguese escudos
	6,61023	French francs
	6,02811	Finnish marks
	2,19514	Dutch guilders
	0,778173	Irish punt
	1 973,93	Italian lire
	13,7482	Austrian schillings
	165,198	Spanish pesetas
	8,64446	Swedish kroner
	0,768177	Pound sterling

ANNEX II

Agricultural conversion rates fixed in advance and adjusted

Table A			Table B		
ECU 1 =	38,7366	Belgian and Luxembourg francs	ECU 1 =	41,9647	Belgian and Luxembourg francs
	7,21151	Danish kroner		7,81247	Danish kroner
	1,87907	German marks		2,03566	German marks
	299,770	Greek drachmas		324,751	Greek drachmas
	190,579	Portuguese escudos		206,460	Portuguese escudos
	6,35599	French francs		6,88566	French francs
	5,79626	Finnish marks		6,27928	Finnish marks
	2,11071	Dutch guilders		2,28660	Dutch guilders
	0,748243	Irish punt		0,810597	Irish punt
	1 898,01	Italian lire		2 056,18	Italian lire
	13,2194	Austrian schillings		14,3210	Austrian schillings
	158,844	Spanish pesetas		172,081	Spanish pesetas
	8,31198	Swedish kroner		9,00465	Swedish kroner
	0,738632	Pound sterling		0,800184	Pound sterling

COMMISSION REGULATION (EC) No 125/97
of 23 January 1997
amending Regulation (EEC) No 1627/89 on the buying in of beef by invitation to tender

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 organization of the market in beef and veal ⁽¹⁾, as last amended by Regulation (EC) No 2222/96 ⁽²⁾, and in particular Article 6 (7) thereof,

Whereas Commission Regulation (EEC) No 1627/89 of 9 June 1989 on the buying in of beef by invitation to tender ⁽³⁾, as last amended by Regulation (EC) No 36/97 ⁽⁴⁾, opened buying in by invitation to tender in certain Member States or regions of a Member State for certain quality groups;

Whereas the application of Article 6 (2), (3) and (4) of Regulation (EEC) No 805/68 and the need to limit intervention to the buying in of the quantities necessary to ensure reasonable support for the market result, on the

basis of the prices of which the Commission is aware, in an amendment, in accordance with the Annex hereto, to the list of Member States or regions of a Member State where buying in is open by invitation to tender, and the list of the quality groups which may be bought in,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EEC) No 1627/89 is hereby replaced by the Annex hereto.

Article 2

This Regulation shall enter into force on 27 January 1997.

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

Done at Brussels, 23 January 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 24.

⁽²⁾ OJ No L 296, 21. 11. 1996, p. 50.

⁽³⁾ OJ No L 159, 10. 6. 1989, p. 36.

⁽⁴⁾ OJ No L 8, 11. 1. 1997, p. 5.

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

Estados miembros o regiones de Estados miembros y grupos de calidades previstos en el apartado 1 del artículo 1 del Reglamento (CEE) n° 1627/89

Medlemsstater eller regioner og kvalitetsgrupper, jf. artikel 1, stk. 1 i forordning (EØF) nr. 1627/89

Mitgliedstaaten oder Gebiete eines Mitgliedstaats sowie die in Artikel 1 Absatz 1 der Verordnung (EWG) Nr. 1627/89 genannten Qualitätsgruppen

Κράτη μέλη ή περιοχές κρατών μελών και ομάδες ποιότητας που αναφέρονται στο άρθρο 1 παράγραφος 1 του κανονισμού (ΕΟΚ) αριθ. 1627/89

Member States or regions of a Member State and quality groups referred to in Article 1 (1) of Regulation (EEC) No 1627/89

États membres ou régions d'États membres et groupes de qualités visés à l'article 1^{er} paragraphe 1 du règlement (CEE) n° 1627/89

Stati membri o regioni di Stati membri e gruppi di qualità di cui all'articolo 1, paragrafo 1 del regolamento (CEE) n. 1627/89

In artikel 1, lid 1, van Verordening (EEG) nr. 1627/89 bedoelde Lid-Staten of gebieden van een Lid-Staat en kwaliteitsgroepen

Estados-membros ou regiões de Estados-membros e grupos de qualidades referidos no n° 1 do artigo 1º do Regulamento (CEE) n° 1627/89

Jäsenvaltiot tai alueet ja asetuksen (ETY) N:o 1627/89 1 artiklan 1 kohdan tarkoittamat laaturyhmät

Medlemsstater eller regioner och kvalitetsgrupper som avses i artikel 1.1 i förordning (EEG) nr 1627/89

Estados miembros o regiones de Estados miembros	Categoría A					Categoría C		
Medlemsstat eller region	Kategori A					Kategori C		
Mitgliedstaaten oder Gebiete eines Mitgliedstaats	Kategorie A					Kategorie C		
Κράτος μέλος ή περιοχή κράτους μέλους	Κατηγορία Α					Κατηγορία Γ		
Member States or regions of a Member State	Category A					Category C		
États membres ou régions d'États membres	Catégorie A					Catégorie C		
Stati membri o regioni di Stati membri	Categoria A					Categoria C		
Lid-Staat of gebied van een Lid-Staat	Categorie A					Categorie C		
Estados-membros ou regiões de Estados-membros	Categoria A					Categoria C		
Jäsenvaltiot tai alueet	Luokka A					Luokka C		
Medlemsstater eller regioner	Kategori A					Kategori C		
	S	E	U	R	O	U	R	O
België/Belgique	x	x						
Danmark				x	x			
Deutschland				x				
France				x				x
Ireland						x	x	x
Österreich			x					
Portugal			x	x				
Suomi				x	x			
Sweden				x	x			
Great Britain			x	x	x	x	x	x
Northern Ireland			x	x	x	x	x	x

COMMISSION REGULATION (EC) No 126/97
of 23 January 1997
establishing the standard import values for determining the entry price of
certain fruit and vegetables

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

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables⁽¹⁾, as last amended by Regulation (EC) No 2375/96⁽²⁾, and in particular Article 4 (1) thereof,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy⁽³⁾, as last amended by Regulation (EC) No 150/95⁽⁴⁾, and in particular Article 3 (3) thereof,

Whereas Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the 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 24 January 1997.

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

Done at Brussels, 23 January 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ No L 325, 14. 12. 1996, p. 5.

⁽³⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 23 January 1997 establishing the standard import values for determining the entry price of certain fruit and vegetables

(ECU/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 15	052	41,9
	204	43,8
	212	105,3
	404	37,5
	624	170,2
	999	79,7
0707 00 10	052	114,3
	053	181,3
	068	134,7
	999	143,4
0709 10 10	220	151,8
	999	151,8
0709 90 71	052	121,9
	204	132,6
	999	127,3
0805 10 01, 0805 10 05, 0805 10 09	052	47,3
	204	44,5
	212	46,8
	220	31,3
	448	27,3
	600	64,5
	624	56,9
	999	45,5
0805 20 11	052	57,4
	204	68,5
	624	54,9
	999	60,3
0805 20 13, 0805 20 15, 0805 20 17, 0805 20 19	052	48,0
	204	83,2
	400	77,6
	624	85,2
	662	45,2
	999	67,8
	052	77,5
0805 30 20	528	70,5
	600	77,4
	999	75,1
	060	54,8
0808 10 51, 0808 10 53, 0808 10 59	064	40,1
	400	85,9
	404	84,9
	720	47,7
	728	98,2
	999	68,6
	052	126,9
	064	42,5
0808 20 31	400	108,1
	512	79,1
	624	74,0
	999	86,1
	052	41,9

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 68/96 (OJ No L 14, 19. 1. 1996, p. 6). Code '999' stands for 'of other origin'.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION RECOMMENDATION

of 8 January 1997

concerning a coordinated programme for the official control of foodstuffs for 1997

(97/77/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 89/397/EEC of 14 June 1989 on the official control of foodstuffs⁽¹⁾, and in particular Article 14 (3) thereof,

After consultation with the Standing Committee for Foodstuffs,

Whereas it is necessary, with a view to the sound operation of the internal market, to arrange for coordinated food inspection programmes at Community level;

Whereas such programmes place emphasis on compliance with Community legislation, the protection of public health, consumer interests and fair trade practices;

Whereas simultaneous implementation of national programmes and coordinated programmes can provide information and experience on which to base future control activities,

HEREBY RECOMMENDS:

During 1997 Member States should take samples and undertake laboratory analysis for:

(a) Aflatoxins in spices;

(b) Contamination of food products for persons suffering from food allergy or hypersensitivity.

1. Although sampling rates have not been set, Member States should ensure that the number of samples taken is sufficient to provide an overview of the subject under consideration in each Member State. Suggestions will be made for the methods of analysis.

2. Member States should provide the information as requested following the format of the record sheets provided in the Annex to help enhance the comparability of results.

3. Aflatoxins in spices

Spices, in particular pepper, chilli products, nutmeg and paprika powder, may contain aflatoxins in excessive amounts owing to different processing and storage conditions. Article 2 of Council Regulation (EEC) No 315/93⁽²⁾, prohibits the selling of foodstuffs with excessive amounts of contaminants from the public health viewpoint and in particular at a toxicological level. Most Member States have specific regulations for the aflatoxin content of this kind of products.

The aim of this element of the programme is to study the extent to which the levels of aflatoxins in these products exceed national limits. This study will also identify the legal basis for rejection in each Member State. Analytical methods should be capable of determining aflatoxin levels in the samples at least down to 1 µg/kg.

⁽¹⁾ OJ No L 186, 30. 6. 1989, p. 23.

⁽²⁾ OJ No L 37, 13. 2. 1993, p. 1.

4. Contamination of foodstuffs for persons suffering from food allergy or hypersensitivity

Food products labelled or otherwise marketed with claims implying absence of certain protein ingredients and so forth constitute a potential health risk to people suffering from food allergy or hypersensitivity, if they are contaminated with that particular ingredient. Even minute amounts may be fatal. Article 2 of Council Directive 79/112/EEC⁽¹⁾ provides that the labelling and the advertising must not be such as could mislead the purchaser to a material degree, particularly as to the composition of the foodstuff. The aim of this element of the programme is to survey the enforcement actions taken by Member States when contaminated food products are found on the market.

Scope

Any type of food with claims implying absence of a particular ingredient: in view of the types of such food

most commonly offered for sale in the Member States, sampling should be restricted to products not containing milk/milk proteins, lactose, egg, or gluten.

Project report: record sheet

Member States should ensure that the number of contaminated food products and of producers/importers involved, together with information about enforcement action taken, are reported to the Commission. If the kind of action taken is related to the amount of the contaminant found, action levels should also be reported.

Done at Brussels, 8 January 1997.

For the Commission

Martin BANGEMANN

Member of the Commission

⁽¹⁾ OJ No L 33, 8. 2. 1979, p. 1.

ANNEX

1. AFLATOXINS IN SPICES

Table 1.1

Pepper

Member State:

Total number of samples analysed:

Total number of samples rejected:

	Not detected	Number of samples				Average value of positive samples (µg/kg)	Median value of positive samples (µg/kg)	Maximum value (µg/kg)	Limit or guide value for rejection (µg/kg)
		< 2 µg/kg	2 - < 10 µg/kg	10 - 50 µg/kg	> 50 µg/kg				
Aflatoxin									
B1									
B2									
G1									
G2									

Legal basis for rejection:

Method of analysis used (reference: literature, written standard, etc.; keyword description of the procedure; limits of detection and determination) (if different from the proposed method):

Other details, indications, difficulties encountered:

Origin of rejected samples, if known:

Table 1.2

Chilli and chilli powder

Member State:

Total number of samples analysed:

Total number of samples rejected:

	Not detected	Number of samples				Average value of positive samples (µg/kg)	Median value of positive samples (µg/kg)	Maximum value (µg/kg)	Limit or guide value for rejection (µg/kg)
		< 2 µg/kg	2 - < 10 µg/kg	10 - 50 µg/kg	> 50 µg/kg				
Aflatoxin									
B1									
B2									
G1									
G2									

Legal basis for rejection:

Method of analysis used (reference: literature, written standard, etc.; keyword description of the procedure; limits of detection and determination) (if different from the proposed method):

Other details, indications, difficulties encountered:

Origin of rejected samples, if known:

Table 1.3

Nutmeg

Member State:

Total number of samples analysed:

Total number of samples rejected:

	Not detected	Number of samples				Average value of positive samples (µg/kg)	Median value of positive samples (µg/kg)	Maximum value (µg/kg)	Limit or guide value for rejection (µg/kg)
		< 2 µg/kg	2 - < 10 µg/kg	10 - 50 µg/kg	> 50 µg/kg				
Aflatoxin									
B1									
B2									
G1									
G2									

Legal basis for rejection:

Method of analysis used (reference: literature, written standard, etc.; keyword description of the procedure; limits of detection and determination) (if different from the proposed method):

Other details, indications, difficulties encountered:

Origin of rejected samples, if known:

Table 1.4
Paprika powder

Member State:

Total number of samples analysed:
Total number of samples rejected:

	Not detected	Number of samples				Average value of positive samples (µg/kg)	Median value of positive samples (µg/kg)	Maximum value (µg/kg)	Limit or guide value for rejection (µg/kg)
		< 2 µg/kg	2 - < 10 µg/kg	10 - 50 µg/kg	> 50 µg/kg				
Aflatoxin									
B1									
B2									
G1									
G2									

Legal basis for rejection:
Method of analysis used (reference: literature, written standard, etc.; keyword description of the procedure; limits of detection and determination) (if different from the proposed method):
Other details, indications, difficulties encountered:
Origin of rejected samples, if known:

Table 2.2

Member State:

Analytical methods used

Milk/milk proteins	
Lactose	
Egg	
Gluten	

Further comments:

COMMISSION DECISION

of 14 January 1997

authorizing the Member States exceptionally to provide for derogations from certain provisions of Council Directive 77/93/EEC in respect of plants of *Vitis* L., other than fruits, originating in Croatia or Slovenia

(Text with EEA relevance)

(97/78/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS DECISION:

Having regard to the Treaty establishing the European Community,

Article 1

Having regard to Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community⁽¹⁾, as last amended by Commission Directive 96/78/EC⁽²⁾, and in particular Article 14 (1) thereof,

Having regard to the request made by Italy,

Whereas, under the provisions of Directive 77/93/EEC, plants of *Vitis* L., other than fruits, originating in third countries, may in principle not be introduced into the Community;

Whereas the imports would take place for a limited period of time to enable specialised nurseries to multiply these plants in the EU, whereby these plants will be re-exported afterwards to Croatia or Slovenia;

Whereas, in respect of the said imports into the Community of the said plants, on the basis of the information supplied by the relevant Member State, it appears that in Croatia and Slovenia, plants of *Vitis* L. can be grown under adequate health conditions and that there are no sources for the introduction of exotic diseases affecting plants of *Vitis* L.;

Whereas therefore a derogation should be authorized for a limited period, provided that it includes specific conditions and without prejudice to Council Directive 68/193/EEC⁽³⁾, as last amended by the Act of Accession of Austria, Finland and Sweden;

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

1. The Member States are hereby authorized to provide, under the conditions laid down in paragraph 2, for exceptions from Article 4 (1) of Directive 77/93/EEC, with regard to the prohibitions referred to in Part A, point 15 of Annex III thereto for plants of *Vitis* L., other than fruits, originating in Croatia or Slovenia.

2. The following specific conditions shall be satisfied;

(a) the plants shall be propagating material in the form of dormant bud material of the following varieties:

- Babic,
- Plavaz Mali,
- Plavina,
- Debit,
- Kuc,
- Marastina,
- Gilovca,
- Zlatarica,
- Blastina,
- Krvatica;

(b) the buds shall be intended to be grafted in the Community at premises referred to in (h), on to rootstocks produced in the Community;

(c) the buds intended for the Community shall be:

- harvested from propagating material grown in vineyards, which are officially registered. The lists of the registered vineyards shall be made available to the Member States making use of the derogation and to the Commission, at the latest by 15 January 1997. These lists shall include the name(s) of the varieties, the number of rows planted with these varieties, the number of plants per row for each of these vineyards, as far as they are deemed suitable for dispatch to the Community in 1997, under the conditions laid down in this Decision,
- properly packed and the packaging made recognizable with a marking, enabling the identification of the registered nursery and the variety,

⁽¹⁾ OJ No L 26, 31. 1. 1977, p. 20.

⁽²⁾ OJ No L 321, 12. 12. 1996, p. 20.

⁽³⁾ OJ No L 93, 17. 4. 1968, p. 15.

— accompanied by a phytosanitary certificate issued in Croatia or Slovenia in accordance with Article 7 of Directive 77/93/EEC, on the basis of the examination laid down in Article 6 thereof, in particular freedom from the following harmful organisms:

- *Daktulosphaira vitifoliae* (Fitch)
- *Xylophilus ampelinus* (Panagopoulos) Willems, *et al.*
- Grapevine Flavescence dorée MLO
- *Xylella fastidiosa* (Well et Raju)
- *Trechispora brinkmannii* (Bresad.) Rogers
- Tobacco ringspot virus
- Tomato ringspot virus
- Blueberry leaf mottle virus
- Peach rosette mosaic virus

The certificate shall state under 'Additional Declaration', the indication 'this consignment meets the conditions laid down in Decision 97/78/EC';

- (d) the official plant protection organisation of Croatia or Slovenia shall ensure the identity of the buds from the time of harvesting as referred to in (c), first indent, until the time of loading for export to the Community;
- (e) the inspections required pursuant to Article 12 of Directive 77/93/EEC shall be made by the responsible official bodies, referred to in the said Directive, of the Member States making use of this derogation, and where appropriate, in co-operation with the said bodies of the Member State in which the buds will be grafted. Without prejudice to the monitoring referred to in Article 19a (3) second indent, first possibility, the Commission shall determine to which extent the inspections referred to in Article 19a (3) second indent, second possibility of the said Directive shall be integrated into the inspection programme in accordance with Article 19a (5) (c) of that Directive;
- (f) the buds shall be introduced through points of entry situated within the territory of a Member State making use of this derogation and designated for the purposes of this derogation by that Member State;
- (g) prior to introduction into the Community, the importer shall notify each introduction sufficiently in advance to the responsible official bodies in the Member State of introduction and that Member State shall convey the details of the notification to the Commission, indicating:
- the type of material,
 - the variety and quantity,
 - the declared date of introduction and confirmation of the point of entry,
- the names, addresses and the locations of the premises referred to in (h) where the buds will be grafted and/or where the grafted plants will subsequently be planted.
- At the time of import the importer shall provide confirmation of the details of the aforementioned advance notification. The importer shall be officially informed, prior to the introduction, of the conditions laid down in (a), (b), (c), (d), (e), (f), (g), (h), (i) and (j);
- (h) the buds shall be grafted onto rootstocks and the grafted material subsequently planted only at premises for which the names, addresses and the locations have been notified by the person who intends to use the buds imported pursuant to this Decision, to the said responsible official bodies of the Member State in which the premises are situated; in those cases where the place of grafting or planting is situated in a Member State other than the Member State making use of this derogation, the said responsible official bodies of the Member State making use of this derogation, at the moment of receipt of the aforementioned advance notification from the importer, shall inform the said responsible official bodies of the Member State in which the plants will be grafted or planted giving the names, addresses and the locations of the premises where the plants will be grafted or planted;
- (i) at the premises referred to in (h), the:
- buds shall be bench grafted and the grafted plants shall be planted and further grown in fields belonging to the premises referred to in (h) where they should remain until they are moved to a destination outside the Community as referred to in (j),
 - grafted plants shall in the growing period following importation, be visually inspected by the said responsible official bodies of the Member State in which the grafted plants are planted, at appropriate times, for harmful organisms or symptoms caused by any harmful organism; in order to identify the harmful organisms having caused such symptoms an appropriate testing on any symptom observed in the visual inspection shall be carried out. Any plant which has not been found free during the said inspections or testing, from harmful organisms listed under (c), third indent, shall be immediately destroyed,
- (j) any grafted plant resulting from a successful grafting using the buds referred to in (a) shall be moved in 1998 to a destination outside the Community. The said responsible official bodies shall ensure that any plant not so moved shall be officially destroyed. Records shall be kept available to the Commission on the amounts of successfully grafted plants, of officially destroyed plants and of plants sold as well as on the country of destination of the plants sold.

Article 2

Member States shall inform the other Member States and the Commission of any use of the authorization. They shall provide the Commission and the other Member States, before 1 November 1997, with the information on amounts imported pursuant to this Decision and with a detailed technical report of the official examination referred to in Article 1 (2) (i). Furthermore any other Member State in which the buds are grafted onto rootstocks and in which the grafted plants are planted, after the import, shall also provide the Commission and the other Member States, before 1 November 1997, with a detailed technical report of the official examination referred to in Article 1 (2) (i).

Article 3

Without prejudice to the provisions laid down in Article 14 (3) of Directive 77/93/EEC, the Member States concerned shall notify the Commission and the other Member States of all cases of consignments introduced

pursuant to this Decision which do not comply with the conditions laid down herein.

Article 4

This Decision shall apply during the period between 15 January 1997 and 30 March 1997. It shall be revoked if it is established that the conditions laid down in Article 1 (2) are not sufficient to prevent the introduction of harmful organisms or have not been complied with.

Article 5

This Decision is addressed to the Member States.

Done at Brussels, 14 January 1997.

For the Commission

Franz FISCHLER

Member of the Commission
