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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2003/97

of 13 October 1997

imposing a definitive anti-dumping duty on imports of woven polyolefin sacks
and bags originating in the People's Republic of China

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⁾ (hereinafter referred to as the 'basic Regulation'), and in particular Articles 9, 11 and 23 thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

- (1) By Regulation (EEC) No 3308/90⁽²⁾, the Council imposed a definitive anti-dumping duty of 43,4 % on imports of woven polyolefin sacks originating in the People's Republic of China.

By Regulation (EEC) No 2346/93⁽³⁾, the Council amended Regulation (EEC) No 3308/90 and imposed an increased duty of 85,7 % following a finding that the duty had been borne by the exporters concerned.

2. Request for a review

- (2) Following the publication in April 1995 of a notice⁽⁴⁾ of the impending expiry of the measures in force, the Commission received a request for a review lodged by the European Association for Textile Polyolefins (EATP) on behalf of eight Community producers allegedly representing a

major proportion of the total production of the product concerned in the European Community. The request contained evidence of dumping of the product originating in China, and of renewed material injury likely to result in the event of expiry of the existing measures. This evidence was considered sufficient to justify the opening of a review investigation.

- (3) On 17 October 1995, the Commission announced by a notice published in the *Official Journal of the European Communities*⁽⁵⁾ (hereinafter referred to as the 'Notice of Initiation') the initiation of a review of Regulation (EEC) No 3308/90 and commenced an investigation pursuant to Articles 11 (2) and 11 (3) of Council Regulation (EC) No 3283/94⁽⁶⁾ which was replaced during the investigation by the Basic Regulation.

3. Investigation

- (4) The Commission officially advised the exporting producers and importers known to be concerned as well as their associations, the representatives of the exporting country and the complainant Community producers of the initiation of the review.
- (5) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the Notice of Initiation.

A number of importers and one organization representing such importers made their views known in writing. The Commission sent questionnaires to all parties known to be concerned and received replies from four Community producers and two importers to the Community.

- (6) The investigation was hampered by the fact that no Chinese exporters replied to the Commission's questionnaire or made their views known in writing.

⁽¹⁾ OJ L 56, 6. 3. 1996, p. 1. Regulation as amended by Regulation (EC) No 2331/96 (OJ L 317, 6. 12. 1996, p. 1).

⁽²⁾ OJ L 318, 17. 11. 1990, p. 2. Regulation as amended by Regulation (EEC) No 2346/93 (OJ L 215, 25. 8. 1993, p. 1).

⁽³⁾ OJ L 215, 25. 8. 1993, p. 1.

⁽⁴⁾ OJ C 95, 19. 4. 1995, p. 7.

⁽⁵⁾ OJ C 271, 17. 10. 1995, p. 3.

⁽⁶⁾ OJ L 349, 31. 12. 1994, p. 1.

- (7) The Commission sought and verified all information it deemed necessary for the purposes of a determination of dumping and injury and carried out investigations at the premises of the following companies:

(a) *complainant Community producers*

- Condepols SA, Valencia (Spain),
- Cotesi, Carvalhos (Portugal),
- Saint Frères Emballage SA, Paris (France),
- Thrace Plastics Co., Athens (Greece);

(b) *producer/exporter in the analogue country*

- Debant Plastik, Istanbul, Turkey;

(c) *importers*

- Blockx, Arendonk, Belgium,
- Interjute, Hulst, Netherlands.

- (8) The investigation of dumping covered the period from 1 January to 30 September 1995 (hereinafter referred to as 'the investigation period'). The examination of injury covered the period from 1 January 1992 to 30 September 1995.

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

- (9) The product under consideration is woven sacks and bags of a kind used for packaging of goods not knitted or crocheted, obtained from a polyethylene or polypropylene strip or the like of woven fabrics weighing 120 g/m² or less. There are many different types of sacks and bags manufactured from either raw material, but they all have similar physical, chemical and technical characteristics. The sacks and bags are used for packaging, *inter alia*, industrial and agricultural products.

Since the basic characteristics of the sacks and bags, whether physical, chemical or technical, and their use, are similar, it was considered that this review should cover all such sacks and bags. In particular, it was considered that sacks and bags from a fabric woven from strips of any width, and from fabric laminated to any extent, should be covered by the scope of the investigation.

- (10) The product as described above normally falls now within CN codes 6305 32 81 and 6305 33 91 in accordance with Commission Regulation (EC) No 2448/95 of 10 October 1995 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff⁽¹⁾. The proceeding was

opened for products falling within CN code 6305 31 91, which the Regulation in question subsequently replaced with the two CN codes given. In the framework of the current review, however, the Commission became aware that the sacks and bags concerned can, if made from a fabric which is either woven from a strip wider than 5 mm, or laminated on both sides to an extent visible to the naked eye, be classified under CN codes 3923 21 00, 3923 29 10 or 3923 29 90 while still meeting the product description given above.

2. Like product

- (11) The investigation showed that sacks and bags exported to the Community by Chinese companies constituted a like product to those produced in Turkey, which was eventually chosen as an analogue country in view of China being considered a non market economy country (see recitals 14 and 15). Similarly, the sacks and bags manufactured by the Community industry and sold on the Community market and those exported to the Community from China were alike in all respects as regards their physical, chemical and technical characteristics. It was found that the printing and hemming of certain bags referred to in recital 36 did not render them different from any other bags. It was also established that the sacks and bags had the same end-uses and competed with each other.
- (12) It was therefore concluded that, within the meaning of Article 1 (4) of the basic Regulation, the sacks and bags produced and sold in Turkey constituted a like product to those exported from China to the Community and to those produced and sold by the Community industry.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

1. Preliminary remarks

- (13) The aim of the dumping investigation was to consider whether or not it could be determined that expiry of measures would be likely to lead to a continuation or recurrence of dumping, in particular by examining whether dumping continued to take place.

2. Analogue country

- (14) As the People's Republic of China is considered a non market economy country, the Commission announced at the initiation of the review that Turkey was envisaged as an appropriate market economy third country (hereinafter referred to as the 'analogue country') for the purpose of establishing normal value, in accordance with Article 2 (7) of the Basic Regulation.

⁽¹⁾ OJ L 259, 30. 10. 1995, p. 1.

- (15) All interested parties were given the opportunity to comment on the choice of analogue country. The Chinese exporters did not submit any comments concerning this choice. One importer and one European traders' association objected it on the grounds that the Chinese and the Turkish macro-economic situations were not comparable and that Turkish capacity was not sufficient. The importer proposed Indonesia as an alternative analogue country. This proposal was rejected as it was established in an anti-dumping proceeding concerning the same product originating *inter alia* in Indonesia that the latter market was not governed by normal market forces. In these circumstances, and given the fact that the Turkish and Chinese producers use the same machines and the same raw materials, that several producers manufacturing the like product in representative quantities compete on the Turkish market and that Turkish capacity is currently sufficient, Turkey was found to be an appropriate choice of analogue country. The Commission received cooperation from one Turkish producer of the like product.

3. Normal value

- (16) As explained in recital 15, the Commission sought and verified from one producer in the analogue country all the information it deemed necessary for the determination of normal value.
- (17) As far as this determination is concerned, the Commission set out to establish whether or not the cooperating producer's domestic sales in the analogue country were representative in accordance with Article 2 (2) of the Basic Regulation.

The investigation established that the total domestic sales of the cooperating Turkish producer represented by volume less than 5 % of the Chinese exports of the like product to the Community.

- (18) As the volume of domestic sales of the like product was not representative and as there were no other domestic sales by a cooperating producer, normal value was constructed. In accordance with Article 2 (3) of the Basic Regulation, the constructed normal value was based on the cooperating Turkish producer's average costs of production per type of bag. In accordance with Article 2 (6) of the Basic Regulation, a reasonable amount for selling, general and administrative costs and for profits was added to these costs. The former was established on the basis of actual data pertaining to the production and domestic sales of the like product made by the cooperating Turkish producer. With regard to the profit margin, given the high proportion of sales at a loss of the product concerned made by the

cooperating producer, the profit margin was based, in accordance with Article 2 (6) (c) of the Basic Regulation, on the information obtained from other Turkish producers on the profit normally realized on sales of the like product in Turkey.

- (19) For the purpose of the investigation, the product was classified by type (simple lined and laminated). The different costs of production were calculated separately for the three different types of bags (simple, lined and laminated).

4. Export price

- (20) The exporter's questionnaire was sent to 10 alleged producers in China but none of them replied.
- (21) Chinese exports of the product concerned were made to independent importers in the Community. The Commission obtained cooperation from two of the importers of the like products. It was considered that the prices reported by these importers were the best evidence available for the purpose of establishing the export price because the volume of these transactions represented a substantial proportion of the imports of the product from China and allowed a calculation per type of bag.
- (22) The export prices were therefore determined on the basis of prices actually paid by the two importers for the product concerned during the investigation period. These transactions concerned two types of the product concerned, i.e. simple and lined bags, which were considered representative of Chinese exports. This was because the transaction concerned formed a large proportion of the Chinese exports to the Community, since the cooperating importers represent themselves a very large proportion of all Chinese imports of the like products.

5. Comparison

- (23) In accordance with Article 2 (10) and (11) of the Basic Regulation, the constructed normal value by the product type was compared to the weighted average export price by product type on a free-on-board basis and at the same level of trade. To calculate the constructed normal value free on board Turkish port, the inland freight cost to the closest port was added to the constructed normal value established above in order to make a fair comparison with the Chinese export price which was reported FOB Shanghai.
- (24) As set out above, the Chinese export prices obtained from the two cooperating importers for the period of investigation concerned only simple and lined bags. The Commission therefore limited its comparison to these two types.

6. Dumping margin

- (25) The comparison of the normal value with the export price showed the existence of dumping, the dumping margin being equal to the amount by which the normal value exceeded the price for export to the Community.
- (26) The weighed average dumping margin expressed as a percentage of the free-at-Community frontier price, duty unpaid, is 102,4 %.

D. COMMUNITY INDUSTRY

- (27) The Commission considered whether the Community producers which supported the request for a review and cooperated with the investigation represented a major proportion of total Community production as provided for in Article 4 (1) of the basic Regulation. In this respect it was found that the four producers who cooperated with the review manufactured a major share (at least 65 %) of the Community's total output. It was therefore concluded that the four cooperating producers could be considered to constitute the 'Community industry' for the purposes of the investigation.

E. LIKELIHOOD OF RECURRENCE OR CONTINUATION OF INJURY

1. Preliminary remarks

- (28) The aims of the injury investigation were to consider whether or not it could be determined that expiry of measures would be likely to lead to a continuation or recurrence of injury, in accordance with Article 11 (2) of the Basic Regulation, and whether the measures were either no longer necessary or were no longer sufficient to counteract the dumping which is causing injury, in accordance with Article 11 (3).

2. Community consumption

- (29) Apparent Community consumption on the market for free circulation (based on questionnaire replies, Eurostat data and market information available to the Commission) increased from about 33 000 tonnes in 1992 to about 44 000 tonnes in 1995, an increase of about 33 %.
- (30) It should be noted that sacks and bags are imported under different import procedures. Anti-dumping

and conventional duties are applicable only to imports for free circulation.

3. Volume and market share of the dumped imports

- (31) The quantities of the product concerned imported from China for free circulation decreased from 3 884 tonnes in 1992 to 2 672 tonnes in 1995. The market share of these imports (calculated on the basis of the apparent consumption figures in recital 29) fell from 11,7 % in 1992 to 6,1 % in 1995.
- (32) It can be noted that while the volumes of Chinese imports for free circulation have fallen in recent years, they retain a significant market share. It can be considered that their ability to undercut Community producers on the free circulation market, even with the current measures in place (see recital 37), has contributed to downward pressure on prices on the Community market.

4. Prices of the dumped imports

- (33) The lack of cooperation from the Chinese exporters meant that the export price for the undercutting calculation was taken from the actual transactions (almost entirely for temporary import) of the two cooperating importers. These figures constituted the best information available, in particular since they allowed a price comparison by type of sack or bag (simple, lined, laminated etc.).
- (34) The Commission services compared average prices by type of sack or bag on the basis of sales to the first independent importer, in the case of the imports, and to the first independent customer, in the case of the Community producers.
- (35) Community producers sell almost entirely direct to end-users. In the small number of cases where they sold to distributors, no appreciable price difference was observed. The import transactions, on the other hand, were all to wholesale importers with associated warehousing costs. In order to take account of this, the Commission adjusted the average Community producers' prices downwards by an appropriate adjustment for the differences in the level of trade.
- (36) All the import transactions observed were either: (a) of simple sacks and bags, or (b) of sacks and bags lined with a polyethylene liner. All the lined sacks and bags and all but one transaction of simple sacks and bags were hemmed at the top of the sack or bag and most were unprinted (printing being undertaken by the importer). By contrast, most sales by Community producers were of printed,

unhemmed sacks or bags. The selling prices of Community producers were therefore adjusted, where appropriate, by the deduction of printing costs and the costs of adding a hem. The Commission then calculated an average Community producers' price for each type of sack or bag imported, weighted by sales by the four cooperating producers of the type in question.

- (37) Once these adjusted average prices per type of sack or bag were arrived at, calculation was carried out in order to establish the level of actual undercutting, with the current measures in force, on the market in sacks and bags for free circulation. The import prices were increased by 92,9 % (7,2 % conventional plus 85,7 % anti-dumping duty) and compared with the adjusted Community producers' prices. It should be noted that the import transactions were for temporary import and would not therefore have incurred duty, but in the absence of verified transactions intended for free circulation this was the best information available. The result was undercutting margins of 4,7 % for simple hemmed sacks and bags and 28,6 % for lined hemmed sacks and bags, with an average of 15,3 % (expressed as percentages of the adjusted Community producers' prices).

5. Factors relating to the Community industry

- (38) In the following recitals, concerning the change in certain key factors between 1992 and the investigation period, figures for the investigation period have been adjusted to make them comparable with full year figures, since the period was of nine months only.

Production

- (39) Production by the Community industry fell from 9 500 tonnes in 1992 to a comparable figure of 8 900 tonnes in the investigation period, a fall of 6 %.

Sales volume and market share

- (40) The Community industry's sales by volume on the Community market fell by 13 %, from approximately 9 600 tonnes in 1992, to a comparable figure of approximately 8 400 tonnes in the investigation period. This represented a fall in market share from 30,2 % in 1992 to 19,1 % in the investigation period.

Sales value

- (41) The Community industry's sales by value on the Community markets fell by 9 %, from approximately ECU 23,7 million in 1992 to a comparable figure of approximately ECU 21,6 million in the investigation period.

Profitability

- (42) Profitability of the Community industry for the product concerned declined, with losses increasing from 0,14 % of sales in 1992 to 1,80 % in the investigation period.

Conclusion

- (43) These findings confirm that the Community industry is in a weakened state. This would be exacerbated in the event of undercutting on the scale which would arise should the measures against imports from China expire.

6. Price undercutting in the event of expiry of measures

- (44) A second undercutting calculation was undertaken to establish the threatened level of undercutting in the event of expiry of measures. The methodology was the same as for that described in recitals 34 to 37, except that to the import prices was added only the 7,2 % conventional duty and not the current anti-dumping duty of 85,7 %. In this case, undercutting margins resulted of 47,0 % for simple hemmed sacks and bags, 60,2 % for lined hemmed sacks and 52,9 % on average, expressed as percentages of the adjusted Community producers' prices.

7. Conclusion

- (45) Although imports from China for free circulation have declined, they remain significant compared to production by the Community industry. In this economic sector it can be assumed that the Chinese exporters would have little or no difficulty in increasing their exports back to previous levels if the economic conditions favoured this.
- (46) Even with the current measures in place, imports from China are able to undercut Community producers on the 'free circulation' market for sacks and bags. Were measures to expire, the level of this undercutting would be dramatically increased, providing Chinese producers with a strong incentive to increase their exports to the Community and creating further downward pressure on Community producers' prices.

- (47) The sacks and bags concerned are subject to a quantitative limit (textiles category 33). However, the limit currently provides no significant constraint on imports (30 % utilization in 1995), in particular since the condition that it should apply even to sacks and bags intended for re-export outside the Community does not appear to be being rigidly applied.
- (48) It is therefore concluded that expiry of the measures would be likely to lead to a recurrence of injury.
- (49) A further exercise, in accordance with Article 11 (3) of the Basic Regulation, was therefore carried out to determine whether the current measures were sufficient to counteract the dumping which is causing injury. This is covered in recitals 62 to 64.

F. COMMUNITY INTEREST

1. Introduction

- (50) No interested parties came forward in the course of the review other than producers and importers (see recital 5). In particular, no users of sacks and bags came forward, which can be taken as a sign that the effect of the measures on their interests was limited. Nevertheless, an assessment, as set out below, was conducted of the wider Community interests involved.

2. Price and quantity effects of measures

- (51) Since imposition of measures in 1990, imports of sacks and bags for free circulation from China have fallen. In that time, apparent Community consumption has increased, so it can be assumed that purchasers have used other sources of supply rather than bought fewer sacks and bags. It can be concluded, in the absence of any representation or indication to the contrary, that the measures have not resulted in a shortage of supply.
- (52) The price before duty of imports from China fell until 1994 but recovered in 1995. Assessment on the basis of Eurostat statistics suggests that duty paid, imports for free circulation from China were some 70 % more expensive in 1995 than in 1990 before the imposition of measures.
- (53) Even at the proposed new rates of duty, Chinese prices will undercut Community producers' prices, since the new rate of duty is below the level of undercutting which would occur in the event of expiry of measures. Community demand is ap-

parently increasing. It can be considered unlikely, even after the imposition of the proposed new measures, that the Chinese exporters will reduce their duty-free price or will be obliged to reduce their sales volumes on the market for free circulation by comparison with the current situation. It can reasonably be assumed that the price of Chinese imports on the market for free circulation (after duties are paid) will rise marginally (less than 10 %) as a result of the proposed new measures.

3. Interests of the Community industry

- (54) Turnover of the cooperating Community companies is currently of the order of ECU 23 million and employment of 650 people (scaled up to all Community producers, estimates of ECU 35 million and 1 200 employees).
- (55) The investigation has shown that the Community industry has made efforts to rationalize and to switch to production of more specialized types of sacks and bags (such as flexible intermediate bulk containers), indicating that the industry can remain viable. The significant investments made in order to achieve this rationalization would be wasted if the industry concerned is not protected against unfair and injurious imports. Continuation of anti-dumping measures would serve to put the Community industry on a level playing field with imports from China by counteracting unfair competitive practices.

4. Interests of users

- (56) The sacks and bags concerned are an industrial product whose main use is to package, *inter alia*, agricultural and chemical products.
- (57) By definition, the competitiveness in third-country markets of users in the Community of the sacks and bags (such as agricultural exporters) should not be affected by measures, since sacks and bags for re-export after filling will not be subject to the duty. Measures could, however, affect the competitiveness of users on the Community market *vis-à-vis* third-country competitors. However, for the reasons given below this effect is considered to be minimal.
- (58) In order to assess the likely impact on users (in the absence of any submissions or complaints by them in the course of the investigation), the likely cost increases as a result of measures were expressed as proportions of the value of the likely contents of a sack or bag (agricultural commodities etc.), in order to estimate the percentage increase in costs. This

analysis showed that the cost increase for the large majority of users of Chinese sacks would be of the order of 0,5 % of this value. Since the price of the contents is only a part of users' total costs, the cost increase expressed as a proportion of total costs would be lower still.

5. Interests of importers

- (59) Only two importers cooperated with the investigation out of more than 40 contacted by the Commission, and submissions were received from one association of importers.
- (60) It should be noted that the proposed amended measures are not expected to reduce quantities of Chinese imports. Furthermore, importers are able to switch to other sources of supply and are in any case largely involved in handling temporary imports which will be unaffected by the new measures. In the circumstances, the impact of the proposed limited duty increase on importers is not expected to be substantial.

6. Conclusion

- (61) The Commission weighed up all the factors outlined above and considered that there were no compelling reasons not to maintain measures in force, amended according to the outcome of the review, in order to restore a competitive regime of fair pricing and to remove the threat of injury to the Community industry which would result if measures were allowed to expire.

G. ANTI-DUMPING MEASURES

1. Injury elimination level

- (62) In the course of the injury investigation it became clear that the mix of type of sacks and bags imported was different from that produced by the Community producers. No laminated sacks or bags, for example, were observed among the Chinese imports, whereas they represent an important part of the production of most Community producers. It was found that simple sacks and bags (the most imported kind) were much less profitable for Community producers than other types.
- (63) A calculation was therefore made on the basis of costs of production per type of sack or bag. In the case of some producers, these costs had to be constructed, either because the company's standard costings by type were found not to be in line with their verified total costs or because no such standard costings existed.
- (64) To the costs thus arrived at, an adjustment was made to take account of differences in the level of trade between the imports and the sales of Community producers (as in recital 35) and a profit margin was added. Comparison was made by type with the cif prices of the observed imports, adjusted

for the 7,2 % conventional duty. The weighted average margin thus arrived at, expressed as proportion of the cif value of the imports and representing the threat of underselling in the event of expiry of measures, and therefore the level of duty required to eliminate injury, was 120,9 %.

It was therefore determined that the current measures of 85,7 % were not sufficient to counteract the dumping which is causing injury.

2. Definitive duties

- (65) Since the result of the comparison shows higher injury margins than the dumping margin established, and since the new dumping margin was higher than the level of the duty subject to review, the duty should be based on the dumping margin found in accordance with Article 9 (4) of the Basic Regulation. On the basis of the above, the level of anti-dumping duty should be set at 102,4 %,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of woven sacks and bags of a kind used for packaging of goods, not knitted or crocheted, obtained from a polyethylene or polypropylene strip or the like, of woven fabrics weighing 120 g/m² or less and originating in the People's Republic of China, falling within the following CN codes:

CN code	Taric code
6305 32 81	—
6305 33 91	—
ex 3923 21 00	3923 21 00*10
ex 3923 29 10	3923 29 10*10
ex 3923 29 90	3923 29 90*10

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, shall be 102,4 %.

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

Article 2

Regulation (EEC) No 3308/90 is hereby repealed.

Article 3

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

It shall expire five years after its entry into force, save that should any review of the measures adopted by this Regulation be pending on that date, it shall remain in force until that review is concluded.

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

Done at Luxembourg, 13 October 1997.

For the Council

The President

J.-C. JUNCKER

COUNCIL REGULATION (EC) No 2004/97

of 9 October 1997

laying down certain rules for the application of the special arrangements for imports of olive oil originating in Tunisia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas Articles 16 and 17 of, and Annex B to, the Cooperation Agreement between the European Economic Community and the Republic of Tunisia⁽¹⁾, hereinafter referred to as the 'Cooperation Agreement', as amended by an Additional Protocol⁽²⁾ to the Cooperation Agreement, provide for special arrangements for imports of olive oil falling within CN codes 1509 and 1510, wholly obtained in Tunisia and transported direct from that country to the Community;

Whereas, for olive oil falling within CN codes 1509 10 10, 1509 10 90 and 1510 00 10, the special arrangements provide for a flat-rate deduction of ECU 0,7245 per 100 kilograms from the applicable levy, representing the reduction provided for in Article 16 (1) (a) of the Cooperation Agreement; whereas, provided that Tunisia levies an export charge, those arrangements provide for a further reduction of that levy corresponding to the amount of the special charge, but not exceeding ECU 14,60 per 100 kilograms, representing the reduction provided for in Article 16 (1) (b) of the Cooperation Agreement;

Whereas the Agreement on Agriculture concluded during the Uruguay Round of multilateral trade negotiations⁽³⁾ provides that the variable levies applied to imports of agricultural products are to be replaced by fixed customs duties from 1 July 1995;

Whereas continuation of the arrangements calls for the adoption of new implementing rules and the repeal of Council Regulation (EEC) No 1508/76 of 24 June 1976 on imports of olive oil originating in Tunisia⁽⁴⁾;

Whereas, in accordance with the Cooperation Agreement, the special export charge should be reflected in the price of the olive oil upon importation into the Community; whereas, to ensure the correct application of the arrangements in question, the necessary measures should be adopted to ensure that the charge is paid at the latest when the oil is imported;

Whereas, if the present conditions of the special arrangements provided for in the Cooperation Agreement are amended, in particular as regards the amounts, or if a new agreement is concluded, it may be necessary to adjust this Regulation to incorporate those changes; whereas provision should be made for those adjustments to be adopted by the Commission in accordance with the procedure laid down in Article 38 of Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽⁵⁾;

Whereas, by Regulation (EC) No 2146/95⁽⁶⁾, the Commission introduced an autonomous system as a transitional measure expiring on 30 June 1997; whereas this Regulation should therefore apply from 1 July 1997,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down certain rules for the application of the special arrangements for imports of olive oil originating in Tunisia.

Article 2

1. The rate of customs duty applicable to imports into the Community of olive oil other than that which has undergone a refining process, falling within CN codes 1509 10 10, 1509 10 90 and 1510 00 10, wholly obtained in Tunisia and transported direct from that country to the Community, shall be reduced by ECU 0,7245 per 100 kilograms.

2. Where Tunisia levies a special export charge on that olive oil, wholly obtained in Tunisia and transported direct from that country to the Community, the rate of customs duty shall be further reduced by an amount equal to the special charge but not exceeding ECU 14,60 per 100 kilograms.

3. The reduction in the rate of customs duty provided for in paragraph 2 shall apply to all olive oil imports for which the importer provides proof, when importing the oil, that the special export charge is reflected in the import price.

⁽¹⁾ OJ L 265, 27. 9. 1978, p. 2.

⁽²⁾ OJ L 297, 21. 10. 1987, p. 36.

⁽³⁾ OJ L 336, 23. 12. 1994, p. 1.

⁽⁴⁾ OJ L 169, 28. 6. 1976, p. 9. Regulation as amended by Regulation (EC) No 413/86 (OJ L 48, 26. 2. 1986, p. 1).

⁽⁵⁾ OJ L 172, 30. 9. 1966, p. 3025/66. Regulation as last amended by Regulation (EC) No 1581/96 (OJ L 206, 16. 8. 1996, p. 11).

⁽⁶⁾ OJ L 215, 9. 9. 1995, p. 1.

Article 3

1. The rate of customs duty applicable to imports into the Community of olive oil having undergone a refining process falling within CN code 1509 90 00, wholly obtained in Tunisia and transported direct from that country to the Community, shall be reduced by ECU 4,661 per 100 kilograms.

2. The rate of customs duty applicable to imports into the Community of olive oil having undergone a refining process falling within CN code 1510 00 90, wholly obtained in Tunisia and transported direct from that country to the Community, shall be reduced by ECU 8,754 per 100 kilograms.

Article 4

Detailed rules for the application of this Regulation shall be adopted by the Commission in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC.

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

Done at Luxembourg, 9 October 1997.

Article 5

Where the present conditions of the special arrangements provided for in the Cooperation Agreement are amended, in particular as regards the amounts, or where a new agreement is concluded, the Commission shall adopt the resultant adjustments necessary for this Regulation in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC.

Article 6

Regulation (EEC) No 1508/76 is hereby repealed.

Article 7

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

It shall apply from 1 July 1997.

For the Council

The President

M. DELVAUX-STEHRÉS

COUNCIL REGULATION (EC) No 2005/97**of 9 October 1997****laying down certain rules for the application of the special arrangements for imports of olive oil originating in Algeria**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas Articles 16 and 17 of, and Annex B to, the Cooperation Agreement between the European Economic Community and the People's Democratic Republic of Algeria⁽¹⁾, hereinafter referred to as the 'Cooperation Agreement', provide for special arrangements for imports of olive oil falling within CN codes 1509 and 1510, wholly obtained in Algeria and transported direct from that country to the Community;

Whereas, for olive oil falling within CN codes 1509 10 10, 1509 10 90 and 1510 00 10, the special arrangements provide for a flat-rate deduction of ECU 0,7245 per 100 kilograms from the applicable levy, representing the reduction provided for in Article 16 (1) (a) of the Cooperation Agreement; whereas, provided that Algeria levies an export charge, those arrangements provide for a further reduction of that levy corresponding to the amount of the special charge, but not exceeding ECU 14,60 per 100 kilograms, representing the reduction provided for in Article 16 (1) (b) of the Cooperation Agreement and a reduction of ECU 14,60 per 100 kilograms, representing the additional amount provided for in Annex B to the Cooperation Agreement;

Whereas the Agreement on Agriculture concluded during the Uruguay Round of multilateral trade negotiations⁽²⁾ provides that the variable levies applied to imports of agricultural products are to be replaced by fixed customs duties from 1 July 1995;

Whereas continuation of the arrangements calls for the adoption of new implementing rules and the repeal of Council Regulation (EEC) No 1514/76 of 24 June 1976 on imports of olive oil originating in Algeria⁽³⁾;

Whereas, in accordance with the Cooperation Agreement, the special export charge should be reflected in the price of the olive oil upon importation into the Community; whereas, to ensure the correct application of the arrangements in question, the necessary measures should be adopted to ensure that the charge is paid at the latest when the oil is imported;

Whereas if the present conditions of the special arrangements provided for in the Cooperation Agreement are amended, in particular as regards the amounts, or if a new agreement is concluded, it may be necessary to adjust this Regulation to incorporate those changes; whereas provision should be made for those adjustments to be adopted by the Commission in accordance with the procedure laid down in Article 38 of Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽⁴⁾;

Whereas, by Regulation (EC) No 2146/95⁽⁵⁾, the Commission introduced an autonomous system as a transitional measure expiring on 30 June 1997; whereas this Regulation should therefore apply from 1 July 1997,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down certain rules for the application of the special arrangements for imports of olive oil originating in Algeria.

Article 2

1. The rate of customs duty applicable to imports into the Community of olive oil other than that which has undergone a refining process, falling within CN codes 1509 10 10, 1509 10 90 and 1510 00 10, wholly obtained in Algeria and transported direct from that country to the Community, shall be reduced by ECU 0,7245 per 100 kilograms.

2. Where Algeria levies a special export charge on that olive oil, wholly obtained in Algeria and transported direct from that country to the Community, the rate of customs duty shall be further reduced by an amount equal to the special charge but not exceeding ECU 14,60 per 100 kilograms.

3. The reduction in the rate of customs duty provided for in paragraph 2 shall be applied to all olive oil imports for which the importer provides proof, when importing the oil, that the special export charge is reflected in the import price.

⁽¹⁾ OJ L 263, 27. 9. 1978, p. 2.

⁽²⁾ OJ L 336, 23. 12. 1994, p. 1.

⁽³⁾ OJ L 169, 28. 6. 1976, p. 24. Regulation as amended by Regulation (EEC) No 1900/92 (OJ L 169, 11. 7. 1992, p. 1).

⁽⁴⁾ OJ L 172, 30. 9. 1966, p. 3025/66. Regulation as last amended by Regulation (EC) No 1581/96 (OJ L 206, 16. 8. 1996, p. 11).

⁽⁵⁾ OJ L 215, 9. 9. 1995, p. 1.

Article 3

1. The rate of customs duty applicable to imports into the Community of olive oil having undergone a refining process falling within CN code 1509 90 00, wholly obtained in Algeria and transported direct from that country to the Community, shall be reduced by ECU 4,661 per 100 kilograms.

2. The rate of customs duty applicable to imports into the Community of olive oil having undergone a refining process falling within CN code 1510 00 90, wholly obtained in Algeria and transported direct from that country to the Community, shall be reduced by ECU 8,754 per 100 kilograms.

Article 4

Detailed rules for the application of this Regulation shall be adopted by the Commission in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC.

Article 5

Where the present conditions of the special arrangements provided for in the Cooperation Agreement are amended, in particular as regards the amounts, or where a new agreement is concluded, the Commission shall adopt the resultant adjustments necessary for this Regulation in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC.

Article 6

Regulation (EEC) No 1514/76 is hereby repealed.

Article 7

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

It shall apply from 1 July 1997.

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

Done at Luxembourg, 9 October 1997.

For the Council

The President

M. DELVAUX-STEHRRES

COUNCIL REGULATION (EC) No 2006/97

of 9 October 1997

laying down certain rules for the application of the special arrangements for imports of olive oil originating in Morocco

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas Articles 17 and 18 of, and Annex B to, the Cooperation Agreement between the European Economic Community and the Kingdom of Morocco⁽¹⁾, hereinafter referred to as the 'Cooperation Agreement', provide for special arrangements for imports of olive oil falling within CN codes 1509 and 1510, wholly obtained in Morocco and transported direct from that country to the Community;

Whereas, for olive oil falling within CN codes 1509 10 10, 1509 10 90 and 1510 00 10, the special arrangements provide for a flat-rate deduction of ECU 0,7245 per 100 kilograms from the applicable levy, representing the reduction provided for in Article 17 (1) (a) of the Cooperation Agreement; whereas, provided that Morocco levies an export charge, those arrangements provide for a further reduction of that levy corresponding to the amount of the special charge, but not exceeding ECU 14,60 per 100 kilograms, representing the reduction provided for in Article 17 (1) (b) of the Cooperation Agreement and a reduction of ECU 14,60 per 100 kilograms, representing the additional amount provided for in Annex B to the Cooperation Agreement;

Whereas the Community has concluded an agreement in the form of an exchange of letters with the Kingdom of Morocco extending the special arrangements after 1 January 1994 and for the duration of the Cooperation Agreement, on the basis of a flat-rate reduction in the customs duties⁽²⁾;

Whereas the Agreement on Agriculture concluded during the Uruguay Round of multilateral trade negotiations⁽³⁾ provides that the variable levies applied to imports of agricultural products are to be replaced by fixed customs duties from 1 July 1995;

Whereas continuation of the arrangements calls for the adoption of new implementing rules and the repeal of Council Regulation (EEC) No 1521/76 of 24 June 1976 on imports of olive oil originating in Morocco⁽⁴⁾;

Whereas, in accordance with the Cooperation Agreement, the special export charge should be reflected in the price

of the olive oil upon importation into the Community; whereas, to ensure the correct application of the arrangements in question, the necessary measures should be adopted to ensure that the charge is paid at the latest when the oil is imported;

Whereas, if the present conditions of the special arrangements provided for in the Cooperation Agreement are amended, in particular as regards the amounts, or if a new agreement is concluded, it may be necessary to adjust this Regulation to incorporate those changes; whereas provision should be made for those adjustments to be adopted by the Commission in accordance with the procedure laid down in Article 38 of Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽⁵⁾;

Whereas, by Regulation (EC) No 2146/95⁽⁶⁾, the Commission introduced an autonomous system as a transitional measure expiring on 30 June 1997; whereas this Regulation should therefore apply from 1 July 1997,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down certain rules for the application of the special arrangements for imports of olive oil originating in Morocco.

Article 2

1. The rate of customs duty applicable to imports into the Community of olive oil other than that which has undergone a refining process, falling within CN codes 1509 10 10, 1509 10 90 and 1510 00 10, wholly obtained in Morocco and transported direct from that country to the Community, shall be reduced by ECU 0,7245 per 100 kilograms.

2. Where Morocco levies a special export charge on that olive oil, wholly obtained in Morocco and transported direct from that country to the Community, the rate of customs duty shall be further reduced by an amount equal to the special charge but not exceeding ECU 14,60 per 100 kilograms, plus ECU 14,60 per 100 kilograms.

⁽¹⁾ OJ L 264, 27. 9. 1978, p. 2.

⁽²⁾ OJ L 277, 30. 10. 1996, p. 35.

⁽³⁾ OJ L 336, 23. 12. 1994, p. 1.

⁽⁴⁾ OJ L 169, 28. 6. 1976, p. 43. Regulation as last amended by Regulation (EC) No 2062/96 (OJ L 277, 30. 10. 1996, p. 3).

⁽⁵⁾ OJ L 172, 30. 9. 1966, p. 3025/66. Regulation as last amended by Regulation (EC) No 1581/96 (OJ L 206, 16. 8. 1996, p. 11).

⁽⁶⁾ OJ L 215, 9. 9. 1995, p. 1. Regulation as last amended by Regulation (EC) No 1235/96 (OJ L 161, 29. 6. 1996, p. 105).

3. The reduction in the rate of customs duty provided for in paragraph 2 shall apply to all olive oil imports for which the importer provides proof, when importing the oil, that the special export charge is reflected in the import price.

Article 3

1. The rate of customs duty applicable to imports into the Community of olive oil having undergone a refining process falling within CN code 1509 90 00, wholly obtained in Morocco and transported direct from that country to the Community, shall be reduced by ECU 4,661 per 100 kilograms.

2. The rate of customs duty applicable to imports into the Community of olive oil having undergone a refining process falling within CN code 1510 00 90, wholly obtained in Morocco and transported direct from that country to the Community, shall be reduced by ECU 8,754 per 100 kilograms.

Article 4

Detailed rules for the application of this Regulation shall be adopted by the Commission in accordance with the

procedure laid down in Article 38 of Regulation No 136/66/EEC.

Article 5

Where the present conditions of the special arrangements provided for in the Cooperation Agreement are amended, in particular as regards the amounts, or where a new agreement is concluded, the Commission shall adopt the resultant adjustments necessary for this Regulation in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC.

Article 6

Regulation (EEC) No 1521/76 is hereby repealed.

Article 7

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

It shall apply from 1 July 1997.

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

Done at Luxembourg, 9 October 1997.

For the Council

The President

M. DELVAUX-STEHRES

COUNCIL REGULATION (EC) No 2007/97

of 9 October 1997

laying down certain rules for the application of the special arrangements for imports of olive oil originating in Lebanon

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas Article 18 of the Cooperation Agreement between the European Economic Community and the Republic of Lebanon⁽¹⁾, hereinafter referred to as the 'Cooperation Agreement', provides for special arrangements for imports of olive oil falling within CN codes 1509 and 1510, wholly obtained in Lebanon and transported direct from that country to the Community;

Whereas, for olive oil falling within CN codes 1509 10 10, 1509 10 90 and 1510 00 10, the special arrangements provide for a flat-rate deduction of ECU 0,7245 per 100 kilograms from the applicable levy, representing the reduction provided for in Article 18 (1) (a) of the Cooperation Agreement; whereas, provided that Lebanon levies an export charge, those arrangements provide for a further reduction of that levy corresponding to the amount of the special charge, but not exceeding ECU 5,796 per 100 kilograms, representing the reduction provided for in Article 18 (1) (b) of the Cooperation Agreement;

Whereas the Agreement on Agriculture concluded during the Uruguay Round of multilateral trade negotiations⁽²⁾ provides that the variable levies applied to imports of agricultural products are to be replaced by fixed customs duties from 1 July 1995;

Whereas continuation of the arrangements calls for the adoption of new implementing rules and the repeal of Council Regulation (EEC) No 1620/77 of 18 July 1977 on imports of olive oil originating in Lebanon⁽³⁾;

Whereas, in accordance with the Cooperation Agreement, the special export charge should be reflected in the price of the olive oil upon importation into the Community; whereas, to ensure the correct application of the arrangements in question, the necessary measures should be adopted to ensure that the charge is paid at the latest when the oil is imported;

Whereas if the present conditions of the special arrangements provided for in the Cooperation Agreement are amended, in particular as regards the amounts, or if a new agreement is concluded, it may be necessary to adjust this Regulation to incorporate those changes; whereas provi-

sion should be made for those adjustments to be adopted by the Commission in accordance with the procedure laid down in Article 38 of Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽⁴⁾;

Whereas, by Regulation (EC) No 2146/95⁽⁵⁾, the Commission introduced an autonomous system as a transitional measure expiring on 30 June 1997; whereas this Regulation should therefore apply from 1 July 1997,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down certain rules for the application of the special arrangements for imports of olive oil originating in Lebanon.

Article 2

1. The rate of customs duty applicable to imports into the Community of olive oil other than that which has undergone a refining process, falling within CN codes 1509 10 10, 1509 10 90 and 1510 00 10, wholly obtained in Lebanon and transported direct from that country to the Community, shall be reduced by ECU 0,7245 per 100 kilograms.

2. Where Lebanon levies a special export charge on that olive oil, wholly obtained in Lebanon and transported direct from that country to the Community, the rate of customs duty shall be further reduced by an amount equal to the special charge but not exceeding ECU 5,796 per 100 kilograms.

3. The reduction in the rate of customs duty provided for in paragraph 2 shall apply to all olive oil imports for which the importer provides proof, when importing the oil, that the special export charge is reflected in the import price.

Article 3

Detailed rules for the application of this Regulation shall be adopted by the Commission in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC.

⁽¹⁾ OJ L 267, 27. 9. 1978, p. 2.

⁽²⁾ OJ L 336, 23. 12. 1994, p. 1.

⁽³⁾ OJ L 181, 21. 7. 1977, p. 4.

⁽⁴⁾ OJ 172, 30. 9. 1966, p. 3025/66. Regulation as last amended by Regulation (EC) No 1581/96 (OJ L 206, 16. 8. 1996, p. 11).

⁽⁵⁾ OJ L 215, 9. 9. 1995, p. 1.

Article 4

Where the present conditions of the special arrangements provided for in the Cooperation Agreement are amended, in particular as regards the amounts, or where a new agreement is concluded, the Commission shall adopt the resultant adjustments necessary for this Regulation in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC.

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

Done at Luxembourg, 9 October 1997.

Article 5

Regulation (EEC) No 1620/77 is hereby repealed.

Article 6

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

It shall apply from 1 July 1997.

For the Council

The President

M. DELVAUX-STEHRES

COUNCIL REGULATION (EC) No 2008/97

of 9 October 1997

laying down certain rules for the application of the special arrangements for imports of olive oil and certain other agricultural products originating in Turkey

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas the Additional Protocol to the Agreement creating an Association between the European Economic Community and Turkey on new concessions for imports of Turkish agricultural products into the Community⁽¹⁾ provides for special arrangements for imports of durum wheat and canary grass, rye and malt originating in Turkey; whereas those arrangements grant a reduction in the levy applicable to imports of durum wheat and canary grass, a reduction in the levy applicable to imports of rye, provided that Turkey levies a special export charge on that product, and a reduction in the fixed component of the levy applicable to imports of malt;

Whereas, for olive oil falling within CN codes 1509 10 10, 1509 10 90 and 1510 00 10, Decision No 1/77 of the EC-Turkey Association Council provides for special arrangements comprising a flat rate deduction of ECU 0,7245 per 100 kilograms from the levy applicable to that oil; whereas, provided that Turkey levies an export charge, those arrangements provide for a further reduction of that levy corresponding to the amount of the special charge, but not exceeding ECU 13,14 per 100 kilograms, representing the reduction provided for in Article 2 of the Association Agreement and a reduction of ECU 13,14 per 100 kilograms, representing the additional amount provided for in Annex IV to that Agreement; whereas the Community has concluded an agreement in the form of an exchange of letters with Turkey extending the aforementioned special arrangements for the duration of the Association Agreement with Turkey, on the basis of a flat-rate reduction in the customs duties⁽²⁾;

Whereas the Agreement on Agriculture concluded during the Uruguay Round of multilateral trade negotiations⁽³⁾ provides that the agricultural levies are to be replaced by fixed customs duties from 1 July 1995;

Whereas continuation of the arrangements calls for the adoption of new implementing rules and the deletion of certain Articles of Council Regulation (EEC) No 1180/77

of 17 May 1977 on imports into the Community of certain agricultural products originating in Turkey⁽⁴⁾;

Whereas, in accordance with the agreements, the special export charge should be reflected in the price of the olive oil upon importation into the Community; whereas, to ensure the correct application of the arrangements in question, the necessary measures should be adopted to ensure that the charge is paid at the latest when the oil is imported;

Whereas, if the present conditions of the special arrangements provided for in the Association Agreement are amended, in particular as regards the amounts, or if a new agreement is concluded, it may be necessary to adjust this Regulation to incorporate those changes; whereas provision should be made for those adjustments to be adopted by the Commission in accordance with the procedure laid down in Article 38 of Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽⁵⁾ or in the corresponding Articles of the other Regulations on the common organization of the markets affected by the special arrangements;

Whereas, in Regulation (EC) No 2146/95⁽⁶⁾ and Regulation (EC) No 1214/96⁽⁷⁾, the Commission introduced autonomous systems as a transitional measure expiring on 30 June 1997; whereas this Regulation should therefore apply from 1 July 1997,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down certain rules for the application of the special arrangements for imports of olive oil and certain other agricultural products originating in Turkey.

Article 2

1. The rate of customs duty applicable to imports into the Community of olive oil other than that which has undergone a refining process, falling within CN codes

⁽¹⁾ OJ L 217, 29. 12. 1964, p. 3687/64.

⁽²⁾ OJ L 277, 30. 10. 1996, p. 39.

⁽³⁾ OJ L 336, 23. 12. 1994, p. 22.

⁽⁴⁾ OJ L 142, 9. 6. 1977, p. 10. Regulation as last amended by Regulation (EC) No 2063/96 (OJ L 277, 30. 10. 1996, p. 4).

⁽⁵⁾ OJ L 172, 30. 9. 1966, p. 3025/66. Regulation as last amended by Regulation (EC) No 1581/96 (OJ L 206, 16. 8. 1996, p. 11).

⁽⁶⁾ OJ L 215, 9. 9. 1995, p. 1.

⁽⁷⁾ OJ L 161, 29. 6. 1996, p. 46.

1509 10 10, 1509 10 90 and 1510 00 10, wholly obtained in Turkey and transported direct from that country to the Community, shall be reduced by ECU 0,7245 per 100 kilograms.

2. Where Turkey levies a special export charge on that olive oil, wholly obtained in Turkey and transported direct from that country to the Community, the rate of customs duty shall be reduced by a further amount equal to the special charge but not exceeding ECU 13,14 per 100 kilograms, plus ECU 13,14 per 100 kilograms.

3. The reduction in the rate of customs duty provided for in paragraph 2 shall apply to all olive oil imports for which the importer provides proof, when importing the oil, that the special export charge is reflected in the import price.

Article 3

1. The rate of customs duty applicable to imports into the Community of olive oil having undergone a refining process falling within CN code 1509 90 00, wholly obtained in Turkey and transported direct from that country to the Community, shall be reduced by ECU 3,723 per 100 kilograms.

2. The rate of customs duty applicable to imports into the Community of olive oil having undergone a refining process falling within CN code 1510 00 90, wholly obtained in Turkey and transported direct from that country to the Community, shall be reduced by ECU 7,003 per 100 kilograms.

Article 4

The rates of duty applicable to imports into the Community of durum wheat falling within CN code 1001 10 00, originating in Turkey and transported direct from that country to the Community, shall be that set up pursuant to Article 10 of Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals⁽¹⁾, less ECU 0,73 per tonne.

Article 5

1. The rate of duty applicable to imports into the Community of rye falling within CN code 1002 00 00, originating in Turkey and transported direct from that

country to the Community, shall be that set pursuant to Article 10 (2) of Regulation (EEC) No 1766/92, less an amount equal to the special charge on exports to the Community levied by Turkey on that product, but not exceeding ECU 11,68 per tonne.

2. The arrangements provided for in paragraph 1 shall apply to all imports for which the importer provides proof that the special export charge has been paid by the exporter, of an amount not exceeding that set pursuant to Article 10 (2) of Regulation (EEC) No 1766/92, nor exceeding ECU 11,68 per tonne.

Article 6

The rate of duty applicable to imports into the Community of malt, whether or not roasted, falling within CN code 1107, originating in Turkey and transported direct from that country to the Community, shall be reduced by ECU 6,57 per tonne.

Article 7

Detailed rules for the application of this Regulation shall be adopted by the Commission in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC or the corresponding Articles of the other Regulations on the common organization of the markets concerned.

Article 8

Where the present conditions of the special arrangements provided for in the Association Agreement are amended, in particular as regards the amounts, or where a new agreement is concluded, the Commission shall adopt the resultant adjustments necessary for this Regulation in accordance with the procedure laid down in Article 38 of Regulation 136/66/EEC or the corresponding Articles of the other Regulations on the common organization of the markets concerned.

Article 9

Articles 6 to 10 of Regulation (EEC) No 1180/77 are hereby deleted.

Article 10

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

It shall apply from 1 July 1997.

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21. Regulation as last amended by Regulation (EEC) No 923/96 (OJ L 126, 24. 5. 1996, p. 37).

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

Done at Luxembourg, 9 October 1997.

For the Council

The President

M. DELVAUX-STEHRES

COMMISSION REGULATION (EC) No 2009/97

of 15 October 1997

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the market in sugar ⁽¹⁾, as last amended by Regulation (EC) No 1599/96 ⁽²⁾,

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

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

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

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

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

resentative of actual market trends must also be disregarded;

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

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

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 16 October 1997.

⁽¹⁾ OJ L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ L 141, 24. 6. 1995, p. 12.

⁽⁴⁾ OJ L 145, 27. 6. 1968, p. 12.

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

Done at Brussels, 15 October 1997.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX

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

CN code	Amount of the representative price in ECU per 100 kg net of the product in question	Amount of the additional duty in ECU per 100 kg net of the product in question	Amount of the duty to be applied to imports in ECU per 100 kg net of the product in question because of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 ⁽²⁾
1703 10 00 ⁽¹⁾	7,94	—	0,27
1703 90 00 ⁽¹⁾	11,36	—	0,00

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

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

COMMISSION REGULATION (EC) No 2010/97

of 15 October 1997

altering the export refunds on white sugar and raw sugar exported in the natural state

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas the refunds on white sugar and raw sugar exported in the natural state were fixed by Commission Regulation (EC) No 1954/97 ⁽³⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EC) No 1954/97 to the informa-

tion known to the Commission that the export refunds at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 (1) (a) of Regulation (EEC) No 1785/81, undenatured and exported in the natural state, as fixed in the Annex to Regulation (EC) No 1954/97 are hereby altered to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 16 October 1997.

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

Done at Brussels, 15 October 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ L 263, 25. 9. 1997, p. 3.

ANNEX

to the Commission Regulation of 15 October 1997 altering the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Amount of refund
	— ECU/100 kg —
1701 11 90 9100	36,00 ⁽¹⁾
1701 11 90 9910	33,47 ⁽¹⁾
1701 11 90 9950	⁽²⁾
1701 12 90 9100	36,00 ⁽¹⁾
1701 12 90 9910	33,47 ⁽¹⁾
1701 12 90 9950	⁽²⁾
	— ECU/1 % of sucrose × 100 kg —
1701 91 00 9000	0,3914
	— ECU/100 kg —
1701 99 10 9100	39,14
1701 99 10 9910	40,20
1701 99 10 9950	40,20
	— ECU/1 % of sucrose × 100 kg —
1701 99 90 9100	0,3914

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

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

**COMMISSION REGULATION (EC) No 2011/97
of 15 October 1997**

**fixing the maximum export refund for white sugar for the 11th partial invitation
to tender issued within the framework of the standing invitation to tender
provided for in Regulation (EC) No 1408/97**

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

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector⁽¹⁾, as last amended by Regulation (EC) No 1599/96⁽²⁾, and in particular the second subparagraph of Article 17 (5) (b) thereof,

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

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

Whereas, following an examination of the tenders submitted in response to the 11th partial invitation to

tender, the provisions set out in Article 1 should be adopted;

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 11th partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1408/97 the maximum amount of the export refund is fixed at ECU 43,359 per 100 kilograms.

Article 2

This Regulation shall enter into force on 16 October 1997.

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

Done at Brussels, 15 October 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ L 194, 23. 7. 1997, p. 16.

COMMISSION REGULATION (EC) No 2012/97

of 15 October 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 Regu-
lation (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 multilat-
eral trade negotiations, the criteria whereby the Commis-
sion fixes the standard values for imports from third

countries, in respect of the products and periods stipu-
lated 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 16 October
1997.

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

Done at Brussels, 15 October 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ L 325, 14. 12. 1996, p. 5.

⁽³⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 15 October 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 40	052	92,9
	999	92,9
0709 90 79	052	118,6
	999	118,6
0805 30 30	052	69,4
	388	64,6
	524	60,5
	528	52,4
	999	61,7
0806 10 40	052	91,0
	064	59,9
	400	178,7
	999	109,9
0808 10 92, 0808 10 94, 0808 10 98	052	59,1
	060	48,1
	064	43,8
	400	94,0
	404	74,8
	528	47,3
	800	156,1
	999	74,7
0808 20 57	052	87,5
	064	86,6
	999	87,0

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

COMMISSION REGULATION (EC) No 2013/97

of 15 October 1997

fixing the export refunds on olive oil

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by Regulation (EC) No 1581/96⁽²⁾, and in particular Article 3 (3) thereof,

Whereas Article 3 of Regulation No 136/66/EEC provides that, where prices within the Community are higher than world market prices, the difference between these prices may be covered by a refund when olive oil is exported to third countries;

Whereas the detailed rules for fixing and granting export refunds on olive oil are contained in Commission Regulation (EEC) No 616/72⁽³⁾, as last amended by Regulation (EEC) No 2962/77⁽⁴⁾;

Whereas Article 3 (3) of Regulation No 136/66/EEC provides that the refund must be the same for the whole Community;

Whereas, in accordance with Article 3 (4) of Regulation No 136/66/EEC, the refund for olive oil must be fixed in the light of the existing situation and outlook in relation to olive oil prices and availability on the Community market and olive oil prices on the world market; whereas, however, where the world market situation is such that the most favourable olive oil prices cannot be determined, account may be taken of the price of the main competing vegetable oils on the world market and the difference recorded between that price and the price of olive oil during a representative period; whereas the amount of the refund may not exceed the difference between the price of olive oil in the Community and that on the world market, adjusted, where appropriate, to take account of export costs for the products on the world market;

Whereas, in accordance with Article 3 (3) third indent, point (b) of Regulation No 136/66/EEC, it may be decided that the refund shall be fixed by tender; whereas the tendering procedure should cover the amount of the

refund and may be limited to certain countries of destination, quantities, qualities and presentations;

Whereas the second indent of Article 3 (3) of Regulation No 136/66/EEC provides that the refund on olive oil may be varied according to destination where the world market situation or the specific requirements of certain markets make this necessary;

Whereas the refund must be fixed at least once every month; whereas it may, if necessary, be altered in the intervening period;

Whereas it follows from applying these detailed rules to the present situation on the market in olive oil and in particular to olive oil prices within the Community and on the markets of third countries that the refund should be as set out in the Annex hereto;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92⁽⁵⁾, as last amended by Regulation (EC) No 150/95⁽⁶⁾, are used to convert amounts expressed in third country currencies and are used as the basis for determining the agricultural conversion rates of the Member States' currencies; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93⁽⁷⁾, as last amended by Regulation (EC) No 1482/96⁽⁸⁾;

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

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 (2) (c) of Regulation No 136/66/EEC shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 16 October 1997.

⁽¹⁾ OJ L 72, 30. 9. 1966, p. 3025/66.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 11.

⁽³⁾ OJ L 78, 31. 3. 1972, p. 1.

⁽⁴⁾ OJ L 348, 30. 12. 1977, p. 53.

⁽⁵⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁶⁾ OJ L 22, 31. 1. 1995, p. 1.

⁽⁷⁾ OJ L 108, 1. 5. 1993, p. 106.

⁽⁸⁾ OJ L 188, 27. 7. 1996, p. 22.

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

Done at Brussels, 15 October 1997.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX

to the Commission Regulation of 15 October 1997 fixing the export refunds on olive oil
(ECU/100 kg)

Product code	Amount of refund (¹)
1509 10 90 9100	0,00
1509 10 90 9900	0,00
1509 90 00 9100	0,00
1509 90 00 9900	0,00
1510 00 90 9100	0,00
1510 00 90 9900	0,00

(¹) For destinations mentioned in Article 34 of amended Commission Regulation (EEC) No 3665/87 (OJ L 351, 14. 12. 1987, p 1), as well as for exports to third countries.

NB: The product codes and the footnotes are defined in amended Commission Regulation (EEC) No 3846/87.

COMMISSION REGULATION (EC) No 2014/97

of 15 October 1997

fixing the maximum export refunds for olive oil for the 21st partial invitation to tender under the standing invitation to tender issued by Regulation (EC) No 2081/96

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

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by Regulation (EC) No 1581/96⁽²⁾, and in particular Article 3 thereof,

Whereas Commission Regulation (EC) No 2081/96⁽³⁾ issued a standing invitation to tender with a view to determining the export refunds on olive oil;

Whereas Article 6 of Regulation (EC) No 2081/96 provides that maximum amounts are to be fixed for the export refunds in the light in particular of the current situation and foreseeable developments on the Community and world olive-oil markets and on the basis of the tenders received; whereas contracts are awarded to any tenderer who submits a tender at the level of the maximum refund or at a lower level;

Whereas, for the purposes of applying the abovementioned provisions, the maximum export refunds should be set at the levels specified in the Annex;

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refunds for olive oil for the 21st partial invitation to tender under the standing invitation to tender issued by Regulation (EC) No 2081/96 are hereby fixed in the Annex, on the basis of the tenders submitted by 9 October 1997.

Article 2

This Regulation shall enter into force on 16 October 1997.

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

Done at Brussels, 15 October 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ 172, 30. 9. 1966, p. 3025/66.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 11.

⁽³⁾ OJ L 279, 31. 10. 1996, p. 17.

ANNEX

to the Commission Regulation of 15 October 1997 fixing the maximum export refunds for olive oil for the 21st partial invitation to tender under the standing invitation to tender issued by Regulation (EC) No 2081/96

(ECU/100 kg)

Product code	Amount of refund
1509 10 90 9100	—
1509 10 90 9900	—
1509 90 00 9100	—
1509 90 00 9900	—
1510 00 90 9100	—
1510 00 90 9900	—

NB: The product codes and the footnotes are defined in amended Commission Regulation (EEC) No 3846/87.

COMMISSION REGULATION (EC) No 2015/97
of 15 October 1997
fixing the import duties in the rice sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1503/96 of 29 July 1996 laying down detailed rules for the application of Council Regulation (EC) No 3072/95 as regards import duties in the rice sector ⁽²⁾, as last amended by Regulation (EC) No 1403/97 ⁽³⁾, and in particular Article 4 (1) thereof,

Whereas Article 11 of Regulation (EC) No 3072/95 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation; whereas, however, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by a certain percentage according to whether it is husked or milled rice, minus the cif import price provided that duty does not exceed the rate of the Common Customs Tariff duties;

Whereas, pursuant to Article 12 (3) of Regulation (EC) No 3072/95, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market or on the Community import market for the product;

Whereas Regulation (EC) No 1503/96 lays down detailed rules for the application of Regulation (EC) No 3072/95 as regards import duties in the rice sector;

Whereas the import duties are applicable until new duties are fixed and enter into force; whereas they also remain in force in cases where no quotation is available from the source referred to in Article 5 of Regulation (EC) No 1503/96 during the two weeks preceding the next periodical fixing;

Whereas, in order to allow the import duty system to function normally, the market rates recorded during a reference period should be used for calculating the duties;

Whereas application of Regulation (EC) No 1503/96 results in import duties being fixed as set out in the Annexes to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import duties in the rice sector referred to in Article 11 (1) and (2) of Regulation (EC) No 3072/95 shall be those fixed in Annex I to this Regulation on the basis of the information given in Annex II.

Article 2

This Regulation shall enter into force on 16 October 1997.

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

Done at Brussels, 15 October 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30. 12. 1995, p. 18.

⁽²⁾ OJ L 189, 30. 7. 1996, p. 71.

⁽³⁾ OJ L 194, 23. 7. 1997, p. 2.

ANNEX I

to the Commission Regulation of 15 October 1997 fixing the import duties on rice and broken rice

(ECU/tonne)

CN code	Duties ⁽¹⁾			
	Third countries (except ACP and Bangladesh) ⁽¹⁾ ⁽⁷⁾	ACP Bangladesh ⁽¹⁾ ⁽²⁾ ⁽³⁾ ⁽⁴⁾	Basmati India and Pakistan ⁽⁶⁾	Egypt ⁽⁵⁾
1006 10 21	(7)	130,91		202,88
1006 10 23	(7)	130,91		202,88
1006 10 25	(7)	130,91		202,88
1006 10 27	(7)	130,91		202,88
1006 10 92	(7)	130,91		202,88
1006 10 94	(7)	130,91		202,88
1006 10 96	(7)	130,91		202,88
1006 10 98	(7)	130,91		202,88
1006 20 11	301,06	146,19		225,80
1006 20 13	301,06	146,19		225,80
1006 20 15	301,06	146,19		225,80
1006 20 17	249,26	120,29	0	186,95
1006 20 92	301,06	146,19		225,80
1006 20 94	301,06	146,19		225,80
1006 20 96	301,06	146,19		225,80
1006 20 98	249,26	120,29	0	186,95
1006 30 21	528,77	249,48		396,58
1006 30 23	528,77	249,48		396,58
1006 30 25	528,77	249,48		396,58
1006 30 27	(7)	251,59		399,75
1006 30 42	528,77	249,48		396,58
1006 30 44	528,77	249,48		396,58
1006 30 46	528,77	249,48		396,58
1006 30 48	(7)	251,59		399,75
1006 30 61	528,77	249,48		396,58
1006 30 63	528,77	249,48		396,58
1006 30 65	528,77	249,48		396,58
1006 30 67	(7)	251,59		399,75
1006 30 92	528,77	249,48		396,58
1006 30 94	528,77	249,48		396,58
1006 30 96	528,77	249,48		396,58
1006 30 98	(7)	251,59		399,75
1006 40 00	(7)	78,38		123,00

⁽¹⁾ Subject to the application of the provisions of Articles 12 and 13 of amended Council Regulation (EEC) No 715/90 (OJ L 84, 30. 3. 1990, p. 85).

⁽²⁾ In accordance with Regulation (EEC) No 715/90, the duties are not applied to products originating in the African, Caribbean and Pacific States and imported directly into the overseas department of Réunion.

⁽³⁾ The import levy on rice entering the overseas department of Réunion is specified in Article 11 (3) of Regulation (EC) No 3072/95.

⁽⁴⁾ The duty on imports of rice not including broken rice (CN code 1006 40 00), originating in Bangladesh is applicable under the arrangements laid down in Council Regulation (EEC) No 3491/90 (OJ L 337, 4. 12. 1990, p. 1) and amended Commission Regulation (EEC) No 862/91 (OJ L 88, 9. 4. 1991, p. 7).

⁽⁵⁾ No import duty applies to products originating in the OCT pursuant to Article 101 (1) of amended Council Decision 91/482/EEC (OJ L 263, 19. 9. 1991, p. 1).

⁽⁶⁾ For husked rice of the Basmati variety originating in India and Pakistan, a reduction of ECU 250 per tonne applies (Article 4a of amended Regulation (EC) No 1503/96).

⁽⁷⁾ Duties fixed in the Common Customs Tariff.

⁽⁸⁾ The duty on imports of rice originating in and coming from Egypt is applicable under the arrangements laid down in Council Regulation (EC) No 2184/96 (OJ L 292, 15. 11. 1996, p. 1) and Commission Regulation (EC) No 196/97 (OJ L 31, 1. 2. 1997, p. 53).

ANNEX II

Calculation of import duties for rice

	Paddy	Indica rice		Japonica rice		Broken rice
		Husked	Milled	Husked	Milled	
1. Import duty (ECU/tonne)	(¹)	249,26	533,00	301,06	528,77	(¹)

2. Elements of calculation:

(a) Arag cif price (ECU/tonne)	—	350,95	293,19	325,83	361,54	—
(b) fob price (ECU/tonne)	—	—	—	299,05	334,76	—
(c) Sea freight (ECU/tonne)	—	—	—	26,78	26,78	—
(d) Source	—	USDA	USDA	Operators	Operators	—

(¹) Duties fixed in the Common Customs Tariff.

COMMISSION REGULATION (EC) No 2016/97

of 15 October 1997

amending Regulation (EC) No 1098/94 as regards the regional base areas
applicable in Germany

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

Having regard to Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops ⁽¹⁾, as last amended by Regulation (EC) No 1422/97 ⁽²⁾, and in particular Article 12 thereof,

Whereas Commission Regulation (EC) No 1098/94 ⁽³⁾, as last amended by Regulation (EC) No 794/97 ⁽⁴⁾, lays down the regional base areas applicable under the support system for producers of certain arable crops;

Whereas, following a request from Germany, new base areas should be laid down in accordance with the regionalization plan of the Member State concerned;

Whereas Regulation (EC) No 1098/94 must therefore be amended;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Joint Management Committee for Cereals, Oils and Fats and Dried Fodder,

HAS ADOPTED THIS REGULATION:

Article 1

The information given under 'Germany' in the Annex to Regulation (EC) No 1098/94 is hereby replaced by that given in the Annex hereto.

Article 2

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

It shall apply from the 1997/98 marketing year.

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

Done at Brussels, 15 October 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 12.

⁽²⁾ OJ L 196, 24. 7. 1997, p. 18.

⁽³⁾ OJ L 121, 12. 5. 1994, p. 12.

⁽⁴⁾ OJ L 114, 1. 5. 1997, p. 31.

ANNEX

(1 000 ha)

Region	All crops	Maize
GERMANY	10 005,6 (*)	540,3 (*)
Schleswig-Holstein	505,6	
Hamburg	5,1	
Niedersachsen	1 424,4	
Bremen	1,8	
Nordrhein-Westfalen	948,3	
Rheinland-Pfalz	368,4	
Hessen	461,2	
Baden-Württemberg	735,4	122,1
Bayern	1 775,9	418,2
Saarland	36,5	
Berlin	2,9	
Brandenburg	881,7	
Mecklenburg-Vorpommern	901,4	
Sachsen	585,7	
Sachsen-Anhalt	846,1	
Thüringen	525,2	

(*) Where Article 2 (7) of Regulation (EEC) No 1765/92 is applied.

COMMISSION REGULATION (EC) No 2017/97

of 15 October 1997

amending Regulation (EC) No 1237/95 laying down detailed rules for the application of the stabilizer to the yields used for the calculation of the compensatory payments referred to in Regulation (EEC) No 1765/92

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

Having regard to Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops⁽¹⁾, as last amended by Regulation (EC) No 1422/97⁽²⁾, and in particular Article 12 thereof,

Whereas, in order to prevent complicated regionalization plans resulting in actual yields which significantly exceed historical yields, Regulation (EEC) No 1765/92 provides for the reduction of compensatory payments during the following marketing year in proportion to the overrun of the average historical yield resulting from the 1993 regionalization plans or, in the case of Austria, Finland and Sweden, the plan implemented in 1995;

Whereas Commission Regulation (EC) No 1237/95⁽³⁾, as amended by Regulation (EC) No 769/96⁽⁴⁾, lays down the procedure to be used for determining such overruns and lays down, *inter alia*, the historical reference yields;

Whereas, following a request from Germany to be permitted to apply a national base area with a view to the

possible application of Article 2 (7) of Regulation (EEC) No 1765/92, an average historical yield should also be set for that Member State; whereas Regulation (EC) No 1237/95 should therefore be amended;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Joint Management Committee for Cereals, Oils and Fats and Dried Fodder,

HAS ADOPTED THIS REGULATION:

Article 1

In the Annex to Regulation (EC) No 1237/95, against 'Germany', a yield of '5,66 t/ha' is hereby inserted accompanied by the following footnote: 'Where Article 2 (7) of Regulation (EEC) No 1765/92 is applied.'

Article 2

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

It shall apply from the 1997/98 marketing year.

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

Done at Brussels, 15 October 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 12.

⁽²⁾ OJ L 196, 24. 7. 1997, p. 18.

⁽³⁾ OJ L 121, 1. 6. 1995, p. 29.

⁽⁴⁾ OJ L 104, 27. 4. 1996, p. 12.

COMMISSION REGULATION (EC) No 2018/97
of 15 October 1997
on additional quantities of textile products to be made available to the Republic
of Bulgaria

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

Having regard to Council Regulation (EEC) No 3030/93 of 12 October 1993 on common rules for imports of certain textile products from third countries⁽¹⁾, as last amended by Commission Regulation (EC) No 1445/97⁽²⁾, and in particular Article 8 thereof,

Whereas the competent authorities of the Republic of Bulgaria requested that an additional quantity be made available for Bulgaria for category 2 for the quota year 1997;

Whereas, for the category concerned, the flexibility provisions specified in Annex VIII to Regulation (EEC) No 3030/93 have been used to the full extent;

Whereas, based on commercial links between Bulgarian and Italian economic operators for the processing in Bulgaria of raw cotton originating in Greece into cotton fabric to be re-imported into the Community during 1997, an additional quantity is required for Community industry;

Whereas the Additional Protocol to the Europe Agreement on trade in textile products between the Community and the Republic of Bulgaria will expire, and the quantitative restrictions will be eliminated, on 31 December 1997;

Whereas the quantities in question, in relation to total imports of these products into the European Community, are unlikely to cause market disruption if the goods are released into free circulation;

Whereas Article 8 of Regulation (EEC) No 3030/93 allows the Commission to open up additional opportunities for imports under particular circumstances;

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

HAS ADOPTED THIS REGULATION:

Article 1

The following additional quantity shall be made available to the Republic of Bulgaria for which it can issue export licenses during the quota year 1997:

— category 2: 1 500 tonnes.

Article 2

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

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

Done at Brussels, 15 October 1997.

For the Commission

Leon BRITTAN

Vice-President

⁽¹⁾ OJ L 275, 8. 11. 1993, p. 1.

⁽²⁾ OJ L 198, 25. 7. 1997, p. 1.

COMMISSION REGULATION (EC) No 2019/97

of 15 October 1997

on additional quantities of textile products to be made available to Romania

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

Having regard to Council Regulation (EEC) No 3030/93 of 12 October 1993 on common rules for imports of certain textile products from third countries⁽¹⁾, as last amended by Commission Regulation (EC) No 1445/97⁽²⁾, and in particular Article 8 thereof,

Whereas, following unsatisfied demand within the Community, the competent authorities of Romania requested that an additional quantity be made available for Romania for category 7 for the quota year 1997;

Whereas for the category concerned the flexibility provisions specified in Annex VIII to Regulation (EEC) No 3030/93 have been used to the full extent;

Whereas the Additional Protocol to the Europe Agreement on trade in textile products between the Community and Romania will expire, and the quantitative restrictions will be eliminated, on 31 December 1997;

Whereas, for the category concerned, following the elimination of import duties on 1 January 1997 for textile products originating in Romania and imported into the Community, there was a substantial shift from importations under the quota established for the economic outward processing regime to importations under the direct quota;

Whereas the quantities in question, in relation to total imports of these products into the European Community, are unlikely to cause market disruption if the goods are released into free circulation;

Whereas Article 8 of Regulation (EEC) 3030/93 allows the Commission to open up additional opportunities for imports under particular circumstances;

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

HAS ADOPTED THIS REGULATION:

Article 1

The following additional quantity shall be made available to Romania for which it can issue export licenses during the quota year 1997:

— category 7: 250 000 pieces.

Article 2

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

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

Done at Brussels, 15 October 1997.

For the Commission

Leon BRITTAN

Vice-President

⁽¹⁾ OJ L 275, 8. 11. 1993, p. 1.

⁽²⁾ OJ L 198, 25. 7. 1997, p. 1.

COMMISSION REGULATION (EC) No 2020/97

of 15 October 1997

introducing preventive distillation as provided for in Article 38 of Council Regulation (EEC) No 822/87 for the 1997/98 wine year

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine⁽¹⁾, as last amended by Regulation (EC) No 1417/97⁽²⁾, and in particular Article 38 (5) thereof,

Whereas Commission Regulation (EEC) No 2721/88⁽³⁾, as last amended by Regulation (EEC) No 2181/91⁽⁴⁾, lays down detailed rules for voluntary distillation as provided for in Articles 38, 41 and 42 of Regulation (EEC) No 822/87; whereas Commission Regulation (EC) No 1475/97⁽⁵⁾ fixes the prices, the aid and certain other factors applicable to preventive distillation for the 1997/98 wine year;

Whereas, in view of the foreseeable situation on the market, the harvest forecasts and the level of end-of-year stocks, the quantities eligible for distillation should be fixed at levels which, in combination with the other measures for the wine year, will enable the market to be stabilized without, however, exceeding the quantities compatible with sound management of the market; whereas, to this end, an overall volume of 12 000 000 hectolitres of table wine should be fixed for all Community production regions which may avail themselves of preventive distillation; whereas this volume should be broken down by region; whereas the economic situation of wines may vary in the different production areas of a Member State; whereas, therefore, the authorities of the Member States should be allowed to allocate different quantities to different production areas; whereas, in order to prevent discrimination between producers, the Commission should be informed as to how this allocation is justified by the particular conditions on the wine market in the different production areas and must be able to comment on such allocations;

Whereas, given the low yields obtained in Spanish and Portuguese wine-growing areas, a different volume for products obtained from grapes harvested in Portugal and a maximum percentage for the production which can be distilled from products obtained from grapes harvested in the Spanish wine-growing zone C should be set so as to

give comparable results in terms of a percentage of production for the entire Community; whereas, considering that there is no data on supplies of table wine in Austria, a specific regime should be set for that country;

Whereas, with a view to applying this Regulation, it is necessary to know the areas cultivated for production in order to determine the quantity which producers may have distilled; whereas a large number of Greek producers do not have the necessary data owing to the administration's delay in introducing the planned administrative structures; whereas, so that the abovementioned producers are not prevented from qualifying under the measure, provision should be made for the reference areas to be determined on the basis of a flat-rate yield for Greece as a whole;

Whereas, in order to increase the efficiency of this measure, application should be extended to a period long enough to take account of the time required to make wine in certain regions, and contracts or declarations should be approved rapidly up to a certain level to enable growers and distillers who so wish to start deliveries and distillation as early as possible; whereas proper performance of the contracts and declarations signed by the producers should also be ensured by means of a security which will guarantee delivery of wine to a distillery;

Whereas Member States should be required promptly to communicate to the Commission the quantities for which contracts have been signed so that the Commission may set a single acceptance rate for contracts or declarations submitted if the overall quantity applied for throughout the Community exceeds the 12 000 000 hectolitres provided for;

Whereas, with a view to the sound management of the quantities in question, it is necessary to derogate from specific provisions of Regulation (EEC) No 2721/88 and to provide that the quantities applied for in the contracts and declarations may be reduced;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. Preventive distillation of table wine and of wine suitable for yielding table wine as provided for in Article

⁽¹⁾ OJ L 84, 27. 3. 1987, p. 1.

⁽²⁾ OJ L 196, 24. 7. 1997, p. 10.

⁽³⁾ OJ L 241, 1. 9. 1988, p. 88.

⁽⁴⁾ OJ L 202, 25. 7. 1991, p. 16.

⁽⁵⁾ OJ L 200, 29. 7. 1997, p. 25.

38 of Regulation (EEC) No 822/87 is hereby introduced for the 1997/98 wine year. Distillation shall be restricted to 12 000 000 hectolitres.

This quantity shall be broken down by production region as referred to in Article 4 of Commission Regulation (EEC) No 441/88⁽¹⁾ as follows:

— Region 1 (Germany):	100 000 hl
— Region 3 (France):	1 500 000 hl
— Region 4 (Italy):	5 500 000 hl
— Region 5 (Greece):	350 000 hl
— Region 6 (Spain):	4 000 000 hl
— Region 7 (Portugal):	500 000 hl
— Austria:	50 000 hl.

The Member States may allocate the reserved quantity among the different production areas in their territory, without excluding any specific areas from application of the measure. Within one month following the entry into force of this Regulation, they shall forward to the Commission the list of production regions and the quantity allocated to each, explaining the specific production conditions which warrant this breakdown. The Commission shall, where necessary, make comments on the breakdown and inform the Member State concerned thereof within two weeks.

The quantity of table wine or of wine suitable for yielding table wine which producers may have distilled in accordance with Regulation (EEC) No 2721/88 shall be limited to 25 hectolitres per hectare.

However, for products obtained from grapes harvested in Portugal, this quantity shall be limited to 21 hectolitres per hectare and, for products obtained from grapes harvested in the Spanish wine-growing zone C, this quantity shall be limited to 30 % of the table wine produced from these products by each producer.

Notwithstanding Article 2 (1) of Regulation (EEC) No 2721/88, the quantity of table wine or wine suitable for yielding table wine obtained from grapes harvested in Austria that producers may have distilled shall be limited solely to a percentage of their production of table wine. This percentage is fixed at 15 %.

The quantity of table wine produced to which the percentages referred to in the preceding fourth and fifth subparagraphs apply shall be, for each producer, that resulting from the sum of the quantities appearing as wine in the table wine column of the production declaration presented pursuant to Commission Regulation (EC) No 1294/96⁽²⁾ where so required.

2. The area to be used when calculating the quantity of table wine or wine suitable for yielding table wine which Greek producers may have distilled shall be obtained by dividing by 64 the quantity given as wine in the table wine column of the production declaration, presented pursuant to Regulation (EC) No 1294/96.

3. Notwithstanding Article 6 (1) of Regulation (EEC) No 2721/88, producers who have produced table wine or wine suitable for yielding table wine may submit, not later than 15 January 1998, a preventive distillation contract or declaration to the competent authorities of the Member State, giving the details specified in Article 6 (2) of that Regulation.

Contracts and declarations must be accompanied by proof that a security equal to ECU 5 per hectolitre has been lodged.

4. Notwithstanding Article 6 (3) and (4) of Regulation (EEC) No 2721/88, the Member States may authorize the approval of contracts or declarations as soon as they are submitted, for a quantity not exceeding half of the quantity specified in each contract or declaration, without prejudice to the application of Article 2 (2) of that Regulation.

5. The Member States shall inform the Commission of the total volume covered by preventive distillation contracts or declarations not later than 29 January 1998.

If the overall volume covered by contracts or declarations submitted exceeds 12 000 000 hl and/or the volume established in advance for one or more regions, the Commission shall fix the single acceptance rate to be applied to all contracts and declarations for each region and shall notify each Member State thereof by fax not later than 6 February 1998. In order to ensure that maximum use is made of the overall volume of 12 000 000 hl in the event that the overall volume is exceeded while all or part of the volume allocated to one or more specific regions remains unused, the Commission shall distribute the remaining available volume for that region or those regions among the other regions before fixing the single acceptance rate for each region, using the following method.

- if available, an initial instalment of not more than 25 000 hl, as needed, to each region which has exceeded its volume, and
- the remainder in proportion to the quantities fixed in the second subparagraph of paragraph 1.

6. Notwithstanding Article 6 (4) of Regulation (EEC) No 2721/88, Member States shall take the administrative measures necessary to approve the above contracts and declarations not later than 27 February 1998, indicating the acceptance rate applied, for the quantities not yet approved when the contracts or declarations were submitted.

⁽¹⁾ OJ L 45, 18. 2. 1988, p. 15.

⁽²⁾ OJ L 166, 5. 7. 1996, p. 14.

Securities shall be released for quantities applied for and not accepted.

7. Quantities covered by contracts and declarations must be delivered to the distillery by 30 June 1998.

8. The security shall be released for the quantities delivered when the producer presents proof of delivery to a distillery.

If no deliveries have taken place within the time limit, the security shall be forfeited.

9. Member States may restrict the number of contracts or declarations a producer may sign for the distillation operation concerned.

Article 2

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

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

Done at Brussels, 15 October 1997.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 2021/97

of 15 October 1997

establishing the quantities to be allocated to importers from the 1998
Community quantitative quotas on certain products originating in the People's
Republic of China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European
Community,

Having regard to Council Regulation (EC) No 520/94 of 7
March 1994 establishing a Community procedure for
administering quantitative quotas⁽¹⁾, as amended by
Regulation (EC) No 138/96⁽²⁾, and in particular Articles 9
and 13 thereof,

Having regard to Commission Regulation (EC) No
1393/97 of 18 July 1997 establishing administration
procedures for the 1998 quantitative quotas for certain
products originating in the People's Republic of China⁽³⁾,
and in particular Article 6 thereof,

Whereas Regulation (EC) No 1393/97 established the
portion of each of the quotas concerned reserved for
traditional and other importers and the conditions and
methods for participating in the allocation of the quanti-
ties available; whereas importers lodged applications for
import licences with the competent national authorities
between 20 July and 12 September 1997, 3 p.m. Brussels
time, in accordance with Article 3 of Regulation (EC) No
1393/97;

Whereas the Commission has received from the Member
States, pursuant to Article 5 of Regulation (EC) No
1393/97, particulars of the numbers and aggregate volume
of import licence applications submitted and the total
volume imported by traditional importers in 1995, the
reference year;

Whereas the Commission is now able, on the basis of that
information, to establish uniform quantitative criteria by
which the competent national authorities may satisfy
licence applications submitted by importers in the
Member States for the 1998 quantitative quotas;

Whereas examination of the figures supplied by Member
States shows that the aggregate volume of applications
submitted by traditional importers for the products listed
at Annex I to this Regulation exceeds the portion of the

quota set aside for them; whereas the applications must
therefore be met by applying the uniform rate of reduc-
tion shown at Annex I to the volume of each importer's
imports, expressed in quantity or value terms, over the
reference period;

Whereas examination of the figures supplied by Member
States shows that the aggregate volume of applications
submitted by non-traditional importers for the products
listed at Annex II to this Regulation exceeds the portion
of the quota set aside for them; whereas the applications
must therefore be met by applying the uniform rate of
reduction shown at Annex II to the amounts requested by
each importer, as limited by Regulation (EC) No 1393/97,

HAS ADOPTED THIS REGULATION:

Article 1

In response to licence applications in respect of the
products listed at Annex I duly submitted by traditional
importers, the competent national authorities shall al-
locate each importer a quantity or value equal to his
imports for 1995 adjusted by the rate of reduction/
increase specified in the said Annex for each quota.

Where the use of this quantitative criterion would entail
allocating an amount greater than that applied for, the
quantity or value allocated shall be limited to that speci-
fied in the application.

Article 2

In response to licence applications in respect of the
products listed at Annex II duly submitted by non-tradi-
tional importers, the competent national authorities shall
allocate each importer a quantity or value equal to the
amount requested within the limits set by Regulation (EC)
No 1393/97, adjusted by the rate of reduction specified in
the said Annex for each quota.

Article 3

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

⁽¹⁾ OJ L 66, 10. 3. 1994, p. 1.

⁽²⁾ OJ L 21, 27. 1. 1996, p. 6.

⁽³⁾ OJ L 190, 19. 7. 1997, p. 24.

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

Done at Brussels, 15 October 1997.

For the Commission

Leon BRITTAN

Vice-President

ANNEX I

Rate of reduction/increase applicable to imports in 1995

(traditional importers)

Product description	HS/CN code	Rate of reduction/increase
Footwear falling within HS/CN codes	ex 6402 99 ⁽¹⁾	+ 36,66 %
	6403 51 6403 59	+ 86,42 %
	ex 6403 91 ⁽¹⁾ ex 6403 99 ⁽¹⁾	+ 2,74 %
	ex 6404 11 ⁽²⁾	+ 74,89 %
	6404 19 10	+ 48,65 %
Tableware, kitchenware of porcelain or china	6911 10	+ 12,63 %
Ceramic tableware or kitchenware	6912 00	+ 16,81 %
Toys falling within HS/CN codes	ex 9503 41 ⁽³⁾	+ 49,046 %
	ex 9503 49 ⁽³⁾	
	ex 9503 90 ⁽³⁾	

⁽¹⁾ Excluding footwear involving special technology: shoes which have a cif price per pair of not less than ECU 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralize impact or materials such as low-density polymers.

⁽²⁾ Excluding:

- (a) footwear which is designed for a sporting activity and has, or has provision for the attachment of, spikes, sprigs, stops, clips, bats or the like, with a non-injected sole;
- (b) footwear involving special technology: shoes which have a cif price per pair of not less than ECU 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralize impact or materials such as low-density polymers.

⁽³⁾ Excluding parts and accessories.

ANNEX II

Rate of reduction applicable to the volume/value requested within the limits of the maximum amounts fixed by Regulation (EC) No 1393/97

(non-traditional importers)

Product description	HS/CN code	Rate of reduction
Footwear falling within HS/CN codes	ex 6402 99 ⁽¹⁾	– 10,64 %
	6403 51 6403 59	– 92,09 %
	ex 6403 91 ⁽¹⁾ ex 6403 99 ⁽¹⁾	– 71,89 %
	ex 6404 11 ⁽²⁾	– 56,64 %
	6404 19 10	– 10,68 %
Tableware, kitchenware of porcelain or china	6911 10	– 27,50 %
Ceramic tableware or kitchenware	6912 00	– 42,91 %
Toys falling within HS/CN codes	ex 9503 41 ⁽³⁾ ex 9503 49 ⁽³⁾ ex 9503 90 ⁽³⁾	– 43,50 %

⁽¹⁾ Excluding footwear involving special technology: shoes which have a cif price per pair of not less than ECU 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralize impact or materials such as low-density polymers.

⁽²⁾ Excluding:

- (a) footwear which is designed for a sporting activity and has, or has provision for the attachment of, spikes, sprigs, stops, clips, bats or the like, with a non-injected sole;
- (b) footwear involving special technology: shoes which have a cif price per pair of not less than ECU 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralize impact or materials such as low-density polymers.

⁽³⁾ Excluding parts and accessories.

COMMISSION REGULATION (EC) No 2022/97
of 15 October 1997
fixing the export refunds on pigmeat

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organization of the market in pigmeat⁽¹⁾, as last amended by the Act of Accession of Austria, Finland and Sweden and by Regulation (EC) No 3290/94⁽²⁾, and in particular the second paragraph of Article 13 (3) thereof,

Whereas Article 13 of Regulation (EEC) No 2759/75 provides that the difference between prices on the world market for the products listed in Article 1 (1) of that Regulation and prices for these products within the Community may be covered by an export refund;

Whereas it follows from applying these rules and criteria to the present situation on the market in pigmeat that the refund should be fixed as set out below;

Whereas, in the case of products falling within CN code 0210 19 81, the refund should be limited to an amount which takes account of the qualitative characteristics of each of the products falling within these codes and of the foreseeable trend of production costs on the world market; whereas it is important that the Community should continue to take part in international trade in the case of certain typical Italian products falling within CN code 0210 19 81;

Whereas, because of the conditions of competition in certain third countries, which are traditionally importers of products falling within CN codes 1601 00 and 1602, the refund for these products should be fixed so as to take this situation into account; whereas steps should be taken

to ensure that the refund is granted only for the net weight of the edible substances, to the exclusion of the net weight of the bones possibly contained in the said preparations;

Whereas, since economically significant quantities of other pigmeat products are not being exported at present, there is no need to fix a refund for these products;

Whereas Article 13 of Regulation (EEC) No 2759/75 provides that the world market situation or the specific requirements of certain markets may make it necessary to vary the refund on the products listed in Article 1 (1) of Regulation (EEC) No 2759/75 according to destination;

Whereas the refunds should be fixed taking account of the amendments to the refund nomenclature established by Commission Regulation (EEC) No 3846/87⁽³⁾, as last amended by Regulation (EC) No 1490/97⁽⁴⁾;

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

HAS ADOPTED THIS REGULATION:

Article 1

The list of products on which the export refund specified in Article 15 of Regulation (EEC) No 2759/75 is granted and the amount of the refund shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 16 October 1997.

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

Done at Brussels, 15 October 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 282, 1. 11. 1975, p. 1.

⁽²⁾ OJ L 349, 31. 12. 1994, p. 105.

⁽³⁾ OJ L 366, 24. 12. 1987, p. 1.

⁽⁴⁾ OJ L 202, 30. 7. 1997, p. 24.

ANNEX

to the Commission Regulation of 15 October 1997 fixing the export refunds on pigmeat

<i>(ECU/100 kg net weight)</i>			<i>(ECU/100 kg net weight)</i>		
Product code	Destination of refund ⁽¹⁾	Amount of refund	Product code	Destination of refund ⁽¹⁾	Amount of refund
0203 11 10 9000	01	0,00	0203 29 15 9100	01	0,00
0203 12 11 9100	01	0,00	0210 11 31 9110	01	90,00
0203 12 19 9100	01	0,00	0210 11 31 9910	01	90,00
0203 19 11 9100	01	0,00	0210 12 19 9100	01	24,00
0203 19 13 9100	01	0,00	0210 19 81 9100	01	95,00
0203 19 15 9100	01	0,00	0210 19 81 9300	01	76,00
0203 21 10 9000	01	0,00	1601 00 91 9100	01	30,00
0203 22 11 9100	01	0,00	1601 00 99 9100	01	0,00
0203 22 19 9100	01	0,00	1602 41 10 9210	01	62,00
0203 29 11 9100	01	0,00	1602 42 10 9210	01	38,00
0203 29 13 9100	01	0,00	1602 49 19 9190	01	0,00

⁽¹⁾ The destinations are as follows:

01 All third countries.

NB: The product codes and the footnotes are defined in amended Commission Regulation (EEC) No 3846/87.

COMMISSION REGULATION (EC) No 2023/97
of 15 October 1997
fixing the import duties in the cereals sector

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

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

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector⁽³⁾, as amended by Regulation (EC) No 641/97⁽⁴⁾, and in particular Article 2 (1) thereof,

Whereas Article 10 of Regulation (EEC) No 1766/92 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation; whereas, however, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by 55 %, minus the cif import price applicable to the consignment in question;

Whereas, pursuant to Article 10 (3) of Regulation (EEC) No 1766/92, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market;

Whereas Regulation (EC) No 1249/96 lays down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector;

Whereas the import duties are applicable until new duties are fixed and enter into force; whereas they also remain in force in cases where no quotation is available for the reference exchange referred to in Annex II to Regulation (EC) No 1249/96 during the two weeks preceding the next periodical fixing;

Whereas, in order to allow the import duty system to function normally, the representative market rates recorded during a reference period should be used for calculating the duties;

Whereas application of Regulation (EC) No 1249/96 results in import duties being fixed as set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import duties in the cereals sector referred to in Article 10 (2) of Regulation (EEC) No 1766/92 shall be those fixed in Annex I to this Regulation on the basis of the information given in Annex II.

Article 2

This Regulation shall enter into force on 16 October 1997.

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

Done at Brussels, 15 October 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 161, 29. 6. 1996, p. 125.

⁽⁴⁾ OJ L 98, 15. 4. 1997, p. 2.

ANNEX I

Import duties for the products listed in Article 10 (2) of Regulation (EEC) No 1766/92

CN code	Description	Import duty by land inland waterway or sea from Mediterranean, the Black Sea or Baltic Sea ports (ECU/tonne)	Import duty by air or by sea from other ports ⁽²⁾ (ECU/tonne)
1001 10 00	Durum wheat ⁽¹⁾	0,00	0,00
1001 90 91	Common wheat seed	29,96	19,96
1001 90 99	Common high quality wheat other than for sowing ⁽³⁾	29,96	19,96
	medium quality	46,41	36,41
	low quality	52,96	42,96
1002 00 00	Rye	70,30	60,30
1003 00 10	Barley, seed	70,30	60,30
1003 00 90	Barley, other ⁽³⁾	70,30	60,30
1005 10 90	Maize seed other than hybrid	74,16	64,16
1005 90 00	Maize other than seed ⁽³⁾	74,16	64,16
1007 00 90	Grain sorghum other than hybrids for sowing	70,30	60,30

⁽¹⁾ In the case of durum wheat not meeting the minimum quality requirements referred to in Annex I to Regulation (EC) No 1249/96, the duty applicable is that fixed for low-quality common wheat.

⁽²⁾ For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal (Article 2 (4) of Regulation (EC) No 1249/96), the importer may benefit from a reduction in the duty of:

- ECU 3 per tonne, where the port of unloading is on the Mediterranean Sea, or
- ECU 2 per tonne, where the port of unloading is in Ireland, the United Kingdom, Denmark, Sweden, Finland or the Atlantic Coasts of the Iberian Peninsula.

⁽³⁾ The importer may benefit from a flat-rate reduction of ECU 14 or 8 per tonne, where the conditions laid down in Article 2 (5) of Regulation (EC) No 1249/96 are met.

ANNEX II

Factors for calculating duties

(period from 1 October 1997 to 13 October 1997)

1. Averages over the two-week period preceding the day of fixing:

Exchange quotations	Minneapolis	Kansas City	Chicago	Chicago	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2. 14 %	HRW2. 11,5 %	SRW2	YC3	HAD2	US barley 2
Quotation (ECU/tonne)	129,49	122,49	118,94	97,09	213,47 ⁽¹⁾	102,74 ⁽¹⁾
Gulf premium (ECU/tonne)	—	12,64	9,65	10,29	—	—
Great Lakes premium (ECU/tonne)	13,59	—	—	—	—	—

⁽¹⁾ Fob Duluth.

2. Freight/cost: Gulf of Mexico — Rotterdam: ECU 13,20 per tonne; Great Lakes — Rotterdam: ECU 21,69 per tonne.

3. Subsidy within the meaning of the third paragraph of Article 4 (2) of Regulation (EC) No 1249/96: ECU 0,00 per tonne (HRW2)
: ECU 0,00 per tonne (SRW2).

COMMISSION REGULATION (EC) No 2024/97
of 14 October 1997
establishing unit values for the determination of the customs value of certain
perishable goods

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

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽¹⁾, as last amended by Regulation (EC) No 82/97 ⁽²⁾,

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽³⁾, as last amended by Regulation (EC) No 1427/97 ⁽⁴⁾, and in particular Article 173 (1) thereof,

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

Whereas the result of applying the rules and criteria laid down in the abovementioned Articles to the elements

communicated to the Commission in accordance with Article 173 (2) of Regulation (EEC) No 2454/93 is that unit values set out in the Annex to this Regulation should be established in regard to the products in question,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 17 October 1997.

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

Done at Brussels, 14 October 1997.

For the Commission

Martin BANGEMANN

Member of the Commission

⁽¹⁾ OJ L 302, 19. 10. 1992, p. 1.

⁽²⁾ OJ L 17, 21. 1. 1997, p. 1.

⁽³⁾ OJ L 253, 11. 10. 1993, p. 1.

⁽⁴⁾ OJ L 196, 24. 7. 1997, p. 31.

ANNEX

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	ECU FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
1.10	New potatoes 0701 90 51 0701 90 59	a) b) c)	131,29 772,09 1 114,06	1 813,60 865,81 5 318,16	257,66 100,81 91,07	981,30 254 143,30	40 684,54 290,23	21 740,70 26 196,16
1.30	Onions (other than seed) 0703 10 19	a) b) c)	38,50 226,41 326,69	531,83 253,89 1 559,52	75,56 29,56 26,71	287,76 74 525,99	11 930,50 85,11	6 375,33 7 681,87
1.40	Garlic 0703 20 00	a) b) c)	85,20 501,05 722,97	1 176,93 561,86 3 451,20	167,21 65,42 59,10	636,81 164 925,05	26 402,03 188,34	14 108,52 16 999,87
1.50	Leeks ex 0703 90 00	a) b) c)	48,53 285,40 411,80	670,38 320,04 1 965,80	95,24 37,26 33,66	362,73 93 941,46	15 038,62 107,28	8 036,23 9 683,14
1.60	Cauliflowers 0704 10 10 0704 10 05 0704 10 80	a) b) c)	75,84 446,00 643,54	1 047,63 500,14 3 072,05	148,84 58,23 52,61	566,85 146 806,52	23 501,53 167,65	12 558,57 15 132,28
1.70	Brussels sprouts 0704 20 00	a) b) c)	91,88 540,33 779,65	1 269,20 605,91 3 721,78	180,32 70,55 63,74	686,74 177 855,79	28 472,05 203,11	15 214,68 18 332,72
1.80	White cabbages and red cabbages 0704 90 10	a) b) c)	95,66 562,56 811,72	1 321,42 630,84 3 874,90	187,74 73,45 66,36	714,99 185 172,89	29 643,41 211,46	15 840,63 19 086,94
1.90	Sprouting broccoli or calabrese (<i>Brassica oleracea</i> L. convar. <i>botrytis</i> (L.) Alef var. <i>italica</i> Plenck) ex 0704 90 90	a) b) c)	105,95 623,07 899,04	1 463,56 698,70 4 291,72	207,93 81,35 73,50	791,90 205 091,65	32 832,10 234,21	17 544,58 21 140,10
1.100	Chinese cabbage ex 0704 90 90	a) b) c)	49,40 290,51 419,18	682,40 325,77 2 001,05	96,95 37,93 34,27	369,23 95 625,56	15 308,22 109,20	8 180,29 9 856,73
1.110	Cabbage lettuce (head lettuce) 0705 11 10 0705 11 05 0705 11 80	a) b) c)	87,89 516,86 745,79	1 214,09 579,60 3 560,16	172,49 67,49 60,97	656,92 170 132,19	27 235,62 194,29	14 553,97 17 536,60
1.120	Endives ex 0705 29 00	a) b) c)	21,82 128,32 185,15	301,41 143,89 883,86	42,82 16,75 15,14	163,09 42 237,85	6 761,65 48,23	3 613,24 4 353,72
1.130	Carrots ex 0706 10 00	a) b) c)	37,45 220,24 317,78	517,32 246,97 1 516,99	73,50 28,76 25,98	279,91 72 493,46	11 605,12 82,79	6 201,46 7 472,36
1.140	Radishes ex 0706 90 90	a) b) c)	149,40 878,59 1 267,74	2 063,77 985,23 6 051,75	293,21 114,71 103,64	1 116,66 289 199,56	46 296,52 330,26	24 739,59 29 809,63
1.160	Peas (<i>Pisum sativum</i>) 0708 10 90 0708 10 20 0708 10 95	a) b) c)	292,18 1 718,26 2 479,30	4 036,09 1 926,81 11 835,34	573,42 224,35 202,68	2 183,85 565 584,51	90 541,61 645,89	48 382,96 58 298,38

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	ECU FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
1.170	Beans:							
1.170.1	Beans (<i>Vigna</i> spp., <i>Phaseolus</i> spp.)	a)	241,21	3 332,00	473,39	1 802,88	74 746,88	39 942,69
	ex 0708 20 90	b)	1 418,51	1 590,69	185,21	466 919,85	533,21	48 128,39
	ex 0708 20 20	c)	2 046,79	9 770,69	167,32			
	ex 0708 20 95							
1.170.2	Beans (<i>Phaseolus</i> spp., <i>vulgaris</i> var. <i>Compressus Savi</i>)	a)	140,61	1 942,34	275,96	1 050,96	43 572,65	23 284,03
	ex 0708 20 90	b)	826,90	927,27	107,97	272 184,40	310,83	28 055,77
	ex 0708 20 20	c)	1 193,15	5 695,69	97,54			
	ex 0708 20 95							
1.180	Broad beans	a)	92,83	1 282,33	182,18	693,84	28 766,44	15 372,00
	ex 0708 90 00	b)	545,92	612,18	71,28	179 694,74	205,21	18 522,28
		c)	787,71	3 760,26	64,39			
1.190	Globe artichokes	a)	—	—	—	—	—	—
	0709 10 30	b)	—	—	—	—	—	—
		c)	—	—	—	—	—	—
1.200	Asparagus:							
1.200.1	— green	a)	405,27	5 598,28	795,37	3 029,12	125 586,28	67 109,88
	ex 0709 20 00	b)	2 383,32	2 672,60	311,18	784 497,35	895,88	80 863,12
		c)	3 438,92	16 416,27	281,13			
1.200.2	— other	a)	419,52	5 795,12	823,33	3 135,63	130 002,12	69 469,58
	ex 0709 20 00	b)	2 467,12	2 766,57	322,12	812 081,64	927,38	83 706,41
		c)	3 559,84	16 993,50	291,01			
1.210	Aubergines (eggplants)	a)	74,03	1 022,63	145,29	553,32	22 940,64	12 258,85
	0709 30 00	b)	435,36	468,20	56,84	143 302,83	163,65	14 771,13
		c)	628,18	2 998,73	51,35			
1.220	Ribbed celery (<i>Apium graveolens</i> L., var. <i>dulce</i> (Mill.) Pers.)	a)	60,11	830,34	117,97	449,28	18 627,07	9 953,80
	ex 0709 40 00	b)	353,50	396,40	46,15	116 357,33	132,88	11 993,69
		c)	510,06	2 434,88	41,70			
1.230	Chantarelles	a)	999,60	13 808,17	1 961,77	7 471,33	309 759,05	165 526,76
	0709 51 30	b)	5 878,46	6 591,97	767,53	1 934 965,70	2 209,70	199 449,19
		c)	8 482,12	40 490,80	693,40			
1.240	Sweet peppers	a)	97,85	1 351,67	192,04	731,36	30 322,05	16 203,28
	0709 60 10	b)	575,44	645,28	75,13	189 412,16	216,31	19 523,91
		c)	830,31	3 963,61	67,88			
1.250	Fennel	a)	73,55	1 016,00	144,35	549,74	22 791,89	12 179,37
	0709 90 50	b)	432,53	485,03	56,47	142 373,68	162,59	14 675,36
		c)	624,11	2 979,29	51,02			
1.270	Sweet potatoes, whole, fresh (intended for human consumption)	a)	89,47	1 235,91	175,59	668,73	27 725,23	14 815,61
	0714 20 10	b)	526,16	590,02	68,70	173 190,66	197,78	17 851,86
		c)	759,20	3 624,16	62,06			
2.10	Chestnuts (<i>Castanea</i> spp.), fresh	a)	159,46	2 202,73	312,95	1 191,86	49 413,94	26 405,46
	ex 0802 40 00	b)	937,75	1 051,58	122,44	308 673,10	352,50	31 816,89
		c)	1 353,10	6 459,25	110,61			
2.30	Pineapples, fresh	a)	69,87	965,16	137,12	522,23	21 651,53	11 569,98
	ex 0804 30 00	b)	410,89	460,77	53,65	135 250,15	154,45	13 941,09
		c)	592,88	2 830,22	48,47			

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	ECU FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
2.40	Avocados, fresh ex 0804 40 90 ex 0804 40 20 ex 0804 40 95	a) b) c)	135,18 794,97 1 147,07	1 867,34 891,46 5 475,74	265,30 103,80 93,77	1 010,38 261 673,33	41 889,98 298,83	22 384,86 26 972,33
2.50	Guavas and mangoes, fresh ex 0804 50 00	a) b) c)	103,76 610,19 880,46	1 433,31 684,26 4 203,01	203,64 79,67 71,98	775,54 200 852,38	32 153,46 229,37	17 181,93 20 703,13
2.60	Sweet oranges, fresh:							
2.60.1	— Sanguines and semi-sanguines 0805 10 42 0805 10 51 0805 10 37	a) b) c)	23,94 140,79 203,14	330,70 157,87 969,74	46,98 18,38 16,61	178,94 46 341,62	7 418,60 52,92	3 964,30 4 776,72
2.60.2	— Navels, navelines, navelates, salustianas, vernas, Valencia lates, Maltese, shamou- tis, ovalis, trovita and hamlins 0805 10 44 0805 10 55 0805 10 38	a) b) c)	41,32 243,00 350,62	570,78 272,49 1 673,75	81,09 31,73 28,66	308,84 79 984,78	12 804,37 91,34	6 842,30 8 244,54
2.60.3	— Others 0805 10 39 0805 10 46 0805 10 59	a) b) c)	44,97 264,46 381,59	621,20 296,56 1 821,60	88,26 34,53 31,19	336,12 87 050,23	13 935,44 99,41	7 446,72 8 972,82
2.70	Mandarins (including tangerines and satsu- mas), fresh; clementines, wilkings and simi- lar citrus hybrids, fresh:							
2.70.1	— Clementines 0805 20 21	a) b) c)	85,28 501,52 723,64	1 178,03 562,39 3 454,44	167,37 65,48 59,16	637,41 165 079,91	26 426,82 188,52	14 121,77 17 015,83
2.70.2	— Monreales and satsumas 0805 20 23	a) b) c)	60,54 356,02 513,71	836,28 399,24 2 452,29	118,81 46,48 42,00	452,50 117 189,70	18 760,32 133,83	10 025,00 12 079,49
2.70.3	— Mandarines and wilkings 0805 20 25	a) b) c)	49,46 290,86 419,69	683,23 326,17 2 003,48	97,07 37,98 34,31	369,68 95 741,70	15 326,81 109,34	8 190,23 9 868,70
2.70.4	— Tangerines and others ex 0805 20 27 ex 0805 20 29	a) b) c)	63,08 370,96 535,27	871,37 415,99 2 555,18	123,80 48,44 43,76	471,48 122 106,48	19 547,42 139,44	10 445,61 12 586,29
2.85	Limes (<i>Citrus aurantifolia</i>), fresh ex 0805 30 90	a) b) c)	108,82 639,95 923,39	1 503,21 717,63 4 407,97	213,57 83,56 75,49	813,36 210 647,23	33 721,47 240,56	18 019,83 21 712,75

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	ECU FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
2.90	Grapefruit, fresh:							
2.90.1	— white	a)	35,84	495,08	70,34	267,88	11 106,21	5 934,85
	ex 0805 40 90	b)	210,77	236,35	27,52	69 376,92	79,23	7 151,12
	ex 0805 40 20	c)	304,12	1 451,77	24,86			
	ex 0805 40 95							
2.90.2	— pink	a)	57,01	787,52	111,89	426,11	17 666,43	9 440,46
	ex 0805 40 90	b)	335,26	375,96	43,77	110 356,54	126,03	11 375,15
	ex 0805 40 20	c)	483,76	2 309,30	39,55			
	ex 0805 40 95							
2.100	Table grapes	a)	—	—	—	—	—	—
	0806 10 21	b)	—	—	—	—	—	—
	0806 10 29	c)	—	—	—	—	—	—
	0806 10 61							
	0806 10 30							
	0806 10 69							
2.110	Water melons	a)	31,08	429,33	61,00	232,30	9 631,16	5 146,63
	0807 11 00	b)	182,78	204,96	23,86	60 162,80	68,70	6 201,36
		c)	263,73	1 258,96	21,56			
2.120	Melons (other than water melons):							
2.120.1	— Amarillo, cuper, honey dew (including cantalene), onteniente, piel de sapo (including verde liso), rochet, tendral, futuro	a)	45,86	633,50	90,00	342,77	14 211,23	7 594,09
	ex 0807 19 00	b)	269,69	302,43	35,21	88 773,04	101,38	9 150,40
		c)	389,15	1 857,65	31,81			
2.120.2	— other	a)	112,13	1 548,93	220,06	838,10	34 747,18	18 567,94
	ex 0807 19 00	b)	659,42	739,45	86,10	217 054,53	247,87	22 373,19
		c)	951,48	4 542,05	77,78			
2.140	Pears							
2.140.1	Pears — nashi (<i>Pyrus pyrifolia</i>)	a)	—	—	—	—	—	—
	ex 0808 20 41	b)	—	—	—	—	—	—
		c)	—	—	—	—	—	—
2.140.2	Other	a)	—	—	—	—	—	—
	ex 0808 20 41	b)	—	—	—	—	—	—
		c)	—	—	—	—	—	—
2.150	Apricots	a)	148,11	2 045,95	290,67	1 107,02	45 896,77	24 525,98
	0809 10 10	b)	871,01	976,73	113,72	286 702,45	327,41	29 552,24
	0809 10 50	c)	1 256,79	5 999,49	102,74			
2.160	Cherries	a)	146,66	2 025,92	287,83	1 096,18	45 447,44	24 285,87
	0809 20 11	b)	862,48	967,17	112,61	283 895,63	324,20	29 262,92
	0809 20 19	c)	1 244,48	5 940,76	101,74			
	0809 20 21							
	0809 20 29							
	0809 20 71							
	0809 20 79							
2.170	Peaches	a)	132,82	1 834,74	260,67	992,74	41 158,66	21 994,06
	0809 30 19	b)	781,09	875,90	101,98	257 104,99	293,61	26 501,44
	0809 30 59	c)	1 127,05	5 380,14	92,13			
2.180	Nectarines	a)	100,60	1 389,66	197,43	751,92	31 174,23	16 658,66
	ex 0809 30 11	b)	591,61	663,42	77,24	194 735,44	222,38	20 072,62
	ex 0809 30 51	c)	853,64	4 075,00	69,78			

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	ECU FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
2.190	Plums 0809 40 10 0809 40 40	a) b) c)	94,87 557,91 805,02	1 310,51 625,63 3 842,90	186,19 72,84 65,81	709,09 183 643,65	29 398,60 209,72	15 709,81 18 929,32
2.200	Strawberries 0810 10 10 0810 10 05 0810 10 80	a) b) c)	183,50 1 079,13 1 557,09	2 534,81 1 210,11 7 433,03	360,13 140,90 127,29	1 371,54 355 208,29	56 863,53 405,64	30 386,32 36 613,57
2.205	Raspberries 0810 20 10	a) b) c)	1 173,22 6 899,43 9 955,29	16 206,37 7 736,86 47 523,22	2 302,50 900,83 813,83	8 768,95 2 271 029,53	363 557,83 2 593,47	194 275,36 234 089,42
2.210	Fruit of the species <i>Vaccinium myrtillus</i> 0810 40 30	a) b) c)	290,27 1 707,02 2 463,09	4 009,70 1 914,22 11 757,97	569,67 222,88 201,35	2 169,57 561 887,25	89 949,74 641,67	48 066,68 57 917,28
2.220	Kiwi fruit (<i>Actinidia chinensis Planch.</i>) 0810 50 10 0810 50 20 0810 50 30	a) b) c)	130,02 764,62 1 103,29	1 796,06 857,43 5 266,72	255,17 99,83 90,19	971,81 251 684,91	40 290,99 287,42	21 530,40 25 942,76
2.230	Pomegranates ex 0810 90 85	a) b) c)	105,99 623,31 899,38	1 464,11 698,96 4 293,34	208,01 81,38 73,52	792,20 205 169,08	32 844,50 234,30	17 551,20 21 148,08
2.240	Khakis (including sharon fruit) ex 0810 90 85	a) b) c)	110,16 647,83 934,76	1 521,72 726,46 4 462,25	216,20 84,58 76,42	823,37 213 241,12	34 136,71 243,52	18 241,72 21 980,11
2.250	Lychees ex 0810 90 30	a) b) c)	621,41 3 654,39 5 272,98	8 583,97 4 097,96 25 171,45	1 219,55 477,14 431,06	4 644,62 1 202 888,19	192 564,40 1 373,68	102 901,15 123 989,32

COUNCIL REGULATION (EC) No 2025/97

of 15 October 1997

imposing a definitive anti-dumping duty on imports into the Community of advertising matches originating in Japan and collecting definitively the provisional duty 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 Article 23 thereof,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community⁽²⁾, and in particular Article 12 thereof,

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

Whereas:

that the investigation had already taken an excessive length of time, thus prolonging uncertainty and damaging their business.

(3) This objection seems to be in contradiction with the request made by the exporters concerned that the Commission should analyse in more depth several key issues in the investigation: it should be recalled that the Commission has already stated in recital 7 of the provisional duty Regulation that the present investigation has been particularly complex. In these circumstances, further in-depth analysis of arguments put forward by these parties, as well as extensions granted to them for submissions and replies, had to be restricted to a minimum.

(4) Following the imposition of provisional anti-dumping measures, the following interested parties submitted comments in writing:

(a) producers/exporters in Japan:

- Kobe Match Co. Ltd, Ibo-gun,
- Yaka Chemical Industry Co. Ltd, Himeji,
- Daiwa Trading & Industrial Co. Ltd, Himeji,
- Harima Match Company Co. Ltd, Himeji;

(b) the representative of the Community industry on behalf of their clients;

(c) importers located in the Community:

- Advertising support Werbeträger Vertriebs GmbH.

A. PROVISIONAL MEASURES

- (1) By Commission Regulation (EC) No 1092/97⁽³⁾ (hereinafter referred to as the provisional duty Regulation) provisional duties were imposed on imports into the Community of advertising matches falling within CN 3605 00 00 and originating in Japan.

B. SUBSEQUENT PROCEDURE

1. Duration of provisional measures

- (2) In July 1997 exporters representing a significant percentage of the trade involved objected to the Commission's proposal to extend the four months validity of the provisional anti-dumping duties for two more months as allowed by Regulation (EEC) No 2423/88 (hereinafter referred to as the basic Regulation). In support of this position, they argued

(5) The parties who so requested were granted an opportunity to be heard by the Commission.

(6) The Commission continued to seek and verify all the information it deemed necessary for the purpose of its definitive findings within the period of time available.

(7) 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.

⁽¹⁾ OJ L 56, 6. 3. 1996, p. 1. Regulation as amended by Regulation (EC) No 2331/96 (OJ L 317, 6. 12. 1996, p. 1).

⁽²⁾ OJ L 209, 2. 8. 1988, p. 1. Regulation as last amended by Regulation (EC) No 522/94 (OJ L 66, 10. 3. 1994, p. 10).

⁽³⁾ OJ L 158, 17. 6. 1997, p. 8.

- (8) The comments submitted by the interested parties were considered, and, where appropriate, taken into account in the definitive findings to the extent that they were fully substantiated.

2. Request for termination of proceeding

- (9) Japanese exporters requested that the proceeding be immediately terminated on the ground that the Commission had breached Article 7 (9) (a) of the basic Regulation. They claimed that the investigation was a very ordinary one and that it was very likely that it could have been concluded within the time limit provided for in the basic Regulation.

- (10) As already mentioned in recital 7 of the provisional duty Regulation, the length of the investigation was mainly due to its complexity, particularly the detailed examination of the many figures and arguments put forward as well as the different issues and problems which arose in the course of the investigation.

In this respect, given the claim of the Japanese exporters and the views expressed by other interested parties on the duration of the investigation it seems appropriate to explain in some detail the main events which had a significant impact on its duration.

- (11) Following the initiation of the investigation in August 1994, three different types of questionnaires were sent to some 15 different companies in the Community and in Japan. Verification visits were conducted and preliminary results were reached within the first half of 1995.

- (12) As indicated in recital 39 of the provisional duty Regulation, the investigation had then shown that sales made by Japanese exporters in the Community were not at the same level of trade as the large majority of the Community industry sales. Accordingly a level of trade adjustment had to be calculated. Considering the importance of the adjustment, in particular its direct impact on the undercutting and underselling margins, and consequently on the level of the possible anti-dumping duties, this issue was carefully considered before a provisional decision was taken. This already indicates that, contrary to the allegation made by some Japanese exporters, complex issues had to be dealt with in this investigation. A considerable amount of time had to be spent on assessing the level of trade adjustment and a preliminary conclu-

sion on this issue could not be made until the end of 1995.

- (13) In the first half of 1996, the representative of the Community industry emphasized the weight and importance of the segmentation of the market into three main categories of customers. In this respect, the Community industry supplied complementary information on the link between the segmentation of the market and the level of prices and relative costs, thus elaborating on the data already submitted in the responses to the questionnaire.

In accordance with Article 7 (2) (a) of the basic Regulation, the Commission verified and analysed all the substantiated complementary information supplied and carried out the necessary reconciliation with the verified responses to the questionnaire of the Community industry and the Japanese exporters. These additional tasks took until the end of 1996.

- (14) Consequently, it has to be pointed out that contrary to the allegation of some Japanese exporters, the Commission did not accept any new responses to the questionnaire from the Community industry years after the deadline set, but considered it appropriate to investigate further substantiated information which completed the responses already received.

- (15) During 1996, several other problems had to be solved. Thus some unrelated importers and one Community producer itself importing dumped advertising matches from Japan, who were originally not opposed to the proceeding, made their views known and put forward arguments related to the assessment of the Community interest. All the submissions made, in some cases received late in 1996, had to be given due consideration.

- (16) In 1997 the Commission became aware that one Japanese exporter might have provided misleading information during the investigation and requested that additional information be provided in order to take a final decision on the matter. Conclusive evidence was only received recently.

- (17) In the light of the above facts and considerations, even though the duration of the investigation was long, the Council refers to the statement made in recital 7 of the provisional duty Regulation, namely that the length of the investigation is mainly attributable to its complexity and, therefore, considers that there is no reason for terminating the proceeding on these grounds.

C. PRODUCT CONCERNED AND LIKE PRODUCT

- (18) For the purpose of its preliminary findings, the Commission considered advertising matches produced and sold in the Community, produced and sold in Japan and those exported to the Community from Japan as 'like products' within the meaning of Article 2 (12) of the basic Regulation because they are either identical or have characteristics closely resembling each other.
- (19) An importer provided a list of around 50 models which Japanese exporters can offer to their Community clients alleging that the Community industry can only offer a few models.
- (20) It should be pointed out that not all those Japanese models are also sold in the Community; they are simply part of a list of models that the Japanese exporters are offering to their Community customers. Furthermore, the investigation contradicted the allegation of another importer that the Community industry does not offer, in contrast to Japanese exporters, a wide range of models of advertising matches. Indeed, it was found that the Community industry sold over 30 different models to its customers and that numerous, other personalized models had been produced to clients' specifications.
- (21) Since no other comments were received on the product concerned and the definition of the 'like product', the findings made on this issue, as established in recital 9 of the provisional duty Regulation, are confirmed.

D. DUMPING

1. Normal value

- (22) Before imposition of the provisional measures, the Commission received information that the relationship between the producer-exporter Yaka with another Japanese producer — Nittosha Match Company Ltd, which did not make itself known in the framework of this proceeding — might not only be limited to a relatively small shareholding. The Commission considered that it could not be excluded that Yaka's export prices might have been influenced by its relationship with Nittosha, which would render Yaka's reply to the questionnaire unreliable for the purpose of this investigation. The Commission informed Yaka forthwith of the serious implications this might have.

Nittosha eventually informed the Commission that during the period of investigation on dumping it had exported to the Community the product concerned; the quantities it exported, however, had

been negligible in relation to the exports made by Yaka during the same period. Under these conditions, exports from Nittosha could not have influenced those of Yaka; moreover, based on verified information Yaka demonstrated that transactions between the two companies had not been influenced by the existence of the small shareholding.

It was concluded that there was no reason to reverse the findings in respect of Yaka as an independent exporter from Japan.

- (23) One Japanese producer claimed that for export orders of 5 000 units the normal value should exclusively be based on such quantities and not also on orders for lower quantities since orders of for instance 1 000 or 2 000 units are usually sold at higher prices.

Firstly, it should be noted that for the purpose of this proceeding an order category of up to 5 000 units was defined by this producer in its response to the questionnaire. Secondly, it was found for this industry that for orders up to 5 000 units no distinct difference in prices exists and that orders of substantially less than 5 000 units only represent a relatively small part of the category up to 5 000 units. Thirdly, the normal value and the export price were both established on the basis of the same categories of products and so the comparison takes into account the order sizes in as far as they are considered to be relevant by industry standards.

Consequently, the claim has to be rejected.

- (24) No further comments were received on the determination of the normal value. The Council therefore considers that the findings as established in recitals 10 to 17 of the provisional duty Regulation are to be confirmed.

2. Export price

- (25) As no comments were received on the determination of the export price as established in recital 18 of the provisional duty Regulation the Council considers that the findings made therein are to be confirmed.

3. Comparison

- (26) One Japanese producer claimed that no adjustment should be made for salesmen's salaries as on export sales no salesmen were involved. During the on-the-spot verifications, at the premises of the company concerned, it was established however that salesmen were indeed involved in the export of advertising matches. Consequently, in order to allow for a fair comparison, an adjustment was made to the export price on the basis of the corresponding cost incurred in export sales of the product concerned.

- (27) The same Japanese company repeated its claim, already made at the provisional stage of the investigation, to establish the normal value only on sales to unrelated distributors as, according to this company, export sales were taking place exclusively at this level of trade.

Recital 20 of the provisional duty Regulation explains why the claim could not be accepted. Since no new arguments in support of this claim have been put forward by the company, the rejection of this claim is confirmed by the Council.

- (28) Two Japanese producers reiterated their claim that an adjustment should be made for print film making and artwork.

The claim was based on the fact that for sales to the Community, generally the print film was supplied by the customer, while for sales on the Japanese market in general, it was the producer who supplied the artwork and the film making.

One Japanese producer also further claimed that an adjustment should be made for those domestic orders for which a particular type of paper, called 'Japanese paper' was used, because this type of finishing of the product was not offered for sales to the Community.

Both claims were rejected at the stage of the provisional duty Regulation as the company concerned was not in a position to quantify the market value of the adjustment claimed to the satisfaction of the Commission.

After disclosure of the essential facts leading to the imposition of provisional measures the Japanese producers submitted additional information and explanations on the basis of which it was possible to determine the market value of the adjustments claimed. One of the Japanese producers was not in a position to demonstrate the market value of the adjustment claimed. As the claim itself was considered to be justified the adjustment for this producer was made by reference to another producer in Japan.

Consequently the claim was granted to the extent that it was justified.

- (29) One Japanese producer maintained its request, already made at the provisional stage, that an adjustment should be made for the differences in time of delivery.

This request was based on the grounds that the domestic delivery delay is, generally, much shorter than the one for export transactions and that the

customers in the Community are charged lower prices because of the longer delay in delivery.

In this respect the company concerned did not substantiate its claim in particular by showing that customers consistently pay different prices on the domestic- and/or export markets because of the different delivery delays.

Therefore the request has to be rejected.

4. Dumping margins

- (30) The complainant argued that as the export prices of the Japanese producers are, generally, at the same level and as the Japanese domestic market is homogeneous the individual dumping margins found should not have such a wide spread. The complainant asked the Commission to review the dumping findings, particularly as far as Kobe and Yaka are concerned.

It has to be recalled that the dumping margin is determined individually for each exporter by comparing its normal value with its export price as explained in recitals 10 to 24 of the provisional duty Regulation.

In this respect, the Commission can confirm that the export prices charged by the Japanese exporters for comparable product types are, generally, for all exporters at a similar level. The investigation revealed however that the domestic prices of different Japanese producers vary significantly, thus constituting the principal reason for the variance in dumping margins established.

The complainant further argued, in this context, that the sales channels of the Japanese producers on their domestic market are similar. The verification of the information submitted by the Japanese producers does not confirm this argument.

Other arguments made by the complainant on the provisional findings concerning the margins of dumping related to the cost structure, age of the workers, low productivity, the fact that no manufacturer is left in Japan for match machines and the utilization of old and inefficient machinery.

Consequently, as the evidence provided by the complainant in support of its arguments is either merely circumstantial or not confirmed by the findings made during the investigation, it is concluded that the arguments have to be rejected.

- (31) After having considered the arguments raised by the parties and after having modified, when appropriate, the provisional findings, the definitive dumping margins for the cooperating producers/exporters, expressed as a percentage of the free-at-Community-frontier price are as follows:

- Daiwa Trading & Industrial Co. Ltd 31,8 %
- Harima Match Company Co. Ltd 63,5 %
- Kobe Match Co. Ltd 9,8 %
- Yaka Chemical Industry Co. Ltd 23,3 %.

(32) The approach followed in recital 24 of the provisional duty Regulation for the assessment of the dumping margin applicable to non-cooperating companies in Japan which is based on facts available and verified during the investigation is confirmed by the Council. On that basis, it is considered that the highest dumping margin found, i.e. 63,5 % with regard to a producer in Japan which had cooperated in the investigation, should also apply to non-cooperating producers in Japan.

E. COMMUNITY INDUSTRY

(33) The large majority of the Community producers of advertising matches are members of FEFA (Fédération Européenne des Fabricants d'allumettes), the European association who lodged the complaint on behalf of its members. These producers, located in France, Spain, Italy, Belgium, Portugal and United Kingdom are usually small and medium-sized enterprises with limited resources. Consequently, even though they all supported the complaint, only the main producers, representing 78 % of the total Community output of the product concerned and thus, clearly meeting the criteria set forth in Article 4 (5) of the basic Regulation, have actively cooperated with the Commission in this investigation.

(34) A Japanese exporter questioned the exclusion from the published provisional determinations of a Community producer located in France, who replied to the Commission questionnaire.

(35) This situation is explained by the fact that this producer, although supporting the complaint, was not in a position to comply with the requirements of the Commission for the on-the-spot investigation due to important internal difficulties. Therefore it was decided that this producer could not be considered as actively cooperating in the proceeding and was not included in the definition of the Community industry.

(36) This decision is reflected in the contents of recital 25 of the provisional duty Regulation which indicates that the term 'Community industry' should be interpreted as referring to those Community producers of the like product whose collective output constitutes a major proportion of the total Community production who supported the complaint and who actively cooperated in the proceeding.

(37) Despite the explanation provided in recital 26 of the provisional duty Regulation, one importer of Japanese advertising matches in the Community claimed that the main complainant Community producer should not be considered as part of the Community industry on the grounds that he imported directly or via its related companies dumped advertising matches from Japan in volumes representing far more than 4 % of its own production. In support of its claim a list of the subsidiaries of the above complainant which allegedly imported the advertising matches from Japan was supplied.

(38) The Commission re-examined the level of imports made by this Community producer and confirmed its provisional finding, namely that the quantities imported by this producer represented around 4 % of its own total production of advertising matches.

(39) Another exporter claimed that two of the complaining Community producers were no longer producing advertising matches. Even though this exporter is referring to events which allegedly happened after the investigation period, which therefore should normally not be taken into account, it has to be noted that no indication exists that any of the complaining Community producers stopped manufacturing the product covered by this investigation.

(40) In conclusion, the definition of the Community industry for the purposes of the present proceeding and the provisional findings made by the Commission in this respect are hereby confirmed.

F. INJURY

1. Injury examination period and injury factors

(41) Some exporters argued that the Commission had not been consistent as far as the investigation period for the assessment of injury is concerned.

(42) The period covered by the injury examination is the whole period from 1 January 1990 to 30 June 1994 as mentioned in recital 7 of the provisional duty Regulation. The 'investigation period' for dumping analysis covered a one-year period from 1 July 1993 to 30 June 1994. The main injury indicators were assessed for the whole injury examination period. However, when the information submitted was not fully substantiated or not reliable and consequently could not guarantee an accurate analysis of a certain injury factor within the injury examination period, the Commission considered it appropriate to disregard the information and based its conclusion on the available, substantiated information.

- (43) As requested by some exporters, the Commission has further verified the information available in order to complete its analysis of certain injury factors, the results of which are given below:

(a) *Prices*

- (44) With reference to recital 45 of the provisional duty Regulation, 80 % of the sales of book and box matches taken together made by the Community industry in the Community market were taken into account in the price development exercise. It was found that, from 1990 up to the investigation period, sales prices charged by the Community industry increased on average by 4 %.

- (45) A further analysis has been carried out separately for book and box matches, the latter representing around 60 % of the total Community industry sales of matches and around 80 % of Japanese exporters' total sales in the Community. On that new basis it was found that from 1990 up to the investigation period the sales prices of box matches charged by the Community industry decreased by 2 %, whereas the sales prices of book matches of this industry, representing the minority of Japanese sales in the Community, had increased by 10 % during the same period.

(b) *Production capacity and capacity utilization*

- (46) As requested by one Japanese exporter, the Commission, notwithstanding the difficulties described in recital 44 of the provisional duty Regulation, made the best possible estimate of the production capacity of advertising matches and relative capacity utilization of the Community industry. It appears that on average the Community industry worked 222 days per year and two shifts per day. On this basis, whilst a reasonable average capacity utilization ratio would be around 75 % for the type of business involved, the estimated capacity utilization of the Community industry from 1990 up to the investigation period was consistently low at around 56 %, with a peak of 59 % in 1991.

(c) *Cash flow*

- (47) In addition to the provisional findings stated in recital 51 of the provisional duty Regulation, the operating cash flow of the Community industry established at company-wide level for the advertising division whose main activity is advertising matches, that is the product concerned, decreased by 7 % from 1990 up to the investigation period.

(d) *Profitability*

- (48) For 1990, the first year of the injury period under examination, it was found that the sales of the

product concerned by the Community industry were still profitable with a rate of return on turnover of around 2,5 %.

2. Segmentation of the market

- (49) Following the publication of the provisional duty Regulation, interested parties did not object to the provisional finding set out in recital 36 of the provisional duty Regulation, namely that advertising matches were sold in the Community to separate categories of customers depending on the size of their orders. In fact it should be pointed out that the Japanese market had also been similarly categorized for the establishment of dumping. The investigation revealed that such categorization is a crucial issue given its impact on prices and costs.

- (50) One Japanese exporter noted that the Community industry had requested the exclusion from the determination of injury of one customer on account of the very high volume of purchases, which rendered it not directly comparable within the other customer categories. The Commission established that the customer concerned was notable for the volume of its purchases. However, these characteristics did not constitute a sufficient ground to exclude it from the overall injury assessment.

3. Cost allocation method

- (51) Some exporters questioned the cost allocation method applied by the Community industry and provisionally accepted by the Commission. They argued that the selling, general and administrative (SG & A) expenses which the Community industry allocated either according to the number of orders or according to the number of matchboxes should instead be allocated on a turnover basis.

- (52) Article 2 (11) of the basic Regulation specifies for the examination of dumping that, in general, all cost allocations shall be based on available accounting data, normally allocated, where necessary, in proportion to the turnover for each product and market under consideration. An analogue approach seems appropriate in this case.

This approach implies that the appropriateness of the cost allocation method has to be examined and appreciated on the basis of the consistency in its utilization and, that only in the absence of an appropriate method, should the allocation of costs be made on the basis of turnover.

- (53) After publication of the provisional duty Regulation, the Commission continued to seek the information it deemed necessary. In the light of the submissions received it was decided to conduct a very detailed on-the-spot investigation at the premises of the main Community producer which was part of the Community industry to verify yet again its cost allocation method.

This verification confirmed that the allocation method accepted by the Commission at the provisional stage of the investigation was consistently applied by the producer concerned and reasonably reflected the costs associated with the production and the sale of the product under consideration. Accordingly, the contents of recitals 49 to 50 of the provisional duty Regulation are hereby confirmed.

4. Undercutting and underselling

- (54) Some Japanese exporters claimed for price comparison an allowance for the difference in delivery time on the grounds that, particularly for the small size orders, delivery time affected consumer choice and thus price comparability. These exporters explained that longer delivery periods were the result of the fact that matches from Japan are usually shipped via ocean freight to the Community, thus significantly decreasing the cost of transport and lowering prices to clients who are willing to wait several months for their orders. The Community industry time being much shorter, Japanese exporters have no choice but to lower prices to compensate for the longer delivery terms.

These Japanese exporters consider that longer delivery time justified a price lower than that charged by the Community industry and estimate the amount of this price difference at around 5 %, in line with the average undercutting found to exist. For the reasons given in recital 29 this claim could not be accepted.

- (55) One Japanese exporter questioned its undercutting and underselling margins on the grounds that they were calculated on the basis of the prices of certain basic Community industry models which were not identical in all respects to the models exported by the company concerned to the Community. It was alleged that three basic models of the Community industry were wood-stem book matches, whereas the corresponding book matches exported by the company were made of carton paper (card-stem book matches). The former material being more expensive than the latter, the exporter requested an adjustment reflecting the market value of the dif-

ference in physical characteristics between the abovementioned models.

- (56) In the absence of evidence to substantiate the exporter's claim, the Commission has investigated this issue on the basis of the information available to it. It appeared that sales of comparable models of wood-stem and carton paper book matches were not necessarily made at different prices. As an example, for a particular model, although there were 20 % more wooden matches in this model, its sales price was the same as the card-stem model. This seems to indicate that any adjustment to the Japanese prices should be made downwards rather than upwards. In conclusion, based on the information available and, as the exporter concerned did not provide any evidence to substantiate its claim, the Commission could not take it into consideration.

- (57) The same exporter questioned the methodology applied by the Commission in calculating the undercutting and underselling amounts. It requested that the same methodology applied in another anti-dumping proceeding be applied to calculate its margins.

In the anti-dumping proceeding referred to by the exporter an average sales price and an average non-injurious price for all the different models of the product under investigation were calculated, whereas in the present proceeding the Commission compared prices on a model-per-model basis.

- (58) In cases where the product concerned is not sold under an homogeneous shape or form and there are no domestic standard models directly comparable with imported standard models of the like product, it is necessary to define the most appropriate unit of measurement in order to allow prices to be compared.

As explained in recitals 36 to 41 of the provisional duty Regulation, standard basic models of advertising matches and different categories of customers were found to exist in the Community market. They even represented the large majority of the trade involved. Sales prices of the different standard models of the like product sold by the Community industry could therefore be compared with those of the Japanese exporters on a model-per-model basis separately for the main categories of customers.

As the method followed in this proceeding is the most accurate to determine the undercutting and underselling margins, the Council endorses the Commission's rejection of the request made by the exporter concerned to calculate their margins on the basis of overall weighted average prices.

5. Injury suffered by the Community industry

(59) While recognizing that the Community industry may have suffered some injury, a number of Japanese exporters claimed that this injury could not be qualified as material. Firstly because only small and medium-sized orders, representing a limited share of the whole advertising matches market, were affected by a negative return on sales. Secondly, because the Commission claimed material injury exclusively on the basis of the negative trend of one single injury factor, namely profitability. Thirdly, because several factors were pointing to no injury at all.

(60) With reference to the first argument raised by these exporters, small and medium-sized orders represent a large share of the total Community market, namely around 59 % in terms of volume but around 67 % in terms of value. It can therefore be concluded that these segments are the main sources of revenue for the Community industry. Accordingly, even if this industry was still performing well in the large order segment, its ability to compete in this segment is dependent on maintaining overall financial viability. The deteriorating financial situation of the Community industry, which was found to be negative overall during the investigation period, is therefore a threat to the entire advertising matches sector in the Community.

(61) The above exporters indicated that some injury factors pointed to a no injury situation but did not specify to which indicators they were referring. Furthermore the statement that the Commission based its conclusion on a single injury factor is not correct.

During the whole period under examination, it was found that employment in the advertising matches sector decreased by 13 %, the share of the Community market held by the Community industry in terms of value decreased by about 10 %, cash flow decreased by 7 % and overall profitability became negative after having shown profits of 2,5 % in 1990.

Furthermore, the fact must not be neglected that Community industry prices were depressed for box matches which represent 60 % of total sales by this industry and that the slight increase in overall sales prices for matches of 4,3 % during the investigation period could not even cover the effects of inflation. This price suppression certainly played a significant role in the deteriorating financial situation of the Community industry.

(62) These exporters also supplied annual accounts of the main complaining Community producer and calculated a return on investment of 28,65 % for

this producer during the year 1995, that is after the end of the investigation period. According to them, such a high return should demonstrate that the financial situation of the Community producer concerned is excellent.

To calculate such a return on investment, these exporters applied the profit of the large-sized orders, as stated in recital 50 of the provisional duty Regulation, to the overall turnover as reported in the annual accounts they supplied. Then they established the ratio between this extrapolated profit over the equity as reported in the annual accounts.

(63) It appears that these exporters have confused the return on investment with the return on equity ratio.

More importantly, the annual accounts they supplied were at a consolidated level, and thus included a number of activities not covered by the present investigation. By reference to the turnover as reported in the consolidated annual accounts, the sales value of the large orders segment only represents 0,4 %. Consequently, such an estimate of the return on investment must be disregarded and considered erroneous and misleading.

6. Conclusion on injury

(64) On the basis of the facts and considerations developed above and based on the deterioration of several injury indicators such as profitability, market share in value terms, cash flow and employment, combined with low capacity utilization and the effects of unsatisfactory price development, the Council confirms that the Community industry has suffered material injury in accordance with Article 4 (1) of the basic Regulation.

G. CAUSATION OF INJURY

(65) The Commission had provisionally examined the extent to which the material injury suffered by the Community industry was caused by the impact of dumped Japanese imports, and whether other factors had caused or contributed to that injury in order to ensure that injury caused by these other factors was not attributed to the dumped imports concerned. Such other factors considered were the evolution of consumption, competition from other producers in the Community, other imports, the export performance of the Community industry and the behaviour of the main economic operators during the period under investigation.

(66) In spite of this detailed analysis on the causation of injury, several exporters claimed that no causal relationship was established between the alleged dumped imports and the material injury suffered by the Community industry. They stated that Japanese exporters had not increased the volume of their share of the Community market although their import prices had increased by 40 %. Furthermore they could not understand why in the large-sized orders segment where the highest undercutting margin by Japanese exporters was found, no causal effects seemed to exist. On the contrary a profitable situation had emerged.

undercut the former prices by an average margin of 6,2 %. Over the years this situation has caused significant difficulties for the Community industry whose profitability became negative during the investigation period.

An additional link between the negative situation for the Community industry and the dumped Japanese imports was established through the fact that the return on sales of the Community industry was found to be significantly worse in the sales segments where Japanese products were mainly present, that is in the small and medium-sized order segments.

(67) It should be borne in mind however as mentioned in recitals 58 to 62 of the provisional duty Regulation that low-priced dumped Japanese imports increased their Community market share in value terms by 24 % whereas the Community industry lost 10 % of this share. From 1990 up to the investigation period, the Community industry prices were constantly suppressed and despite a significant price increase Japanese products still

(68) The Commission has further analysed separately the market share of advertising matches for each category of customer depending on the order size in terms of volume and value as shown in the table. This table was established for the investigation period on dumping (1 July 1993 to 30 June 1994) on the basis of more than 80 % of sales made by the Community industry and around 80 % of Japanese sales in the Community market:

Order size	Japanese exporters		Community industry		Total market share	
	volume	value	volume	value	volume	value
Small	14 %	16,5 %	11 %	16,5 %	25 %	33 %
Medium	14 %	13 %	20 %	21 %	34 %	34 %
Large	4 %	3 %	37 %	30 %	41 %	33 %

(69) This analysis shows that while the volume of the market for large orders represents around 41 % of the total advertising matches market, the share held by the Community industry for large orders amounts to nearly 10 times that of Japanese exporters. The limited volume sold by the Japanese exporters in this segment explains why limited effects were found.

constant price pressure since 1990 in such key segments of the market has clearly caused material injury to the Community industry.

(70) As to the other two segments of the markets, they represent around 60 % of the volume and around 67 % of the value of the overall market share, thus demonstrating that these are the key segments in the advertising matches business.

(72) As far as price development is concerned, and as already mentioned in recital 45 above, sales prices of boxes and book matches of the Community industry developed differently from 1990 up to the investigation period. Prices of box matches decreased by 2 % whereas prices of book matches increased by 10 %. Considering that box matches represent the large majority of Japanese sales (around 80 %) during the above period, the link between the negative price development for the box matches and the presence in the Community market of dumped Japanese imports can clearly be established.

(71) It follows that low-priced dumped Japanese imports are, therefore, targeting these key segments of the Community market, the volume of their share of the market in these segments (47 %) being comparable with that of the Community industry (53 %). Consequently the large quantities sold by the Japanese exporters combined with their

(73) In conclusion, based on the findings as explained and developed in the recitals above, the Council confirms that low-priced dumped imports from Japan, taken in isolation, have caused material injury to the Community industry.

H. COMMUNITY INTEREST

- (74) In its provisional duty Regulation the Commission indicated why the Community interest calls for intervention. In this respect it is recalled that the other producers in the Community are small and medium-sized enterprises representing up to 22 % of the total Community production of the product concerned. The fact that the large majority (90 %) of these producers has consistently supported the complaint shows that they are of the opinion that it is in their interest to restore fair trade practices in the Community market with the imposition of anti-dumping measures.
- (75) As to the competition law investigations into the main Community producer in the Community market, the Commission is aware of the fact that a complaint was lodged with the competent services of the Commission, alleging that Swedish Match abused and was abusing its dominant position by practising a policy of acquisitions and of predatory pricing. That complaint has been dismissed, without objections from the complainant, because no evidence was found or had been supplied of the existence of the alleged abuses.
- (76) As to the allegation according to which the main Community producer might adopt or has already adopted a long-term strategy of selling at a loss, while confirming what it stated at recital 94 of the provisional duty Regulation it may be added that the allegations forwarded in this respect were based on a few price quotations referring to a very short period of time subsequent to the investigation period. These allegations cannot be taken into consideration because the number of quotations is very limited (three) and refers to a period of time subsequent to the investigation period.
- (77) In summary, the Council, after an appreciation of all the various interests, taken as a whole, and for the reasons given in the provisional duty Regulation concludes that, on balance, it is in the Community interest to impose definitive measures.

I. ANTI-DUMPING MEASURES

- (78) Based on the above conclusions on dumping, injury, causal link and Community interest, it was considered what level and form the anti-dumping measures should take in order to remove the trade-distorting effects of injurious dumping and to restore effective competitive conditions in the Community market.

- (79) After the publication of the provisional duty Regulation the Commission became aware that the level of trade adjustment made in establishing the injury elimination level had been applied to the unrelated importers' resale prices, whereas such an adjustment should be applied to Japanese exporters' sales prices in the Community. Accordingly the injury margins have been recalculated.

- (80) Since the injury margin, that is the level of prices at which the injurious effects of the dumped imports would be removed, was lower than the dumping margin found for three of the exporters concerned in the investigation, the injury margin was used in order to determine the level of the measures to be applied to these exporters.

For one exporter the dumping margin, which was lower than the injury margin found, was used in order to determine the level of the applicable measures.

- (81) On the above basis, definitive duties, in the form of *ad valorem* duties, should be imposed.

- (82) The complainant claimed that, in order to avoid the possibility of circumvention of the duties, the same duty should be imposed on all the cooperating, exporting producers. This claim was based on a report of a Japanese economic research institute alleging the existence of a close cooperation on domestic and export prices of the Japanese industry.

The information collected by the Commission and verified on the spot did not provide any evidence whatsoever of a common price strategy by the Japanese industry, at least as far as domestic prices, and therefore the normal value, are concerned (see recitals 22 and 23). Furthermore, the imposition of the same duty on all the exporting producers, regardless of their different normal values, would constitute arbitrary treatment that could not be justified by the mere, unsubstantiated possibility of circumvention of the duties,

This claim is therefore rejected.

J. COLLECTION OF THE PROVISIONAL DUTIES

- (83) In view of the magnitude of the dumping margins found for the exporting producers and in the 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 should be definitively collected at the level of the definitive duties,

HAS ADOPTED THIS REGULATION:

Article 1

1. Definitive anti-dumping duties are hereby imposed on imports of advertising matches originating in Japan. The product as described falls within CN code ex 3605 00 00 (Taric code 3605 00 00*10).

For the purposes of this Regulation, advertising matches are matches incorporating advertising matter other than or in addition to the logo or details of the match manufacturer.

2. For the purpose of this Regulation, the rate of duty applicable to the net, free-at-Community-frontier price, before duty shall be 43,2 % (Taric additional code 8900) with the exception of imports manufactured and exported by the following companies, which shall be subject to the following rates of duty:

(a) 27,8 % for the products manufactured and exported by Daiwa Trading & Industrial Match Co. Ltd (Taric additional code 8022);

(b) 9,8 % for the products manufactured and exported by Kobe Match Co. Ltd (Taric additional code 8023);

(c) 10,3 % for the products manufactured and exported by Yaka Chemical Industrial Co. Ltd (Taric additional code 8024).

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

Article 2

The amount secured by way of provisional anti-dumping duty pursuant to Regulation (EC) No 1092/97 shall be definitively collected at the duty rate definitively imposed.

Amounts secured in excess of the definitive rate of anti-dumping 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, 15 October 1997.

For the Council

The President

J. POOS

II

(Acts whose publication is not obligatory)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY

EFTA SURVEILLANCE AUTHORITY DECISION

No 120/97/COL

of 24 April 1997

relating to a proceeding under Article 53 of the EEA Agreement in case
COM 020.0099 — NSF

(Only the Norwegian and English texts are authentic)

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area (the EEA Agreement), and in particular Article 1 of Protocol 21 thereto,

Having regard to Chapter II of Protocol 4 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice (the Surveillance and Court Agreement), and in particular Article 3 (1) thereof,

Having regard to the application for negative clearance and the notification for exemption submitted by *Norges Skogeierforbund*, pursuant to Articles 2 and 5 of Chapter II of Protocol 4 to the Surveillance and Court Agreement,

Having regard to the EFTA Surveillance Authority Decision of 3 July 1996 to initiate proceedings in this case,

Having given the undertakings concerned, as well as other natural or legal persons with a sufficient interest, the opportunity to make known their views on the objections raised by the EFTA Surveillance Authority in its statement of objections of 3 July 1996, in accordance with the provisions of Article 19 (1) and (2) of Chapter II of Protocol 4 to the Surveillance and Court Agreement and with Chapter IV of the same Protocol,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

PART I

THE FACTS

1. The notification

- (1) On 18 July 1994, the EFTA Surveillance Authority received a notification from *Norges Skogeierforbund* (the Norwegian forest owners association, hereinafter referred to as NSF) requesting a negative clearance or an exemption from Article 53 of the EEA Agreement for the following agreements⁽¹⁾:
1. statutes of NSF⁽²⁾;
 2. standard statutes of forestry district societies⁽³⁾;
 3. standard statutes of forestry local squads⁽⁴⁾;
 4. framework agreement governing price negotiations for pulpwood between NSF and *Treforedlingsindustriens Servicekontor* (the service agency of the paper and pulp industry's branch association, hereinafter referred to as TFS)⁽⁵⁾;
 5. price agreement governing the contractual period of 1 January to 31 December 1994 between NSF and *Treforedlingsindustriens Bransjeforening* (the branch association of the paper and pulp industry, hereinafter referred to as TFB)⁽⁶⁾.
- (2) Subsequently, NSF has submitted the following decisions and agreements which suspends the framework agreement (point 4) indicated above:
6. guidelines for future pulpwood negotiations⁽⁷⁾;
 7. decision by NSF regarding pulpwood negotiations in 1995⁽⁸⁾;
 8. Agreement governing price negotiations for pulpwood in 1995 between NSF and TFB⁽⁹⁾;
 9. framework agreement governing pulpwood negotiations between NSF and TFB⁽¹⁰⁾.
- (3) Finally, the notification contained information about an agreement between NSF and TFS regarding the level of commission to be paid to NSF and the NSF forestry district societies, hereinafter referred to as the Commission Agreement⁽¹¹⁾.
- (4) The decisions and agreements which relate to price negotiations and other cooperation between NSF and the industrial buyers of round wood, i.e. points 4 to 9 above as well as the Commission agreement, are being dealt with in two separate cases (COM 020.0131 — NSF + TFB I and COM 020.0132 — NSF + TFB II). Consequently, the present decision relates only to the organization of NSF and its constituent parts (points 1 to 3 above), hereinafter referred to as the NSF system.

⁽¹⁾ The notification also encompasses price agreements for saw-wood between local district societies and local purchasers as exemplified by the price agreement for coniferous saw-wood in Nordenfjells dated 21 December 1993 (*Prisavtale for sagtømmer av bartre Nordenfjells*). These agreements are not covered by the present Decision.

⁽²⁾ *Vedtekter for Norges Skogeierforbund*.

⁽³⁾ *Normalvedtekter for skogeierforeningar*.

⁽⁴⁾ *Normalvedtekter for skogeierlag*.

⁽⁵⁾ *Rammeavtale om prisforhandlingsordning for massevirke av bartre*.

⁽⁶⁾ *Prisavtale for massevirke av bartre for perioden 1. januar 1994 — 31. desember 1994*.

⁽⁷⁾ *Retningslinjer for framtidige massevirkeforhandlinger*.

⁽⁸⁾ *Vedtak om massevirkeforhandlinger 1995*.

⁽⁹⁾ *Avtale om prisforhandlingsordning for massevirke av bartre for 1995*.

⁽¹⁰⁾ *Rammeavtale om omsetningsordning for massevirke av bartre*.

⁽¹¹⁾ *Provisjonsavtale*.

2. The NSF system

- (5) Organizationally, the NSF system is of a cooperative nature. Individual forest owners are members of local squads. All the squads in a given district are organised in a district society. As a member of a squad, the forest owner is automatically a member of the district society and the central association, NSF. NSF, in turn, consists of the individual members, the squads and the district societies, and is the joint coordinating organization for its members and the activities of the district societies.
- (6) Some 57 000 forest owners, mostly small suppliers, are organised in 446 local squads. Most of the economic activities of these forest owners, however, are organised on the district society level. There are 19 such district societies in NSF, geographically covering all of Norway.
- (7) The statutes of NSF, the district societies and the local squads lay down the framework for NSF's activities and the obligations and rights of its members. One of NSF's purposes, according to the statutes, is to defend the forest owners economic interests by working for the best possible prices and market conditions for forestry products to assure the best possible marketing of such goods and, if necessary, to regulate the market through organizational measures. NSF shall also work towards a forestry policy which reflects the members' interests and promotes the understanding and development of forestry. These goals shall be pursued through cooperation between the members. In addition, emphasis shall be put on coordinating owner interests in the forestry industry and promoting a development which secures the highest possible payment for round wood.
- (8) Members are obliged to abide by the decisions or measures taken by NSF and its subordinate organizations⁽¹⁾. Failure to comply with such decisions or the provisions contained in the statutes may lead to exclusion⁽²⁾. The forest owners have furthermore the right and obligation to sell all their marketable round wood through the applicable district society⁽³⁾. A member may leave NSF upon three months written notice, but without any claim to the assets of the association⁽⁴⁾. According to NSF, a member may leave and re-enter NSF without any fees.
- (9) NSF, in turn, shall represent its members in case of central negotiations on prices and delivery conditions. This is done by NSF's board or a committee appointed by the board. Similarly, the board may negotiate quantities to be delivered with round wood buyers and may order the district societies to decide on the allocation of these quantities among themselves⁽⁵⁾. Other binding measures which can be taken by NSF or the district societies include the imposition of market measures, such as regulating output and equalizing prices⁽⁶⁾, and the securing of financial assistance to one or more district societies from the other district societies in times of sudden and large changes in the market⁽⁷⁾.

⁽¹⁾ Paragraph 5 of NSF's statutes and Paragraph 4 of the standard statutes for district societies and local squads.

⁽²⁾ Paragraph 21 of NSF's statutes and Paragraph 14 of the standard statutes for district societies.

⁽³⁾ Paragraph 4 of the standard statutes for district societies and local squads.

⁽⁴⁾ Paragraph 20 of NSF's statutes, Paragraph 15 of the standard statutes for district societies and Paragraph 11 of the standard statutes for local squads.

⁽⁵⁾ Paragraph 6 of NSF statutes.

⁽⁶⁾ Paragraph 7 of NSF statutes and Paragraph 5 of the standard statutes for district societies.

⁽⁷⁾ Paragraph 8 of NSF statutes. This clause previously contained provisions for charging a fee from the members to finance market measures. This was changed by the NSF Annual General Meeting on 2 June 1995.

3. The product

- (10) A fundamental characteristic of round wood is the very long production time from planting the seedling to its economically optimal harvesting. In the Nordic countries this may take as long as 70 to 100 years for fully grown saw-wood log. In principle, up to a limit, the quality and thus the value of the forest will increase with age. Consequently, it is normally possible for an individual forest owner to 'store' the round wood by keeping it on root, without jeopardizing the value.
- (11) The annual harvest of round wood in Norway is around 10 to 12 million m³. It is estimated that the annual forest growth is some 18 million m³. The harvested round wood mainly consists of spruce (77 %) and pine (20 %). Broad-leaved wood, mainly birch, only amounts to some 3 % of the total harvest.
- (12) Round wood can be characterized as an intermediate product, used in the production of wood-based products such as pulp, paper, board, and sawn wood. The high quality part of the round wood logs of sufficient size is mainly sold as saw-wood to the sawmills and wood industries (hereinafter referred to as sawmills), whereas most of the remaining part is sold as pulpwood to the paper and pulp industry. A smaller share of the round wood harvested is used as fuelwood for heating purposes, often directly by consumers. Of the total harvest of 10 to 12 million m³, normally some 8 to 9 million m³ is sold to the forest industry in the form of pulpwood or saw-wood.

Table 1

Total round wood cut in Norway (1 000 m³)⁽¹⁾

	1989/1990	1990/1991	1991/1992	1992/1993	1993/1994	1994/1995
Saw-wood	5 000	4 800	4 400	4 900	4 200	5 562
Pulpwood	5 500	4 600	4 500	4 200	3 800	3 974
Subtotal	10 500	9 400	8 900	9 100	8 000	9 536
Fuelwood, etc.	2 300	2 300	2 300	2 300	2 300	2 300

⁽¹⁾ Source: NSF.

- (13) The amount of saw-wood that can be obtained from a given forested area varies greatly, from 30 to 80 %, according to the quality and type of forest. Apart from variation in quality, the relative difference between pulpwood and saw-wood also has an influence on the category in which the round wood is sold.
- (14) In the production of sawn wood, wood chips are produced as a by-product. These chips are used in paper and pulp production together with pulpwood. It is estimated that 35 to 38 % in volume terms of the saw-wood used by the sawmills becomes wood chips. The wood chips are sold to the paper and pulp industry, directly or as part of an exchange for saw-wood. Due to the quantities involved, the trade in wood chips is considered to be vital for the profitability of the sawmills.
- (15) The harvested round wood is a product which due to its form is difficult to handle and has a large volume relative to its price. Handling costs in terms of harvest and transport are relatively high and demand special machinery. It is estimated that the average transport cost constitutes some 25 % of the total cost both for saw-wood and pulpwood. The

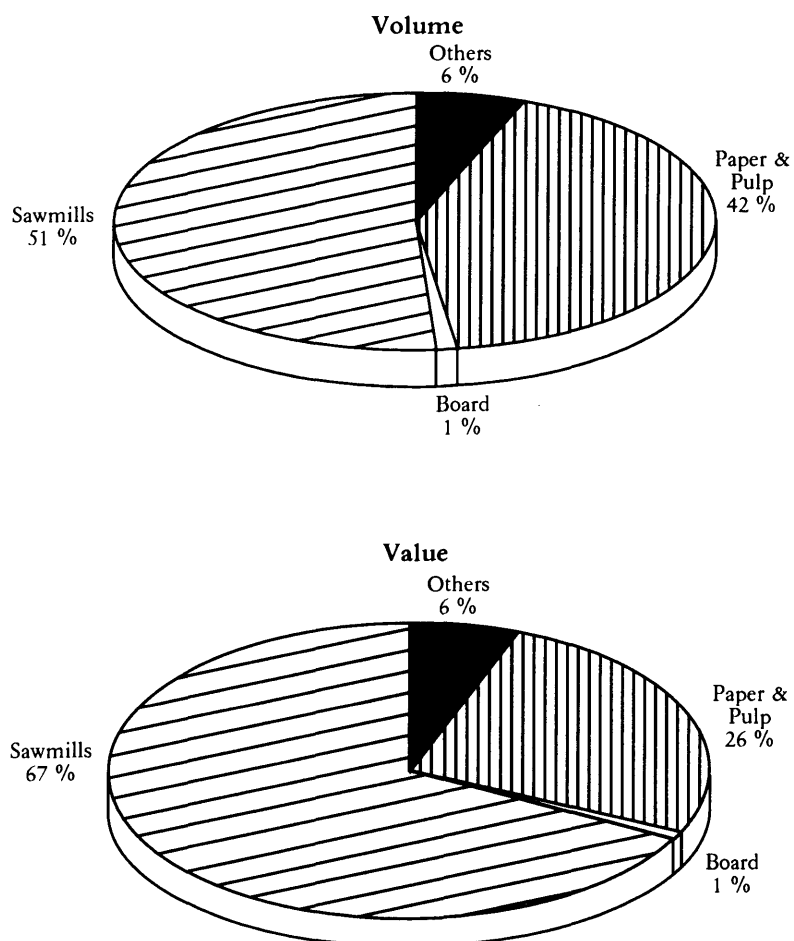
quality of the round wood is dependent primarily on the quality of the forest being harvested. However, since the quality deteriorates quickly after harvest, freshness is also an important criterion. NSF has also pointed to hygiene and specification of origin as increasingly important quality factors.

4. The market

- (16) According to national statistics, the gross value of the 8,5 million m³ round wood cut for industrial sale in Norway 1993/94 was Nkr 2,5 billion. Due mainly to a decline in the rate of harvest, this value has decreased successively from Nkr 3,8 billion 1989/90. The corresponding value of exports and imports in 1994 were Nkr 121 and Nkr 657 million respectively. According to NSF, the total Norwegian harvest of round wood for industrial sale in 1989 and 1991 constituted slightly less than 5 % of the corresponding harvest in the EEA.
- (17) As shown in Figure 1, on average around 50 % of the harvested round wood which is marketed is sold to the sawmills and slightly less to the paper and pulp industry. Since the price for saw-wood is higher, saw-wood represents approximately two thirds of the revenue for the forest owners. The category 'others' includes wood preserving industries, furniture manufacturers etc. as well as exports.

Figure 1

Round wood cut for sale by buyer group 1993/94 (1)

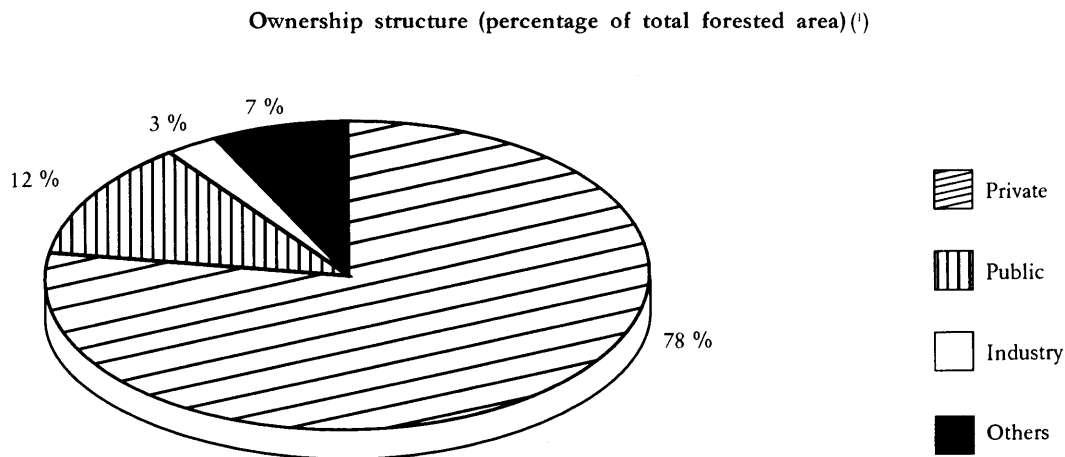


(1) Roundwood cut 1993/94, Official Statistics of Norway.

4.1. Suppliers

- (18) The main part of the forested area in Norway belongs to some 126 000 private forest owners. About 75 % of these are also farmers. A smaller portion is publicly held, mainly by *Stasskog*, which is a State-owned company, and individual municipalities, whereas the forest industry's share is relatively insignificant. The ownership structure is shown graphically below.

Figure 2



4.1.1. NSF

- (19) The 57 000 forest owners in the NSF system represent on average some 75 % of the total supply of round wood harvested in Norway. NSF's share of the supply varies from between 60 and 65 % in the eastern part of Norway, to between 80 and 95 % in the other regions. The average sale per forest owner with deliveries in 1994 was Nkr 77 000. However, it should be kept in mind that a majority of the members only harvests at irregular intervals — often at intervals of several years. The overall purchases of round wood from the members vary from year to year depending on price level and harvest, but lately it has amounted to around Nkr 2 billion per year.
- (20) The total turnover of the undertakings in the NSF system cannot be estimated accurately. It should be noted that the individual forest owners normally have their main income from other activities, mostly from agriculture. As agricultural income is derived from a commercial activity, it has to be included in the turnover of the individual members of NSF. Consequently, it can be estimated that their total turnover is substantially higher than Nkr 2 billion. As to the total turnover of the district societies, it should be noted that apart from selling the round wood purchased from the individual members, they receive additional income from services related to forestry, such as harvesting and transport coordination, and to a lesser extent from industrial activities. Therefore, their annual turnover can also be estimated to substantially exceed Nkr 2 billion.
- (21) In addition to forestry, NSF also has interests in industrial activities, notably through its district societies' ownership in Norske Skog AS, which is the single largest company in the Norwegian forestry industry with a turnover in excess of Nkr 9 billion. The forest owners associations own approximately 30 % of the shares (36 % of the votes) which make them the largest group of owners in the company. NSF has three representatives on the Board of Norske Skog and, traditionally, the chairman comes from the NSF system. There is, however, no such representation in Norsk Virke AS, which is responsible for Norske Skog's procurement of round wood and chips (see below), and transactions between forest owners associations and the Norske Skog Group are said by NSF to be made on commercial terms only.

⁽¹⁾ Source: NSF.

- (22) The central association of NSF is not directly involved in the sale of round wood. Apart from negotiating the general sales conditions with representatives of the industrial buyers, and setting guidelines for the decentralised price negotiations, it has activities relating to information and consultative services for the members, forestry policy shaping, and research in the forestry field.
- (23) The actual trading takes place at the district level. Until recently, a district society typically acted as a commercial agent for its individual members. Today, however, it buys round wood from its members and sells it to the industry in its own name. As a consequence, the district society commits itself to deliver certain quantities to the industry, whereas earlier the sale agreements negotiated by the district society reflected an intent rather than commitment.
- (24) In practice, the district society concludes an agreement with the industrial buyer starting from a base price ex roadside, which is normally similar to that of other district societies or groups of district societies, plus add-ons for conditions creating extra value for the purchaser, which may vary between the district societies. Such add-ons or bonuses may result from, *inter alia*, timing of deliveries throughout the year, assistance with transport, commitment to certain quantities and commissions.
- (25) Subsequently, or in parallel, the district society concludes individual agreements with its members so as to be able to fulfil the contract with the industrial buyer. Although the base price is based on the industry's offer, the actual price for the individual forest owner may vary, depending mainly on quantity and times of harvest. The forest owner is free to organise the harvest himself, but the district society can give assistance in terms of the financing of machines, advances for future deliveries, guarantees to entrepreneurs, etc. Some 40 % of the harvest is organized directly by the district societies. The transport is mostly done by entrepreneurs and is paid for by the industrial buyers. The district societies, however, often organise the logistics and can present views on the industries' selection of entrepreneur.

4.1.2. Other suppliers

- (26) Many of the larger forest owners are members in the other forest owners association, Norskog. Norskog has presently around 200 members. These members represent some 5 to 10 % of the supply of round wood harvest in Norway. The members have an obligation to sell 50 % of their harvested round wood through Norskog. Prices and conditions negotiated by Norskog *vis-à-vis* the industrial buyers, normally mirror those negotiated by NSF. The commission for pulpwood, however, is lower than that of NSF.
- (27) *Statsskog* is a State-owned undertaking which harvests and sells from forests owned by the state and the church. It represents some 5 to 10 % of the total supply of round wood harvested in Norway. *Statsskog* also normally receives the same prices and conditions as those negotiated by NSF, but the commission is somewhat lower than for the two associations.
- (28) Some 68 000 mostly very small forest owners are operating outside the forestry associations. Many of these, however, harvest only at irregular intervals. Together, they represent some 10 % of the total supply of round wood harvested in Norway. They sell either individually to the industrial buyers or through independent round wood traders. These traders are mostly active in Østfold.
- (29) Only about 2 % of the round wood supply stems from forests owned by the forestry industry.

4.2. *The purchasers of round wood in Norway*

4.2.1. Saw-wood purchasers

- (30) There are about 600 saw and planing mills in Norway. Some 120 are members of the *Trelastindustriens Landsforening* (the Norwegian sawmill industries association, hereinafter referred to as TL). They represent approximately 80 % of the total production of sawn timber. TL is mainly involved in providing information and advisory services to its members, and does not take part in its members activities on the saw-wood market. Purchases are done individually by each sawmill, or in cases of ownership links, by groups of sawmills. According to NSF, the six largest groups represent 50 % of the total purchases.

4.2.2. Pulpwood purchases

- (31) In 1993 there were 17 undertakings active in the paper and pulp industry. All purchasers of pulpwood are members of *Treforedlingsindustriens Bransjeforening* (the branch organization of paper and pulp industry, hereinafter referred to as TFB). TFB has traditionally represented the paper and pulp industry in establishing prices and other trading conditions for pulpwood and wood chips. Within the framework of TFB, the members have agreed to a geographic market sharing arrangement, setting the geographic area in which an undertaking or group of undertakings can purchase pulpwood on the Norwegian market. The Authority has raised objections to this arrangement in a separate case (file No COM 020.0130 — TFB).
- (32) Although some smaller paper and pulp mills purchase pulpwood individually in their respective geographic region, some 90 % is procured through the two pulpwood purchasing organizations in Norway. Norsk Virke AS is a joint purchasing company owned by Norske Skog AS (91 %) and Union AS (9 %), and is active mainly in the western and northern part of Norway. It purchases slightly less than 60 % of the Norwegian supply of pulpwood. Østfoldtømmer ANS is the joint purchasing company for Borregard Industries Limited, M. Peterson & Søn A/S and Norske Skog Saugbrugs AS and is active in Østfold in the east of Norway. It accounts for more than 30 % of the Norwegian pulpwood supply. Norsk Virke and Østfoldtømmer are responsible for the procurement of all their owners' needs for raw material in their respective geographic areas, including wood chips from the sawmills and imports.

4.3. *The pricing of round wood*

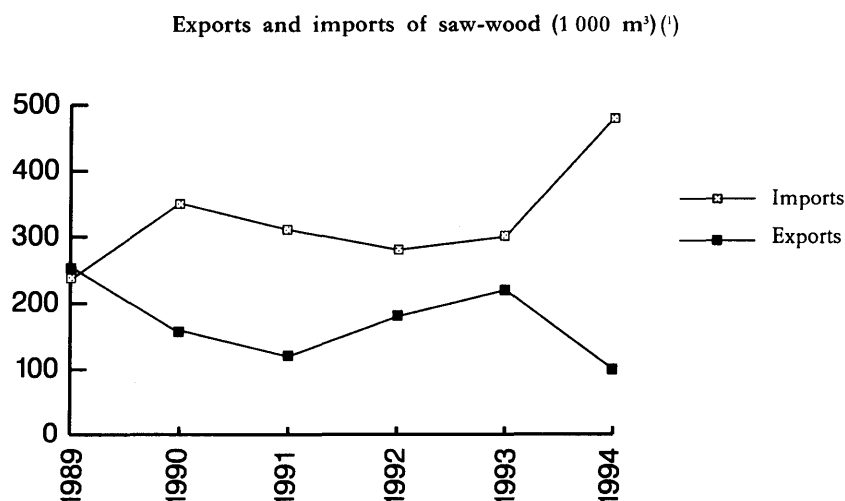
- (33) The round wood is normally sold ready cut ex roadside. The buyer pays the transportation from roadside to the industrial site, where the actual measurement takes place. It is normally the forest owners association which negotiates the price with the buyer. A central principle in previous price negotiations has been to guarantee that the price paid by the industry for the equivalent quality delivered in this manner is the same throughout Norway. The rationale behind this principle is that all resources in Norway shall be utilized regardless of location. This principle implies an acceptance of equalization measures which compensate for disadvantageous locations.
- (34) The round wood is sold either as saw-wood or pulpwood. In general, there seems to be more flexibility in the actual pricing of saw-wood reflecting local differences in supply and demand than is the case for pulpwood.
- (35) Until the mid 1980s the price for saw-wood was set in central negotiations between NSF and TL, which represent some 80 % of the Norwegian sawmills' production. These negotiations were subsequently decentralized and today the prices are mainly set in negotiations between the individual district society or other seller and the individual buying sawmill, or, in the case of ownership links, groups of sawmills. To a limited extent, the sales are conducted in a type of auction to the highest bidder. As a consequence of the discontinuation of the central price negotiations, TL no longer has any right to negotiate prices on behalf of its members.

- (36) Until 1994, the base price for pulpwood and other sales conditions, including rates of commission, were set in central negotiations between NSF and TFB for one year at a time. Within this framework, possible price adjustments, based on local requirements such as delivery time and quality as well as quantity, were negotiated between the district society and the individual industrial buyer. With the exception of the level of commission, the same prices and conditions were normally offered to sellers outside NSF.
- (37) In 1994, against the background of an increase in demand for pulpwood coupled with a relatively low harvest in Norway and correspondingly record high imports, it was decided to carry out regional price negotiations for 1995. Three such regions were established. In each of these, negotiations were carried out jointly by the district societies in the respective region on the one side, and the industrial buyers in the respective region on the other side. As a basis for the district societies' negotiations, the NSF adopted guidelines stipulating, *inter alia*, that the price should not vary with the distance to the industry and that the negotiations should be coordinated. The resulting base prices and conditions were — in principle — identical in the three regions.
- (38) The price negotiations for 1996 were further decentralized, in that they were conducted with each individual buyer. In other words, if a single buyer covered several districts, the corresponding district societies negotiated jointly. If, on the other hand, a buyer only covered one district, the concerned district society conducted the negotiations individually. As a result the prices and conditions for the pulpwood have shown variations between the districts.

4.4. International trade

- (39) The cross-border trade in round wood is restricted by factors such as relatively high transport costs, availability of the demanded types and qualities, freshness, differences in measuring and other national regulations (e.g. barking). Still, international trade is growing. One reason for this is the increased use of fast growing, and thus cheaper, wood types from countries particularly in the southern hemisphere for various types of wood products which previously required wood grown in the north. Increased availability of relatively low cost coniferous wood from Russia and the Baltic states have also led to an increase in trade within Northern Europe. In addition, the use of recycled paper has contributed to limiting the constraint put on capacity by local or regional supply of round wood. In Norway, imports seem to be increasing whereas exports are relatively stable or decreasing and since 1994 there has been a substantial import surplus of round wood and wood chips.

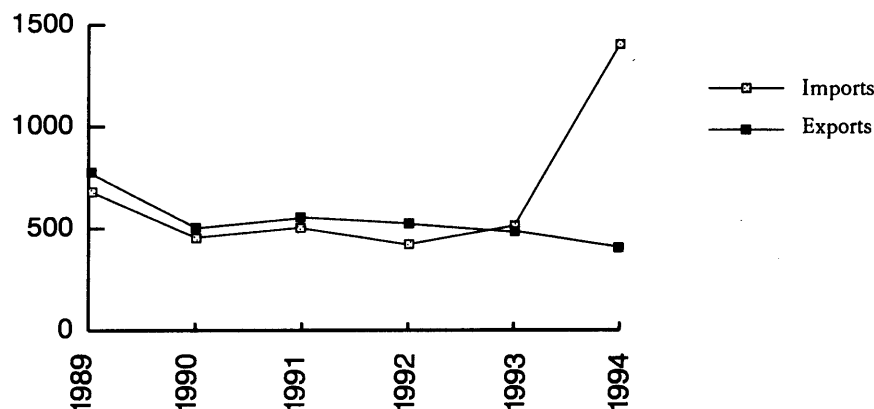
Figure 3



⁽¹⁾ Source: NSF.

- (40) The total annual domestic use of saw-wood can be estimated at 4,5 to 5 million m³. The level of imports varies between 5 and 10 % of the domestic supply. Normally, some 90 % or around 250 to 300 000 m³ of the imports come from Sweden, mainly from the border regions. In 1994, when there was a general shortage of round wood in Norway, the imports of saw-wood increased by 50 %. A large part of this increase came from Russia and the Baltic states. Figures supplied from NSF show that an additional 80 000 m³ or a total of 550 000 m³ was imported in 1995. According to representatives of the sawmills, the need for high quality and high transport costs makes substantial increases of imports difficult.
- (41) The export of saw-wood is for similar reasons generally restricted to neighbouring markets. Total exports normally amount to some 100 to 200 000 m³ or up to 5 % of the domestic supply. With the exception of 1993, when a very large export order to Turkey was executed in connection with severe storm damages, Sweden is by far the predominant destination of these exports.

Figure 4

Exports and imports of pulpwood (1 000 m³)⁽¹⁾

- (42) The import of pulpwood previously contributed to some 10 % of the industry's needs. However, in 1994 and 1995, some 30 % was imported. The scope for imports of pulpwood is relatively large since the Norwegian paper and pulp industry has access to ports and has the capacity to buy large quantities at a time. Hereby the per unit transport cost, which is the main obstacle to trade, can be kept down. There is a possibility to buy pulpwood on international spot markets, but most imports are governed by contracts covering a full year. Most of the imports stem from Sweden, but there are substantial imports also from Russia, the Baltic States, Germany and, as regards fast growing varieties, South America and Africa.
- (43) Exports of pulpwood seem to be limited due to, *inter alia*, the geographic and topographic conditions prevailing in Norway which increase collection and transport costs, relatively high protection costs and an ownership structure with small and widely dispersed individual forest owners. There are, however, some exports to neighbouring countries, mainly Sweden, corresponding to about 300 to 500 000 m³.
- (44) According to NSF, relative price developments of pulpwood follow the same trends internationally, at least in Scandinavia, Germany and France. On the other hand, official statistics ⁽²⁾ seem to indicate large differences in absolute prices of both pulpwood and, to an even greater extent, saw-wood, between Norway and other countries. Statistics provided by

⁽¹⁾ Source: NSF.⁽²⁾ Forest product prices 1992-1994, *Timber Bulletin* 1995 No 1, FAO.

NSF suggests that the price differences are relatively smaller between Norway and the other Nordic countries, normally between 5 and 25 % for certain types of pulpwood and saw-wood during the last five years. There are, however, considerable difficulties involved in making comparisons of relative development or absolute level of prices between different countries due to, *inter alia*, differences in relative proportions of types and qualities of round wood, currency fluctuations, sales conditions (e.g. ex road side, cif, on root), national measuring systems, local price variations within the countries and availability of reliable price statistics. In view of this, it is not possible to draw any definite conclusions from the available information as regards price levels and price developments in Norway compared to those in other countries.

- (45) The various wood products stemming from pulpwood and saw-wood are to a large extent exported. The trade within the EEA of such products is substantial. For example in 1994, the export of paper and paperboard from Norway to other EEA countries amounted to Nkr 5,9 billion (⁽¹⁾). Prices for many of these finished or semi-finished wood-based products seem to be set internationally.

PART II

LEGAL ASSESSMENT

- (46) Following the statement of objections, NSF has in meetings with representatives of the Authority and in written submissions indicated a number of possible amendments to the statutes of NSF, the district societies and the local squads, with a view to finding a solution which would enable the Authority to reach a positive conclusion in the case. The Authority has considered and commented on these possible amendments.
- (47) While the indicated amendments would alleviate a significant part of the restrictions on competition identified in the statement of objections, the Authority has nevertheless taken the view that the remaining restrictions would be such as to exclude a positive decision on the matter. Moreover, no changes of the statutes have actually been made or notified to the Authority.
- (48) Accordingly, what stands to be assessed in the present case is the request for negative clearance or exemption from Article 53 of the EEA Agreement for the statutes as notified, i.e. as referred to in paragraph 1, points 1 to 3.

1. Article 53 (1)

- (49) Under Article 53 (1) of the EEA Agreement, all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between the Contracting Parties and which have as their object or effect the prevention or distortion of competition within the EEA are prohibited.

1.1. *General applicability of Article 53 (1) to the notified arrangements*

- (50) It follows from Article 8 (3) (a) that the provisions of the EEA Agreement apply to round wood. Consequently, the competition rules contained in the EEA Agreement apply to the notified arrangements.

(¹) Official Statistics of Norway.

- (51) The term 'undertaking' in Article 53 (1) refers to any legal or natural person engaged in an economic activity. The forest owners who are members of NSF, are natural or legal persons who engage in commercial activities and are thus considered to be undertakings within the meaning of Article 53 (1). NSF, the district societies and the local squads are thus associations of undertakings, as well as undertakings in their own right to the extent that they are active in commercial activities. Consequently, the notified statutes of NSF, the district societies and the local squads must be considered as agreements between the members or decisions by the association.

1.2. *Defining the relevant market*

1.2.1. The product market

- (52) The round wood traded through the NSF system is in the form of pulpwood and saw-wood. In determining the relevant product market, it is necessary to consider not only the objective characteristics and the intended use of the products in question, but also the conditions of competition applicable to these products.
- (53) There is a marked quality difference between pulpwood and saw-wood, reflected both by differences in physical characteristics and in pricing. The intended use is different for the two products. Furthermore, the conditions of competition in the trade of these two products are markedly different, due to the differences in, *inter alia*, concentration on the buyers' side, levels of imports and coordination of pricing. Although there might be some overlap, depending on the relative prices and the quality needs of the purchaser at any given time, it can thus be held that saw-wood and pulpwood belong to two different markets. This conclusion is further supported by the fact that the principal operators in the trade of round wood, including NSF, distinguish between a saw-wood and a pulpwood market.
- (54) It also has to be considered whether it is necessary to further divide the markets for pulpwood and saw-wood. Different types or qualities of pulpwood and saw-wood respectively are not normally substitutable for the end-users, partly because of price differences and partly because of technical requirements. However, some important conditions for trade, such as transporting arrangements and measurement requirements, are the same within these markets. Furthermore, the buyers and sellers who set prices and other commercial trading conditions are principally the same within the pulpwood market and the saw-wood market respectively. For the purpose of assessing the impact of competition of the agreements at hand, it is thus sufficient to refer to one pulpwood market and one saw-wood market.
- (55) Finally, it has to be considered whether there are any additional products which should be included in the relevant markets. NSF has argued, in this regard, that pulpwood and wood chips belong to the same market. However, although pulpwood and wood chips are to a large extent physically substitutable for the industrial user, several factors indicate that the conditions of competition for the two products are different. Wood chips are by-products from the sawmills' processing of saw-wood, and the quantities produced are determined by the demand for the saw mills' end products rather than the industry's demand for wood chips and pulpwood. This inflexibility of supply is further aggravated by problems with long term storage due to the relatively greater bulk and quicker rate of deterioration of wood chips compared to logs. Since there seems to be few alternative economically feasible uses for the chips, this would indicate that the sawmills have a relatively weaker position *vis-à-vis* the purchasers than the pulpwood suppliers. These differences in conditions of competition between the two products are such that, for the purpose of assessing the arrangement at hand, wood chips should not be included in the relevant pulpwood market.

- (56) This conclusion is not altered by the fact that there is a link between the pricing of wood chips and the price of pulpwood, in that the value of wood chips for the paper and pulp industry increases when the price of pulpwood goes up. The paper and pulp industry's readiness to pay a higher price for the wood chips should therefore increase. However, the final price for the chips appears rather to be dependent on the bargaining power of the respective sawmill and paper and pulp industry, and not on the price of pulpwood. Conversely, conditions as regards trade in wood chips does not significantly influence the pricing and other trading conditions for pulpwood.

1.2.2. The geographic market

- (57) The starting point for defining the relevant geographic market is the geographic area in which the agreements under scrutiny are applicable. In the case at hand, this is Norway. However, this area may be extended if the objective conditions of competition applying to the products concerned are the same for all traders within a larger geographic area.
- (58) NSF argues that the relevant geographic market for both pulpwood and saw-wood is Europe or at least Northern Europe including Russia and the Baltic states. It appears that the main grounds for this view are that there is a substantial trade in round wood, especially pulpwood, and that relative price developments follow the same pattern internationally.
- (59) There are two general observations to be made with regard to both products. First, it is not surprising that the relative price developments of round wood are similar in most countries around the world. This is to be expected since the ability to pay for the round wood by the industrial buyers is linked to the price developments in internationally traded products such as paper, pulp, and other finished and semi-finished wood products, the prices of which to a large extent are set internationally. This is, however, not necessarily an indication of international markets for pulpwood and saw-wood. On the contrary, the absolute prices in different countries seem to show considerable variations, which would indicate national markets.
- (60) Secondly, the cost for transport of round wood is relatively high, on average an estimated 25 % of the total cost for the end-user. Consequently, the round wood would tend to be transported the shortest distance possible, i.e. it would be sold to the industry located the closest. This would indicate regional or even local markets. However, the marketing regimes, such as distribution, purchasing and measurements systems, appear to a large extent to be organized along national lines.
- (61) As regards saw-wood, the level of exports from and imports to Norway is relatively low (see section 4.4 above). Due to high quality requirements, it is difficult and costly to transport saw-wood over any long distances, especially if re-loading is required. In addition, the Norwegian sawmills are generally located inland, for which the costs for overseas imports would be prohibitively high. Imports are thus rarely a realistic alternative to domestic supply. The imports that do take place are mainly from Sweden by sawmills located in the border region. Similarly, for the suppliers, exports are normally not a feasible alternative. High transport costs exclude export for the majority of the forest owners, unless they are situated in the border region with Sweden or close to a port. Furthermore, the individual forest owners are in general too small to organize the marketing, the adaptation to different measurement regimes and transport themselves, and the available selling organizations, including the district societies of NSF, have limited activities in this regard.

- (62) These obstacles to trade, together with the general characteristics of the saw-wood market in terms of pricing, distribution and purchasing, indicate that the conditions of competition are not sufficiently homogeneous for an area larger than Norway, with the possible inclusion of the border regions in Sweden, to be considered one market. However, the supply from these Swedish regions is relatively limited, up to around 5 % of the total domestic supply, and the exports to these regions are even smaller. Consequently, the inclusion of the Swedish border regions would not influence the assessment of the notified arrangements on the market. It thus suffices to consider Norway as the relevant reference market for saw-wood.
- (63) Pulpwood is generally easier to import, despite the fact that the relative value per volume unit is even lower than for saw-wood, and imports constitute up to 30 % of the total supply. The Norwegian buyers are large enough to buy large quantities, for example a shipload, and thus keep transport costs down. Furthermore they have access to ports. Transport costs from the border region in Sweden, which is by far the largest source of imports, are not necessarily higher for industry located in that region than for domestic raw materials. Nevertheless transport costs and the availability of particular qualities at any given time set limits on these imports.
- (64) The sellers, however, face the same problems as with the export of saw-wood. High transport costs relative to the value and lack of international traders make export impossible for almost all forest owners except those situated in border regions or close to international ports. Consequently, the level of exports is relatively low.
- (65) The general characteristics of actual market conditions, including pricing, which is determined through negotiations between domestic sellers and buyers, as well as distribution and purchasing systems, which are determined domestically, all indicate a national market. At the same time, the relatively high level of imports indicate a certain degree of demand side substitutability between domestically procured pulpwood and pulpwood originating in primarily Sweden, Russia and the Baltic States. It is acknowledged that prices that the purchasers may obtain for imports from these countries may be an important element in the price negotiations between buyers and sellers in Norway. This could to some extent influence the relative bargaining strength of the market operators and should thus be taken into consideration when assessing the actual market power of these operators. However, the relatively high level of imports is not in itself enough to conclude that Norway and the main exporting countries belong to the same market. Instead, given the general market conditions together with the obstacles to trade indicated above, the price and other trading conditions, which are the main elements in delimiting a market, would primarily be determined by domestic factors.
- (66) In view of the above, it must be concluded that the objective conditions of competition are at present not sufficiently homogeneous in an area wider than Norway, and possibly certain areas in Sweden bordering Norway, for it to be considered one geographic market. Since the inclusion of Swedish border regions would not influence the assessment in this case, it is thus sufficient to refer to Norway as the relevant geographic market for pulpwood.

1.3. *Restrictions of competition*

- (67) The statutes of NSF, its district societies and local squads, include clauses which concern the central coordination of the commercial conditions for the sale of round wood as well as the control of the members' commercial behaviour at district level. In particular there are clauses which:

- give NSF the right to negotiate prices and framework quotas for its members and allocate these quotas among the members or district societies,
 - give NSF or the district society the right to impose market regulations on their members, such as reducing or stopping the members' production of round wood or equalising prices, and
 - oblige the members to sell all their harvested round wood to the district society in their respective geographic area.
- (68) The Authority recognizes that the sheer number of individual forest owners, the geographic and topographic conditions prevailing in large parts of Norway together with a relatively concentrated buyer side, may make some coordination on the seller's side necessary in order to safeguard the functioning of the Norwegian round wood markets. The forming of a cooperative structure and coordinating the marketing of the members' output at district level to the extent that other market outlets could not fulfil the same function would thus not necessarily restrict competition. Nor would the general services provided by the NSF system, such as forestry counselling, harvesting assistance and exchange of market statistics normally have such effects.
- (69) However, the notified clauses go much further than this. The clauses relating to NSF's right to negotiate on behalf of its members allow NSF to fix prices and other trading conditions, which is expressly prohibited in Article 53 (1) (a). The market regulatory clauses afford NSF and the district societies the possibility to limit production, which is expressly prohibited in Article 53 (1) (b). Finally, the exclusive delivery clause upholds a geographic market sharing arrangement expressly prohibited in Article 53 (1) (c). The individual members of NSF as well as the district societies are potential competitors on the markets for round wood. All these clauses severely restrict the possibility of competition within the NSF system. They restrict the commercial freedom of NSF's members, not only in the event of centrally negotiated or centrally coordinated prices or if market regulatory measures are imposed, but also because the exclusive supply clause eliminates the possibility for members to use marketing channels outside the NSF system. The latter also has the effect of foreclosing the possibility for alternative marketing channels to get access to the round wood produced by NSF members, which account for some 75 % of the total domestic supply, and thus impedes their possibility to compete effectively.
- (70) It could be argued that under exceptional economic circumstances even such clauses, in spite of the restrictions identified above, would have an overall pro-competitive effect and thus fall outside the scope of Article 53 (1). NSF has in this regard pointed especially to the concentrated buyer side. However, the saw-wood market, which accounts for some two thirds of the value of the round wood trade, consists of around 600 sawmills which conduct their purchases individually or through at least six major groupings. This market structure would not indicate an exceptional imbalance in favour of the purchasers of saw-wood. The pulpwood market is dominated by two purchasing organizations. However, it cannot be held that only the presence of these two purchasing organizations implies a market imbalance so severe as to necessitate the near elimination of competition between suppliers in order to ensure the functioning of the pulpwood market. Consequently, the structures of the saw-wood market and the pulpwood market do not indicate the type of exceptional economic circumstances which might lead the NSF system and thus the clauses under review to fall outside the scope of Article 53 (1).

- (71) With regard to the exclusive supply clause, NSF has argued that it does not constitute a restriction of competition within the meaning of Article 53 (1), given that the cooperation itself between the forest owners is justified and that the clause is necessary in order to ensure the proper functioning of the NSF system and the bargaining power of the forest owners. In support of this view, NSF has referred to the judgements of the Court of Justice of the European Communities in Coberco ⁽¹⁾ and DLG ⁽²⁾. In these judgements, the Court assessed the compatibility of certain restrictions with Article 85 (1) of the Treaty of Rome considered to be necessary to ensure the proper functioning of the cooperative structures concerned.
- (72) On this point, the Authority first notes that NSF's reasoning apparently relates to the exclusive supply clause only. Therefore, and since there are also other clauses which restrict competition within the meaning of Article 53 (1), the notified arrangements would be prohibited under that provision even if NSF's line of reasoning with regard to the exclusive supply clause were to be accepted.
- (73) That fact apart, the position taken by NSF on this point is in the Authority's view based on a misconception of the case law relied upon. Thus it is well settled case law, and it is clear also from the two cases referred to by NSF, that before any issue could possibly arise as to the necessity for a restrictive clause for the proper functioning of an agreement, it would have to be established that the agreement itself is not of such a nature as to fall within Article 53 (1) ⁽³⁾. In determining whether or not this is the case, it is not sufficient to consider in isolation the policy aims pursued by the parties to the agreement and the form or organizational structure in general of the cooperation envisaged in order to fulfil these aims. Rather, it is necessary to examine the real nature of the cooperation in the light of, *inter alia*, the economic context in which it is to take place and the structure of the market concerned ⁽⁴⁾.
- (74) Accordingly, in order to consider that the NSF system as such falls outside the scope of Article 53 (1), it is not sufficient to find cooperation between the forest owners to be justified and a cooperative structure to be a legitimate form for such cooperation. Rather, the relevant question is whether or not, given the economic circumstances prevailing on the market, a cooperation between forest owners representing 75 % of the domestic supply of round wood, implying the character and scope of restrictions on their commercial freedom envisaged in the statutes concerned, can be considered to be of such a nature as to fall under the prohibition of Article 53 (1). Only if this question is answered in the negative would the issues raised by NSF on this point become relevant. As should follow from what has already been said, the question must in the Authority's view be answered in the positive, given in particular the strong position of the NSF system on the Norwegian round wood markets and the nature and scope of the restrictions.
- (75) Although it follows from what has been said that the question of whether the exclusive supply clause is necessary for the proper functioning of the NSF system is not of relevance in the present context, it is noted that in discussing below the request for an exemption under Article 53 (3), the Authority takes the view that the clause is not necessary in order to ensure the fulfilment of the aims pursued. Accordingly, even assuming that NSF's reasoning in the present context would be valid in principle, it would in the Authority's view nevertheless have to be rejected in the case at hand.

⁽¹⁾ Coberco (1995 ECR, p. 4515).

⁽²⁾ Gøttrup Klim v. DLG (1994 ECR, p. 5641).

⁽³⁾ See, *inter alia*, Coöperative Stremsel- en Kleurselfabriek v. Commission (1981 ECR, p. 851, paragraphs 12 to 13); Dansk Pelsdyravlerforening v. Commission (1992 ECR, p. 1931, paragraph 78).

⁽⁴⁾ *Id.*

- (76) Finally, as concerns the appreciability of the restrictions, it is noted that the notified arrangements contain clauses relating to price fixing, market sharing and limitation of production which are contrary to the fundamental principles of the EEA competition rules. Furthermore, the NSF system represents some 75 % of the round wood harvested in Norway, corresponding to a value of some Nkr 2 billion a year. In terms of market shares, the NSF system has a collective share — including imports — of some 70 % of the saw-wood market and some 60 % of the pulpwood market. In view of the above, the restrictive effects on competition of the notified arrangements must be considered to be appreciable.

1.4. *Effect on trade*

- (77) In order for Article 53 (1) to apply, it has to be established that the agreements may have an appreciable effect on trade between the Contracting Parties to the EEA Agreement.
- (78) The notified arrangements may have a direct effect on export of round wood, since restricting output, influencing domestic prices or other commercial trading conditions and excluding sales of round wood to any other party than the district society may have an influence on the NSF-members' willingness or possibility to export. It is acknowledged that the export from Norway is relatively low, only some 5 % of the total harvest and is in principle restricted to the border regions with Sweden and certain coastal areas with direct access to a port, and that any such effect may thus be limited.
- (79) However, according to case-law of the Court of Justice of the European Communities⁽¹⁾, the fixing of price for an intermediate product which is not normally exported out of the region in question is capable of affecting trade between Member States, where that product constitutes the raw material for another product marketed elsewhere in the Community. In the present case, the notified arrangements afford NSF and its district societies the possibility to influence the price and other trading conditions for pulpwood and saw-wood. Pulpwood and saw-wood are intermediate products used as the main raw material for important export products of Norway such as paper, pulp and sawn wood. Consequently, the notified arrangements may affect the trade flow of the downstream products in the EEA.
- (80) The notified arrangements may also effect imports of round wood. Since NSF and the district societies can influence the prices and availability of round wood for the industrial buyers in Norway, this has a direct effect on the industries' need to import round wood for its production of downstream products. The fact that the availability of domestic pulpwood has an impact on imports can be illustrated by the situation in 1994, when harvesting and thus the availability of domestic pulpwood was reduced and imports more than doubled in one year.
- (81) The Authority has indicated in its so-called *de minimis* notice⁽²⁾ general guidelines for determining when it considers such effects or potential effects on trade appreciable. As has been described earlier (see section 1.2.2. above), the Authority is of the opinion that Norway forms a distinct geographic market for the products concerned. Since the notified arrangements cover the whole of this geographic market and a substantial part of the products concerned, the relevant market shares would clearly exceed the 5 % indicated in

⁽¹⁾ See, *inter alia*, BNIC II (1987 ECR, p. 4789).

⁽²⁾ Notice of the EFTA Surveillance Authority on agreements of minor importance which do not fall within Article 53 (1) of the EEA Agreement (OJ L 153, 18. 6. 1994, p. 32, and EEA Supplement to OJ 15, 18. 6. 1994, p. 31), as amended by the notice of the EFTA Surveillance Authority updating the notice on agreements of minor importance of 12 January 1994 (OJ C 281, 26. 9. 1996, p. 20).

the notice. However, even if the widest possible definition of the relevant market suggested by NSF would be accepted, which arguably would make the NSF systems' market share fall below 5 %, the turnover threshold of ECU 300 million indicated in the notice would still be exceeded. It is stated by NSF that a major part of the individual forest owners' turnover relates to other activities than round wood trade, and that the district societies are active in a range of supporting services. Given the turnover of round wood stemming from the NSF system, it can therefore be deduced that the total turnover of the undertakings participating in the NSF system would exceed ECU 300 million.

- (82) It must thus be concluded that, in light of the large influence of the notified arrangements on the relevant market and the combined size of the undertakings concerned, these arrangements may effect trade within the meaning of Article 53 (1).

2. Article 53 (3)

- (83) In order to qualify for an exemption from the prohibition in Article 53 (1), the applicant must show that the agreements improve production or distribution, or promote technical or economic progress, while allowing the consumers a fair share of the resulting benefit. To be characterized as such benefits, the objective advantages gained must outweigh the detriment to competition⁽¹⁾. Furthermore, the restrictions contained in the arrangements must be indispensable to the attainment of these benefits and the arrangements must not afford the concerned undertakings the possibility of eliminating competition in respect of a substantial part of the products in question. In the Authority's view, the notified agreements have not been shown to fulfil any of these conditions.
- (84) It should be noted, as a starting point, that the joint fixing of prices or price components, employing a nationwide system of uniform delivered prices regardless of the location of the purchaser, limiting production as well as sharing markets by competing undertakings are normally considered to be against the very principles of competition by artificially influencing the balance between supply and demand and can only be exempted under exceptional circumstances. The notified statutes contain provisions implying or allowing for all these restrictions.

2.1. *The benefits of the arrangements*

- (85) NSF has argued that the cooperation between the forest owners in the NSF system contributes to improving the production and distribution of round wood in Norway. In particular, it is essential for securing a steady and timely supply of round wood of adequate quality to the forest industry. Furthermore the cooperation contributes to efficient harvesting and transport and to the improvement of the quality of round wood by measures taken in the forestry, harvesting and distribution stages. The sheer number of individual forest owners, as well as the geographic and topographic conditions prevailing in Norway would make trade in round wood much less efficient and considerably more costly for the industry without the cooperation between the forest owners.
- (86) NSF has also argued that the cooperation has positive effects in that it contributes to the protection of the environment and to a sustainable development of forestry resources. Moreover, by applying a one-price system within the respective district, the disadvantages for distantly located forest owners, in particular in terms of production costs, are counteracted. This, in turn, is said to facilitate the attainment of politically set goals related to a balanced use of forest resources, a development of environmental values and to increase the forestry sector's contribution to employment and economic activity throughout the country.

⁽¹⁾ See, *inter alia*, Consten and Grundig v. Commission (1966 ECR, English edition, p. 299, and in particular p. 348).

- (87) The Authority does not have reason to question whether the NSF system taken as a whole has certain benefits. This could very well follow from the particular structure of the Norwegian forestry sector and the way the NSF system is operated. It is, however, questionable whether the effects of restraining forest owners in their role as economic operators can be held to improve economic efficiency and hence improve production or distribution or to promote technical or economic progress within the meaning of Article 53 (3). The presumption that such constraints reduce economic efficiency could also be maintained.
- (88) These general remarks aside, in considering possible benefits of the NSF system as a whole it has to be kept in mind that the issue to be considered is limited to the question of whether the restrictions on competition contained in the notified statutes contribute to objective benefits which outweigh the harm to competition. It follows from this that the possible benefits of the NSF system as a whole, as opposed to benefits which are a direct consequence of the restrictive clauses themselves, would only be of relevance to the extent that the restrictive clauses are necessary for the functioning of the NSF system itself.
- (89) The restrictions which have to be examined can be categorized in two groups. First, the possibility of central coordination of the members' commercial activities, including the setting of prices and other commercial trading conditions. Second, the control at the district level of the members' commercial behaviour, in particular the obligation for individual forest owners to sell all their round wood through the district society and the possibility for imposing market regulatory measures.

2.1.1. The central coordination

- (90) The possibility of central coordination by NSF of the market behaviour of its members is primarily based on paragraphs 6 and 7 in the NSF statutes, which enable NSF to conduct negotiations on prices, quantities and other commercial conditions as well as to decide on nationwide market regulatory measures. Although there has not been any central price negotiations since 1994, the NSF has adopted binding guidelines for regional price negotiations in 1995. The market regulatory powers and the possibility to assist ailing district societies do not seem to have been used.
- (91) The price negotiation clauses enable NSF to fix the prices and other commercial conditions for all its member's sale of round wood. It might conceivably be argued that centrally agreed prices and other commercial conditions promote a stable trade in round wood. Similarly, it could be argued that NSF's market regulatory power could possibly be instrumental for upholding a functional market in times of, *inter alia*, natural catastrophes. However, these clauses, if applied, could effectively eliminate all competition between the individual members of NSF and between the district societies. The possible advantages of these clauses can not be such as to outweigh the detriments to competition and can thus not be seen as improvements within the meaning of Article (53) 3.

2.1.2. The control of the members' commercial activities at the district level

- (92) Apart from the stated purpose to, *inter alia*, impose market measures if necessary and gather the members to act jointly, there are mainly two clauses on which the district level control of the members' commercial activities are based: The obligation for the forest owner to sell all his round wood to the district society, and the right for the district society on its own, or after a decision in NSF, to oblige the members to reduce or stop the harvest or delivery of round wood and to equalize prices paid to the members.

Exclusive supply clause

- (93) The alleged benefits in relation to the obligation to sell round wood to the district society can be categorized in two groups. The first group includes all the alleged advantages of the NSF system taken as a whole, which are indicated in paragraph 85 and 86 above, on the ground that the clause is necessary to safeguard the functioning of the NSF system. The second group relates to benefits which are seen by NSF as direct consequences of the clause as such.
- (94) As regards the first group, it has not been shown that the exclusive supply clause, as notified, is in fact necessary for the existence of the NSF system and thus contributes to any advantages of this system. NSF has admittedly argued that a removal of this clause could lead to a reduction of the deliveries through the NSF system, which, in turn, would weaken the economic foundation of the district societies since their activities are mainly based on the amount of round wood sold to them by their members. However, it has neither been shown that any decisive weakening of the NSF system's economic basis would, or is likely to, take place if the exclusive supply clause were modified or even removed, nor that such a weakening would lead to, or be likely to lead to, the removal of the alleged benefits of the NSF system. Consequently, assuming that the NSF system as a whole could be deemed as having such benefits as required for an exemption under Article 53 (3), the Authority has no grounds to conclude that the exclusive supply clause itself would to any appreciable extent contribute to these benefits.
- (95) As regards the second group of alleged benefits, NSF argues that the clause mirrors the member's right to sell all his harvested round wood to the applicable district society, and that the security implied thereby promotes the overall supply and secures deliveries also from remotely located forest owners. Furthermore, a removal of this clause is said to limit the district societies' possibility to secure contractual supply commitments as well as weaken the district societies' bargaining power *vis-à-vis* the industrial buyers.
- (96) As regards the first argument, the right to deliver does not entail a right to any particular price for the forest owner. The obligation for the district society to buy the round wood is an obligation to buy at the price it determines itself. The obligation of the forest owner to sell the wood is an obligation to sell at a price determined by his commercial counterpart, namely the district society. These obligations are not symmetric. The supply of round wood will reasonably depend primarily on the price that the district society offers. Consequently, the right to supply in itself would thus not necessarily promote the supply, not even from remote areas.
- (97) Although the ability to forecast deliveries to the district society might, at least to some extent, be improved by ensuring that there is no competition for the members' supply, this type of uncertainty resulting from competitive pressure is inherent in all normal commercial activity. Consequently, the removal of this uncertainty cannot be deemed to be an objective advantage⁽¹⁾.
- (98) Concerning the maintenance of the district societies' bargaining power, it is doubtful, given the market structure of in particular the saw-wood market, if this could be considered an objective advantage at all within the meaning of Article 53 (3). However, even if this were to be the case, the role played by the exclusive supply clause appears relatively small in this regard.
- (99) The bargaining power *vis-à-vis* the industrial buyers is determined partly by the quantities, qualities and timing of delivery of the round wood a district society can offer for sale, and partly by the alternative sources of supply available to the buyer. The quantities, qualities and timing of delivery from the district society's members are determined by individual contracts. Although the exclusive supply clause might have some influence on the

⁽¹⁾ See, *inter alia*, Consten and Grundig v. Commission (1966 ECR, p. 348)

members' readiness to enter into such contracts, the main factor for securing the contracts are the specific conditions offered. Provided that these are competitive in the areas where the district society faces competition from alternative marketing channels, the number of such contracts would not be reduced. Supplies from alternative marketing channels are not always available, and the district societies' relative size and ability to provide additional services, such as transport coordination, indicate that they would remain the main source of supply for the industry. The district society's relative bargaining position *vis-à-vis* the industry can thus only to a limited extent be considered as determined by the existence of the exclusive selling clause.

- (100) Turning to the detriments to competition, it follows from the nature of the clause that it restricts the possibility for competition between members and it effectively forecloses a large part of the supply of round wood to market operators outside NSF. In practice, it hinders the individual NSF member from, at any given point in time, using alternative marketing channels for its round wood. There are only two ways for an individual member to react if the district society is not considered to offer competitive conditions; by declining to harvest or by leaving the organization. The first alternative might lead to a less than optimal supply of round wood to the market. The cumulative effect of such actions could be a substantial reduction in supply.
- (101) As regards the second alternative, it is noted that the district societies hold a key position in services which are essential for individual forest owners, such as counselling, harvesting, financing and transport. Furthermore, a leaving member has no claim on the assets of the district society nor do the statutes guarantee any right of re-entry. These factors, together with less tangible links such as tradition and local group pressure, may make members hesitate to leave the organization in order to sell round wood through alternative marketing channels. This in turn limits the possibility for such marketing channels to provide an effective competitive pressure and could lead to the preservation of inefficient distribution structures.
- (102) In view of the above, there is no ground for concluding that the exclusive supply clause contributes significantly to the promotion of the supply of round wood, to securing the supply for the industry or maintaining a proper balance between buyers and sellers on the round wood markets, or to any other alleged advantages. On the other hand, this clause has clear anti-competitive effects, both as regards NSF-members' possibility to compete and the foreclosure of supply to non-NSF market operators, and may preserve inefficient production and distribution structures. Therefore, on balance, the exclusive supply clause as notified cannot be held to have such benefits as required for an exemption under Article 53 (3).

Market regulatory clause

- (103) The market regulatory clause is, according to NSF, only intended for extraordinary situations, such as large clearance work after storms, when there has been established cooperation with the national authorities concerned. The clause is thus said not to have any practical effect on competition in the round wood markets.
- (104) Imposing market regulatory measures in times of natural disasters could be necessary in order to avoid a market collapse and would thus have such benefits as are required for an exemption under Article 53 (3). The maintenance of a functioning market in such situations is also likely to be in the ultimate consumers' interests.

2.2. Indispensability

- (105) As shown in section 2.1.1, the central coordination by NSF of the forest owners in the NSF system in itself would not have the objective benefits required for an exemption under Article 53 (3). Furthermore, it is not clear that there is any link between the possible benefits of the NSF system as such and the clauses relating to this central coordination. It is noted in this regard that the functions of the NSF system, which NSF has described as contributing to the efficiency of the round wood markets, are performed without these clauses being applied in practice. Consequently, even if the central coordination reflected in these clauses would have fulfilled the benefit requirement, it has not been shown that they are indispensable for the attainment of these benefits.
- (106) As regards the exclusive supply clause, it has not been shown to improve production or distribution or promote technical or economic progress. However, even if this had been the case, it is difficult to see how an absolute obligation for members to supply all their round wood through the applicable district society could be held to be indispensable for any of the benefits which NSF claim is the result of this clause. The two main alleged benefits are to safeguard the functioning of the NSF system (are hereby contribute to the possible advantages of the whole system) and to maintain the balance *vis-à-vis* the industrial buyers on the Norwegian round wood markets, presumably in order to secure the proper functioning of these markets.
- (107) As has been stated earlier, it has not been shown that the exclusive supply clause is in fact necessary for the existence of the NSF system, and thus the clause cannot be held to be an indispensable restriction to achieve the alleged advantages stemming from this system. The exclusive supply clause is only one of several factors which may contribute to the bargaining power of the NSF system, and is thus of limited importance for this aim. Consequently, even if the maintenance of a market balance would be considered an objective benefit, which at least as regards the saw-wood market is very doubtful, the absolute obligation for members to supply their round wood through the NSF system could hardly be considered indispensable for achieving such an alleged benefit.
- (108) It must thus be concluded that even if there had been the required objective advantages, the exclusive supply clause has not been shown to be indispensable for attaining any such benefits.
- (109) Finally, as regards the district level market regulation clause, there is no mention in the clause itself of natural disasters being the only criterion for employing market regulatory measures. There is, therefore, nothing preventing a district society from using the clause and restricting output in order to influence the market prices of round wood even under normal circumstances. The scope of the clause is thus not in proportion to the limited aim of mitigating the impact of natural disasters on the round wood markets. Consequently, it cannot be considered to be indispensable for the attainment of this aim.

2.3. Elimination of competition

- (110) The possibility of central coordination of prices, output and other commercial conditions at a national level, as well as the market regulatory powers and exclusive supply clause at the district level, do effectively eliminate competition within the NSF system and may have a negative impact on the possibilities for other suppliers to compete actively. The NSF system is by far the largest supplier with some 75 % of the Norwegian supply of both pulpwood and saw-wood. Its shares of the pulpwood and saw-wood markets, including imports, are some 60 and 70 % respectively. The market power *vis-à-vis* the buyers may be limited, in particular on the pulpwood market where it faces a very concentrated buyer side, with the capability of substituting a substantial part of the supply from the

NSF system with imports. However, the present set up makes effective competition on the supply side virtually impossible. On this basis, it must be held that the arrangements as notified afford NSF and the undertakings party to the NSF system the possibility to eliminate competition in respect of a substantial part of the products in question. Consequently, even if the other conditions were fulfilled, an exemption based on Article 53 (3) could not be granted,

HAS ADOPTED THIS DECISION:

Article 1

The notified statutes of NSF, the standard statutes of forestry district societies and the standard statutes of forestry local squads constitute an infringement of Article 53 (1) of the EEA Agreement insofar as they:

- give NSF the right to negotiate prices and framework quotas for its members and allocate these quotas among the members or district societies,
- give NSF and the district societies the right to impose market regulations on their members, such as reducing or stopping the members' production of round wood or equalizing prices, and
- oblige the members to sell all their harvested round wood to the district society in their respective geographic area.

Article 2

An exemption under Article 53 (3) of the EEA Agreement for the agreements mentioned in Article 1 is hereby refused.

Article 3

The undertakings concerned shall bring to an end forthwith the infringement as mentioned in Article 1 and shall refrain from taking any measure having the same object or effect.

Article 4

This decision is addressed to:

<i>Norges Skogeierforbund</i>	<i>Agder Skogeigarlag</i>
<i>Haldenvassdragets Skogeierforening</i>	<i>Rogaland Skogeigarlag</i>
<i>Nedre Glommen Skogeierforening</i>	<i>Hordaland Skogeigarlag</i>
<i>Glommen Skogeierforening</i>	<i>Sogn og Fjordane Skogeigarlag</i>
<i>Trysilvassdragets Skogeierforening</i>	<i>Møre og Romsdal Skogeigarlag</i>
<i>Mjøsen Skogeierforening</i>	<i>Sør-Trøndelag Skogeierforening</i>
<i>Drammensdistriktets Skogeierforening</i>	<i>Inn-Trøndelag Skogeierforening</i>
<i>Vestfold-Lågen Skogeierforening</i>	<i>Namdal Skogeierforening</i>
<i>Telemark Tømmersalgslag</i>	<i>Nordland Skogeierforening</i>
<i>Nidarå Tømmersalgslag</i>	<i>Troms Skogeierforening</i>

Only the English and Norwegian texts of this Decision shall be authentic.

Done at Brussels, 24 April 1997.

*For the EFTA
Surveillance Authority
The President
Knut ALMESTAD*

EFTA SURVEILLANCE AUTHORITY DECISION**No 121/97/COL****of 24 April 1997****relating to a proceeding under Article 53 of the EEA Agreement in case
COM 020.0130 — TFB****(Only the Norwegian and the English texts are authentic)**

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area (the EEA Agreement), in particular Article 1 of Protocol 21 thereto,

Having regard to Chapter II of Protocol 4 to the Agreement Between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice (the Surveillance and Court Agreement), and in particular Article 3 (1) thereof,

Having regard to the application for negative clearance and the notification for exemption submitted by Treforedlingsindustriens Bransjeforening, pursuant to Articles 2, 4 and 5 of Chapter II of Protocol 4 to the Surveillance and Court Agreement,

Having regard to the EFTA Surveillance Authority Decision of 3 July 1996 to initiate proceedings in this case,

Having given the undertakings concerned, as well as other natural or legal persons with a sufficient interest, the opportunity to make known their views on the objections raised by the EFTA Surveillance Authority in its Statement of Objections of 3 July 1996, in accordance with the provisions of Article 19 (1) and 19 (2) of Chapter II of Protocol 4 to the Surveillance and Court Agreement and with Chapter IV of the same Protocol,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

I. THE FACTS**1. The notification**

- (1) On 22 February 1996, Treforedlingsindustriens Bransjeforening (TFB), the Norwegian association of wood processing industries, notified, on behalf of its members, a geographical market sharing agreement for the purchase of round wood and wood chips in Norway (*virkesfordelingsavtalen*) dated 22 January 1986, with a view to obtaining a negative clearance or an exemption from Article 53 of the EEA Agreement. This agreement did not have a fixed expiry date, but was, according to the notification, no longer formally in force⁽¹⁾. Subsequently, a revised market sharing agreement adopted at TFB's annual meeting on 25 March 1996, which replaces the previous agreement, was presented to the Authority on 26 March 1996.
- (2) The notification also included the implicit agreement between the members of TFB that TFB had the right to negotiate prices and other trading conditions for pulpwood on behalf of its members for the purpose of central price negotiations with the forest owner's associations. However, the notification of this agreement was withdrawn by the parties in a letter to the Authority dated 16 September 1996, in which it is stated that the members of TFB had decided not to co-operate through TFB as regards such price negotiations. The parties have subsequently in writing confirmed that there is no cooperation between the members of TFB as regards prices or other commercial conditions at a national level in connection with purchases of round wood or wood chips. In view of these developments, the Authority will not take any further action in this part.

⁽¹⁾ According to a letter from Østfoldtømmer ANS, a purchasing organization representing a number of members of TFB, to the Authority dated 2 November 1995, the agreement was to expire on 31 December 1995.

2. The parties

2.1. TFB

- (3) TFB is a forum for co-operation between all companies active in the Norwegian wood processing industry (see below), e.g. as regards the purchase of wood-based raw material for this industry. The purpose of TFB, according to its statutes, is to safeguard its members' common interest, function as a forum for the common interest as regards trade in wood, recyclable paper etc., as well as to co-operate with other industrial associations.
- (4) A part of TFB's activities has traditionally been related to price negotiations for the paper and pulp industry's purchases of pulpwood and chips, as well as their distribution to its members via *virkesfordelingsavtalen*. The actual purchasing contracts, however, are made by the members individually or through joint purchasing organisations.
- (5) TFB is led by a general assembly and a board of directors. However, in practice, the activities of TFB mainly take place in working groups, appointed by the assembly or the board, in which TFB's members are represented.
- (6) The working group for wood supply (*Virkesutvalget*, hereinafter referred to as the Wood Supply Group) is responsible for issues relating to the supply of pulp wood and chips to the members of TFB. The Wood Supply Group is described by TFB as a forum for discussing the operation of the notified agreement, as well as political issues such as forestry policy and infrastructure.

2.2. The members of TFB⁽¹⁾

- (7) Borregaard Industries Ltd (Borregaard), with a turnover of Nkr 3 155 million, is the chemical division within the Orkla Group, whose turnover is Nkr 20 800 million. Its wood processing plants (paper and pulp) include Hellefos in Hokksund and Vafos in Kragerø.
- (8) M. Peterson & Søn AS is the mother company in the Peterson Group, active in the paper industry with a turnover in 1995 of Nkr 3 390 million. Peterson Moss AS is the only user of round wood in the Group and produces kraft liner. Its turnover is Nkr 852 million.
- (9) Norske Skogindustrier ASA (Norske Skog) is the main wood processing company in Norway, with a turnover of Nkr 9 170 million. The biggest group of owners is the forest owners associations which control 30 % (36 % ⁽²⁾) of the shares in the company. Its main wood using units are Nordenfjeldske Treforedling, Follum and Saugbrugsforeningen which mainly produce paper, and Tofte Industrier and Folla CTMP, producing mainly pulp.
- (10) A/S Egeland's Verk is active in wood processing and mechanical engineering with a turnover in 1995 of Nkr 46 million.
- (11) Hunsfos Fabrikker AS (Hunsfos) produces mainly paper and wallboards and had a turnover in 1995 of Nkr 859 million.
- (12) Rena Karton AS is a producer of different types of carton board with a turnover of Nkr 296 million.
- (13) Fritzøe Fiber AS is a wholly owned subsidiary to Laagen Skogindustrier AS ⁽³⁾. It is active in pulp production and to a limited extent in electricity generation. Fritzøe's turnover in 1995 was Nkr 209 million.
- (14) Rygene-Smith & Thommesen AS (Rygene) produces pulp with a turnover in 1995 of Nkr 126 million.

⁽¹⁾ Turnover figures are given for 1994 if not otherwise indicated. The members listed are the main users of pulpwood in TFB.

⁽²⁾ Percentage of voting rights.

⁽³⁾ No information has been given in the notification about Laagen Skogsindustrier AS.

- (15) A/S Union is mainly active in paper production, electricity generation and commercial properties with a turnover of Nkr 1 250 million in 1995. Norske Skog owns 57,4 % (47,8 %) ⁽¹⁾ of the shares in A/S Union.

3. The agreement

- (16) *Virkesfordelingsavtalen*, hereinafter referred to as VA, is an agreement within TFB between its members. It follows the principle that each individual operator within the wood processing industry buys round wood and wood chips from its 'natural supply area' based on proximity to the concerned processing unit and to its own forests. Based on quotas that were earlier set by Norwegian authorities, the participating companies are grouped within four geographic regions as shown in Table 1 below. Three of these regions are allotted a quota of a fixed percentage of the total supply of Norwegian round wood and chips to these regions. The North Region is not part of this quota system. According to the agreement, the share allotted to the individual company is determined through agreements between the companies in each region.

Table 1

Regional allocation of round wood and wood chips ⁽¹⁾

Region	Main participating companies	Quota
East	Saugbrugsforeningen (Norske Skog), Peterson and Borregaard (joint purchases through Østfoldtømmer), Rena Karton	39,64 %
West	Tofte Industrier and Follum (Norske Skog) and Union (joint purchases through Norsk Virke), Hellefos and Vafos (Borregaard), Fritzøe Fiber	51,60 %
South	Egelands Verk, Rygene, Hunsfos	8,76 %
North	Nordenfjeldske Treforedling and Folla CTMP (Norske Skog) (joint purchases through Norske Virke)	no quota

⁽¹⁾ The table is compiled from information supplied by TFB.

- (17) In recent years, the geographic determination of each region is said by TFB to have become more important and the fixed quotas based on total supply have in practice become less important.
- (18) The revised agreement is a somewhat simplified version of the previous VA. According to the title, the agreement concerns co-operation in allocating Norwegian coniferous round wood and wood chips between all wood-using members of TFB. The stated purpose is to secure rational logistics of available Norwegian round wood and wood chips in the Norwegian market. The revised agreement is based on the quotas and geographic division of the previous VA. The geographic regions remain, with a few minor adjustments, the same. However, no explicit reference is made to the quota for each region in the new agreement.
- (19) There are some provisions regarding the allocation of round wood and chips within the regions. In municipalities where there is more than one buyer, the current allocation shall 'in the short term' be maintained. There is a stated goal, however, that a redistribution of municipalities between buyers shall take place with a view to obtaining the 'most rational logistics possible'. For wood chips, the traditional supplier to the undertaking concerned shall be maintained.
- (20) In addition it is stated that temporary fluctuations in supply or demand shall be solved by the TFB members after discussions in the Wood Supply Group. The agreement is to be reviewed annually by the TFB Board.

⁽¹⁾ Percentage of voting rights.

- (21) There is no structure set up for the operation and enforcement of the VA, except the possibility to discuss and agree on issues relating to the supply of pulpwood and chips within the Wood Supply Group. Furthermore there is no co-ordination of transport or other logistic activities stipulated in the agreement.

4. The product

- (22) A fundamental characteristic of round wood is the very long production time from planting the seedling to its economically optimal harvesting. In the Nordic countries this may take as long as 70 to 100 years for fully grown saw-wood log. In principle, up to a limit, the quality and thus the value of the forest will increase with age. Consequently, it is normally possible for an individual forest owner to 'store' the round wood by keeping it on root, without jeopardising the value.
- (23) Round wood can be characterised as an intermediate product, used in the production of wood based products such as paper, board and sawn wood. The high quality part of the round wood logs is mainly sold as saw-wood to the sawmill and wood industry (herein-after referred to as sawmills), whereas most of the remaining part is sold as pulpwood to the paper and pulp industry. A smaller share of the round wood harvested is used for heating purposes, often for personal use. In total some 10 to 12 million m³ of round wood are harvested every year, of which 8 to 9 million m³ are sold to the forest industry in the form of pulpwood or saw-wood. The harvested round wood mainly consists of spruce (77 %) and pine (20 %). The harvest of broad leaved wood, mainly birch, only amounts to some 3 % of the total harvest.
- (24) The harvested round wood is a product which due to its form is difficult to handle and has a large volume relative to its price. Handling costs in terms of harvest and transport are relatively high and demand special machinery. It is estimated that the average transport cost constitutes some 25 % of the total cost both for saw- and pulpwood.
- (25) The pulpwood users, mainly the paper and pulp industry, normally account for about 40 % of the domestically harvested round wood for industrial use or about 3 to 4 million m³. The saw-wood users, mainly sawmills, account for around 5 million m³. It has been estimated that 35 to 38 % in volume terms of the saw-wood used by the sawmills become wood chips. Due to improvements in production techniques, this share is probably somewhat lower today. The wood chips are almost exclusively sold for use in the production of paper and pulp. Other uses for wood chips, such as the manufacture of briquettes for heating, seem not to be an economically feasible alternative. Due to the quantities involved, the trade in wood chips is considered to be vital for the profitability of the sawmills.
- (26) The pulpwood can be divided into different categories according to type and quality. The production of paper and pulp is often specialized so that only one or a few types and qualities of pulpwood are technically or economically feasible to use. For example most of the TFB members can use fresh spruce, some can use all qualities of spruce and others can use both spruce and pine. Similarly, wood chips can be divided into type and quality, depending on which wood type was used by the sawmill and the freshness of the chips.

5. The market

- (27) According to national statistics, the gross value of the 8.5 million m³ round wood cut for industrial sale in Norway 1993/94 was NOK 2.5 billion. Due mainly to a decline in the rate of harvest, this value decreased successively from NOK 3.8 billion 1989/90. The corresponding value of exports and imports in 1994 was NOK 121 and 657 million respectively. On average around 50 % of the harvested round wood marketed is sold to the sawmills and slightly less to the paper and pulp industry. Since the price for saw-wood is higher, saw-wood represents approximately two thirds of the revenue for the forest owners.

5.1. *Suppliers of round wood*

- (28) The main part (78 %) of the forested area in Norway belongs to some 126 000 private forest owners. About 75 % of these are also farmers. A smaller portion (12 %) is publicly held, mainly by Statsskog which is a state owned company, and individual municipalities. The forest industry's share is relatively insignificant constituting only 2-3 % of the total.
- (29) Norges Skogeierforbund (NSF), the main forest owners' association, consists of some 57 000 forest owners divided into 19 forestry district societies and 446 local forestry squads. The NSF system represents on average some 75 % of the total supply of round wood harvested in Norway. All forest owners who are members of NSF are obliged to sell all their marketable harvested round wood to the NSF district society in their respective geographic area. The overall sale of round wood through the NSF system amounted to approximately NOK 2 billion in 1994.
- (30) Many of the larger individual forest owners are members in the other forest owner's association, Norskog. Norskog has presently around 200 members. These members represent some 5-10 % of the supply of round wood harvested in Norway. Members have an obligation to sell 50 % of their harvested round wood through Norskog.
- (31) Statsskog is a state-owned undertaking which harvests and sells from forests owned by the state and the church. It represents some 5-10 % of the total supply of round wood harvested in Norway.
- (32) Some 68 000 of mostly very small forest owners are operating outside the forestry associations. Many of these, however, harvest only at irregular intervals. Together, they represent some 10 % of the total supply of round wood harvested in Norway. They sell either individually to the industrial buyers, or through independent round wood traders. These traders are mostly active in Østfold.

5.2. *The purchasers of round wood and wood chips*

5.2.1. *Saw-wood purchasers*

- (33) There are about 600 saw and planing mills in Norway. Purchases are done individually by each sawmill, or in cases of ownership links, by groups of sawmills. In addition, some purchases of saw-wood are made by the purchasing organizations of the paper and pulp industry, either, as in the case of Norske Skog, because they also own sawmills, or for the purpose of exchanging saw-wood for wood chips with the sawmills.

5.2.2. *Pulpwood and wood chips purchasers*

- (34) Although some smaller paper and pulp mills purchase pulpwood individually in their respective geographic region, some 90 % is procured through two pulpwood purchasing organizations.
- (35) Norsk Virke AS is a joint purchasing company owned by Norske Skog AS (91 %) and A/S Union (9 %). It is responsible for procuring pulpwood and wood chips for the wood processing industries of Norsk Skog and Union, except supplies to Saugbrugsforeningen in the east of Norway and the company's factories in France and Austria. In addition it supplies raw material to the wall board companies of Norske Skog, return paper to the extent this is utilised by Norske Skog's paper and pulpmills, as well as saw-wood to 4 of the 7 sawmills owned by Norske Skog. It purchases slightly less than 60 % of the Norwegian supply of pulpwood.
- (36) Østfoldtømmer ANS is the joint purchasing company for Borregaard Industries Limited, M. Peterson & Søn A/S and Norske Skog Saugbrugs AS (Saugbrugsforeningen), and is active in Østfold in the east of Norway. It is responsible for purchasing pulpwood and chips for its owners to be used in their production facilities in Østfold as well as for Rena Karton. Østfoldtømmer accounts for more than 30 % of the Norwegian pulpwood supply.

- (37) The relative size of the main purchasers of pulpwood and wood chips in their respective geographic regions is shown in Table 2:

Table 2

Purchase of pulpwood and wood chips in 1995 (1 000 m³)⁽¹⁾

Region	Companies	Pulpwood	Chips	Total	%
East	Østfoldtømmer	629	774	1 403	95
	Rena	68		68	5
	Total	698	784	1 482	100
West	Norsk Virke	1 439	489	1 928	86
	Borregaard	185		185	8
	Fritzøe	71	60	131	6
	Total	1 695	549	2 244	100
South	Egeland	37		37	10
	Hunsfos	169	63	232	64
	Rygene	91		91	25
	Total	297	63	360	100
North	Norsk Virke	578	272	850	100

(¹) The table is compiled from information supplied by TFB.

- (38) It should be noted that the percentages in the table do not fully reflect the competitive situation in the respective regions. Norsk Virke is entitled to purchase pulpwood and chips in certain smaller regions within the East Region. Rena Karton's purchases are, according to TFB, taken care of by Østfoldtømmer. Norsk Virke and Østfoldtømmer, and possibly also other members of TFB, co-operate on a case by case basis to co-ordinate transport and may exchange round wood and chips between the regions. These factors are not reflected in the table above. It should also be noted that the numbers include broad leaved wood and wood chips. A total of 4.84 million m³ of coniferous wood pulp and chips were sold to the members of TFB in 1995.

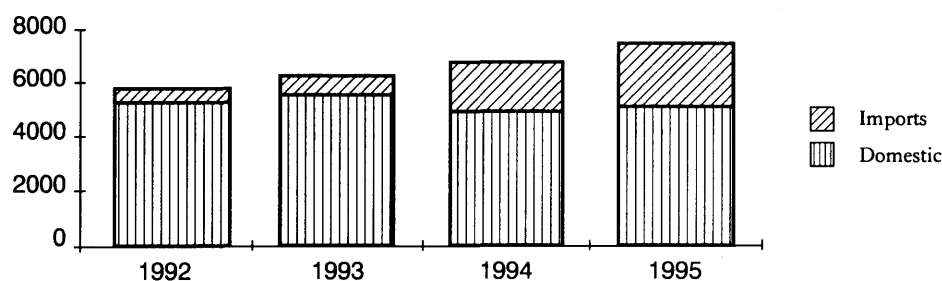
5.3. International trade

- (39) The cross border trade in round wood is restricted by factors such as relatively high transport costs, availability of types and qualities demanded, freshness, differences in measuring regulations and other national regulations (e.g. barking). The trade in wood chips is further restricted by the bulky nature of the product. Still, international trade is growing. One reason for this is the increased use of fast growing and thus cheaper wood types from countries in particularly the southern hemisphere, for various types of wood products which previously required wood grown in the north. Increased availability of relatively low cost coniferous wood from Russia and the Baltic states has also led to an increase in trade within Northern Europe. In addition, the use of recycled paper has contributed to reducing the constraint on capacity put by local or regional supply of round wood. In Norway, there is presently a net import surplus of round wood for industrial use.

- (40) The scope for imports of pulpwood and, to a more limited extent, wood chips, is relatively large since the Norwegian paper and pulp industry has access to ports and has the capacity to buy large quantities at a time. Hereby the per unit transport cost, which is the main obstacle to trade, can be kept down. Exports of pulpwood, on the other hand, seem to be limited due to, *inter alia*, the geographic and topographic conditions prevailing in Norway which increase collection and transport costs, the relatively high production costs, and an ownership structure with small and widely dispersed individual forest owners. There has, however, traditionally been a trade in pulpwood in border areas located close to Sweden. Exports of wood chips are even more limited, mainly due to the bulky nature of the product and the suppliers', i.e. the sawmills', limited access to ports.

Table 3

Domestic purchases and imports of coniferous pulpwood and wood chips by the members of TBF (1 000 m³)⁽¹⁾



- (41) As illustrated in Table 3 above, imports of pulpwood and chips have grown considerably during the last few years. They more than doubled in 1994, apparently due to an increase in demand for wood products both domestically and internationally, at the same time as the domestic harvest was at record low levels. In 1995 imports amounted to almost 2,5 million m³, or over 30 % of the total supply of pulpwood and chips to the Norwegian forest industry. Sweden is the main source for these imports, but there is also regular trade with Finland, Denmark, Germany, Russia and the Baltic states. There is a possibility to buy on an international spot market. However, most imports are governed by annual contracts.
- (42) Exports of pulpwood and wood chips are at a relatively low level, 400 to 600 m³ annually during the last few years equivalent to some 5 to 10 % of the total industrial use in Norway. Exports are made to neighbouring countries, mainly Sweden.
- (43) Relative price developments of pulpwood seem to follow the same trends in Northern Europe. On the other hand, according to official statistics⁽²⁾, there seem to be large differences in absolute prices of both pulpwood and saw-wood within Europe too. There are, however, considerable difficulties involved in making comparisons of relative development or absolute level of prices between different countries due to *inter alia* differences in relative proportions of types and qualities of round wood, currency fluctuations, sales conditions (e.g. ex road side, c.i.f., on root), national measuring systems, local price variations within the countries and availability of reliable price statistics. Therefore, it has not been possible for the Authority to draw any definite conclusions as to the price levels and price developments in Norway *vis-à-vis* other countries on the basis of available information.
- (44) The various wood products stemming from pulpwood and wood chips are to a large extent exported. The trade within the EEA of such products is substantial. For example in 1994, the export of paper and paperboard from Norway to other EEA countries amounted to NOK 5.9 billion⁽³⁾.

⁽¹⁾ The graph is based on information supplied by TBF.

⁽²⁾ See, *inter alia*, *Forest product prices 1992-1994*, Timber Bulletin Vol XLVIII (1995), No 1.

⁽³⁾ Source: Official Statistics of Norway.

II. LEGAL ASSESSMENT

1. Article 53 (1)

- (45) Under Article 53 (1) of the EEA Agreement, all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between the Contracting Parties and which have as their object or effect the prevention or distortion of competition within the EEA are prohibited.

1.1. *General applicability of Article 53 (1)*

- (46) The members of TFB are companies who engage in commercial activities and are thus undertakings within the meaning of Article 53 (1). TBF is an association of undertakings. VA must consequently be considered as an agreement between undertakings or alternatively a decision by the association.

1.2. *Defining the relevant market*

1.2.1. The product market

- (47) VA concerns the purchase of coniferous round wood and wood chips by the members of TFB. Although saw-wood is not excluded from the agreement, the TFB members mainly purchase pulpwood. The saw-wood quantities which are obtained are sold to sawmills or traded against wood chips. Consequently, it seems reasonable to limit the market to pulpwood and wood chips. In view of the relatively marginal trade in broad leaved wood in Norway, it is of no consequence for the purposes of the current assessment whether the reference markets are those of coniferous pulpwood and wood chips only or include broad leaved wood in addition.
- (48) TFB has argued that pulpwood and wood chips belong to the same market. However, although pulpwood and wood chips are to a large extent physically substitutable for the industrial user, several factors indicate that the conditions of competition for the two products are different. Wood chips are by-products from the sawmills' processing of saw-wood, and the quantities produced are determined by the demand for the saw mills' end products rather than the industry's demand for wood chips and pulpwood. This inflexibility of supply is further aggravated by problems with long term storage due to the relatively greater bulk and quicker rate of deterioration of wood chips compared to logs. Since there seems to be few alternative economically feasible uses for the chips, this would indicate that the sawmills have a relatively weaker position *vis-à-vis* the purchasers than the pulpwood suppliers. Although there is admittedly a link between the pricing of wood chips and the price of pulpwood, the final price for the chips appears rather to be dependent on the bargaining power of the respective sawmill and paper and pulp industries and not on the pulpwood price. Consequently, wood chips and pulpwood do not seem to belong to the same market. It should be noted, however, that since the relative market position of TFB's members would be the same regardless of whether wood chips and pulpwood were considered one single or two separate markets, this distinction does not influence the assessment of the case.
- (49) It also has to be considered whether the markets for pulpwood and wood chips have to be further divided. It is correct as pointed out by TFB that different types or qualities of pulpwood and wood chips respectively are not normally substitutable from the point of view of the end-users, partly because of price differences and partly because of technical requirements. However, some important conditions for trade, such as transporting arrangements and measurement requirements, are the same within these markets. Furthermore, the buyers and to some extent the sellers who set prices and other commercial trading conditions are principally the same within the pulpwood market and wood chips market respectively. For the purpose of assessing the impact of competition of the agreements at hand, it is thus sufficient to refer to a pulpwood and a wood chips market.

1.2.2. The geographic market

- (50) The starting point for defining the relevant geographic market is the geographic area in which the agreements under scrutiny are applicable. In the case at hand, this is Norway. However, this area may be extended if the objective conditions of competition applying to the products concerned are the same for all traders within a larger geographic area.
- (51) TFB has argued that the relevant geographic market consists of Norway, Sweden, Denmark, Germany, Finland, Poland, England, Scotland, Russia and the Baltic States, hereinafter referred to as Northern Europe. The basis for this is that the pulpwood and chips from these countries are substitutable in terms of type and quality, that there is considerable trade between these countries and that relative price developments seem similar in this region. It is also pointed out that although transport costs are relatively high, in particular due to the geographic and topographic conditions prevailing in Norway, imports — depending on relative prices and the availability of rational transport solutions — may still be profitable. This is shown by the present import level at 25 to 30 % (1994/1995) of the total supply of pulpwood and chips.
- (52) The Authority has not been able to draw any definite conclusions from available price comparisons within Northern Europe (see paragraph 43). However, as a general observation, it would not be surprising if the relative price developments of round wood were similar in most countries around the world. This is to be expected since the ability to pay for round wood by the industrial buyers is linked to the price developments in internationally traded products such as paper, pulp, and other finished and semi-finished wood products, the prices of which to a large extent are set internationally. This is, however, not necessarily an indication of one international market for pulpwood. On the contrary, the absolute prices in different countries seem to show considerable variations, which would indicate national markets.
- (53) It is acknowledged that pulp and pulpwood from Northern Europe are substitutable in terms of type and quality and that there is considerable scope, at least at present, for imports of pulpwood and, to some extent, wood chips. The Norwegian buyers are big enough to buy large quantities, e.g. a shipload, and thus keep transport costs down. Furthermore they have access to ports. Transport costs from the border region in Sweden, which is the largest source of imports, are not necessarily higher than for domestic raw material for industry located close to that region. Still transport costs and particular quality requirements for certain types of paper and pulp set limits to these imports.
- (54) The Norwegian sellers on the other hand face considerable problems with the export of pulpwood. High transport costs in relation to the value of the pulpwood exclude export as a viable alternative for the majority of the forest owners, unless they are situated in the border region to Sweden or close to a port. In addition, the individual forest owners are in general too small to organise the marketing, the adaptation to different measurement regimes and the transport themselves, and the selling organisations available have limited activities in this regard.
- (55) The general characteristics of actual market conditions, including pricing, which is determined through negotiations between domestic sellers and buyers, as well as distribution and purchasing systems, which are determined domestically, all indicate a national market. At the same time, the relatively high level of imports indicate a certain degree of demand side substitutability between domestically procured pulpwood and pulpwood originating in, primarily, Sweden, Russia and the Baltic States. It is acknowledged that prices that the purchasers may obtain for imports from these countries may be an important element in the price negotiations between buyers and sellers in Norway. This could to some extent influence the relative bargaining strength of the market operators and should thus be taken into consideration when assessing the actual market power of these operators. However, the relatively high level of import in itself is not enough to conclude that Norway and the main exporting countries belong to the same market. Instead, given the

general market conditions together with the obstacles to trade indicated in paragraphs 53 and 54 above, the price and other trading conditions, which are the main elements in delimiting a market, would primarily be determined by domestic factors.

- (56) Similarly, prices of wood chips are determined in negotiations between the sawmill and the local or regional industrial buyer. Although the purchaser may use the import prices as a ceiling for the offer to the sawmill, it is not possible for the sawmill to use international prices to get a higher price for the chips since export is not a viable alternative. In addition, the prices of wood chips are often set as part of a larger exchange of saw-wood, wood chips and to some extent pulpwood. The conditions for this trade are determined by the sawmills' access to alternative sources of saw-wood and to alternative outlets for wood chips and pulpwood rather than international prices of these commodities. It is thus domestic factors which are predominant in the determination of the final commercial conditions for trade in the wood chips market.
- (57) In view of the above, it must be concluded that the objective conditions of competition are at present not sufficiently homogenous in an area wider than Norway and possibly certain areas in Sweden bordering Norway for it to be considered one geographic market. The trade with such border regions are not of such a dimension as to have an influence on the assessment in this case. It is thus sufficient to refer to Norway as the relevant geographic market for pulpwood and for wood chips.

1.3. *Restrictions of competition*

- (58) The members of TFB are competitors or potential competitors in the market for buying pulpwood and wood chips. VA forms a market sharing arrangement prohibited explicitly in Article 53 (1) (c). The agreement limits the TFB members' access to alternative sources of pulpwood and wood chips as well as the suppliers' access to competing purchase offers for these products, and thereby artificially influences the balance of supply and demand. The agreement can also indirectly affect prices of pulpwood and wood chips, by giving the companies involved secure areas of supply where they face no or only a very limited number of competitors.
- (59) In view of the fact that TFB represents practically all Norwegian purchasers of pulpwood and chips with a combined turnover in excess of Nkr 30 billion and that the market sharing agreement covers all of Norway, these restrictions of competition must be deemed to be appreciable.

1.4. *Trade effect*

- (60) The notified arrangement may indirectly influence the prices of pulpwood and wood chips by reducing competition between potential buyers of chips and pulpwood. This in turn may affect the export of pulpwood and chips since the domestic price level may affect the pulpwood suppliers' willingness or possibility to export. It is acknowledged that exports from Norway are relatively low, only some 5 % of the total harvest, and are in principle restricted to the border regions with Sweden and certain coastal areas with a direct access to port, and that any such effect may thus be limited.
- (61) However, according to case-law of the Court of Justice of the European Communities⁽¹⁾ fixing the price for an intermediate product which is not normally exported out of the region in question is capable of affecting trade between Member States where that product constitutes the raw material for another product marketed elsewhere in the Community. In the present case, the notified arrangements may influence prices or other trading conditions for pulpwood or woodchips indirectly by restricting competition between purchasers of pulpwood and chips. Pulpwood and wood chips are intermediate products

⁽¹⁾ See *inter alia* BNIC II (1987 ECR 4789)

used as the main raw material important export products of Norway such as paper and pulp. Since the notified arrangements may thus influence the price and other trading conditions of pulpwood and wood chips, they may affect the trade flow of the downstream products in the EEA.

- (62) The notified arrangement may also affect imports of pulpwood and chips. Price is the most important factor in determining the supply of pulpwood. Changes in the domestic availability of pulpwood have a direct effect on the Norwegian industries' need for importing pulpwood and chips for its production of downstream products. The fact that the availability of domestic pulpwood has an impact on imports can be illustrated by the situation in 1994, when harvesting and thus the availability of domestic pulpwood was reduced and imports more than doubled in one year.
- (63) It must thus be concluded, having regard to the large influence of the undertakings concerned on the relevant market and their combined size, that the notified arrangements may effect trade within the meaning of Article 53 (1).

2. Article 53 (3)

- (64) In order to qualify for an exemption from the prohibition in Article 53 (1) the applicant must show that the agreements improve production or distribution or promote technical or economic progress while allowing consumers a fair share of the resulting benefit. To be characterized as such benefits, the objective advantages gained must outweigh the detriment to competition⁽¹⁾. Furthermore, the restrictions contained in the arrangements must be indispensable to the attainment of these benefits, and the arrangements must not afford the concerned undertakings the possibility of eliminating competition in respect of a substantial part of the products in question. In the Authority's view, the notified arrangements have not been shown to fulfil any of these conditions.

2.1. *Benefits of the notified arrangements*

- (65) TFB argues that VA reduces the transport costs of the Norwegian pulp and paper industry, stimulates harvest and secures a stable supply of raw material to the industry.
- (66) The lowering of transport costs would primarily be a question of organising logistics more efficiently. However, no such arrangement has been notified. On the contrary, TFB has maintained that there is no co-operation as regards logistics which is directly related to VA. Although, by ensuring that the industrial buyers purchase their pulpwood or wood chips in their vicinity, or at least in the designated region, it might be expected that the pulpwood or wood chips would travel shorter distances, this does not necessarily follow from VA. One could equally well argue that an undertaking which had 'exhausted' the regional supply would be forced to import pulpwood or wood chips from abroad, with even a possible increase in transport costs, rather than turn to other domestic regions. It is thus doubtful that VA in itself actually contributes to lower transport costs.
- (67) It must be assumed that the main stimuli for harvesting are the price or other sale conditions offered for the round wood. VA could conceivably stimulate harvest within the respective regions by offering a secure outlet for the pulpwood. However, the market sharing agreement hinders the forest owners and other sellers going outside the region to seek buyers who might be able to offer more attractive conditions for the pulpwood than the conditions offered within the region. This would reduce the sellers' incentive to harvest additional quantities. On balance, the market sharing agreement's effect on the rate of harvest would most likely be marginal and might even be negative.

⁽¹⁾ See, *inter alia*, Consten and Grundig v. Commission (1966 ECR 299, 348)

- (68) Finally, it is conceivable that VA, at least to some extent, promotes a stable supply of raw material to the individual industry by reducing the unpredictability of supply resulting from competition between the purchasers. However, other factors, such as the length and timing of contracts, and the efficiency of systems of logistics and general purchasing policies employed by the individual industries, would seem to be more important in this regard.
- (69) In view of the above, there seem to be few, if at all any, objective advantages of the notified arrangements. On the other hand, the market sharing arrangement in VA effectively hinders an individual buyer from purchasing pulpwood or chips outside 'his' region, regardless of whether the conditions of supply and demand at any given point in time would make such purchases economically justified. By the same token, VA hinders sellers of pulpwood or chips going outside their region to find buyers who might find it justifiable to offer better conditions than those prevailing inside the region. The notified arrangements thus have a substantial negative impact on competition on the pulpwood and wood chips markets which may result in an inefficient allocation of resources in these markets.
- (70) It must therefore be concluded that any objective advantages of the notified arrangements would not outweigh the resulting detriments to competitions in the pulpwood and wood chips markets. Consequently, VA cannot be held to have shown to improve production, distribution or to promote technical or economic progress within the meaning of Article 53 (3).

2.2. *Indispensability*

- (71) Since the notified arrangements have not been shown to have the required benefits for an exemption under Article 53 (3), it is not essential to establish whether the restrictions contained in these agreements are indispensable for attaining such benefits. It should, however, be noted that even if the arrangements had contributed to the stated benefits, i.e. lower transport costs, stimulation of round wood production and the stable supply of raw material to the paper and pulp industries, and these benefits were not outweighed by the resulting detriments to competition, it would be difficult to see how the resulting restrictions of competition could be held to be indispensable for the attainment of these benefits.
- (72) For the purpose of lowering transport costs, cooperation between the purchasers of pulpwood and wood chips limited to logistics co-ordination without market sharing elements would most probably be more efficient and have less restrictive effects than VA. Similarly, in order to stimulate the forest owners' harvest or promote a stable supply, a flexible pricing system and active purchasing policy from each of the individual industrial purchasers concerned would in all likelihood do more to this effect than a geographic sharing of supply.
- (73) Consequently, even if the notified arrangements had contributed to improving production or distribution, or promoting technical or economic progress, the restrictions imposed on the undertakings concerned would not seem indispensable to the attainment of these objectives.

2.3. *Elimination of competition*

- (74) Although it is not essential to establish whether the notified arrangements may result in a substantial elimination of competition since the other conditions for exemption are not fulfilled, the Authority would like to note the following in this regard. The notified arrangements cover almost the whole domestic supply of pulpwood and chips. This corresponds to around 70 % of the total supply of pulpwood and chips to the paper and pulp industry in Norway. Apart from a small minority of suppliers of these products, who are located in such a way that the paper and pulp industry from neighbouring countries would find it economically feasible to purchase from them, there are no alternative buyers to the TFB members on the Norwegian market. It must therefore be concluded that the notified arrangements afford the TFB and the members of TFB the opportunity to eliminate competition in respect of a substantial part of the products in question,

HAS ADOPTED THIS DECISION:

Article 1

The agreement of 22 January 1986 between the members of TFB referred to as *virkesfordelingsavtalen* and the subsequent revised version of 25 March 1996 of that agreement constitute an infringement of Article 53 (1) of the EEA Agreement.

Article 2

An exemption under Article 53 (3) of the EEA Agreement for the agreement as mentioned in Article 1 is hereby refused.

Article 3

The undertakings concerned shall bring the infringement as mentioned in Article 1 to an end forthwith and shall refrain from taking any measure having the same object or effect.

Article 4

This decision is addressed to:

Treforedlingsindustriens Bransjeforening,
A/S Egeland's Verk,
Hunsfos Fabrikker,
Peterson Moss A/S,
Norske Skogindustrier ASA,
Borregaard Industries Ltd,
Rena Karton AS,
Rygene-Smith & Thommesen AS,
Fritzøe Fiber A/S,
and A/S Union.

Only the English and Norwegian texts of this Decision shall be authentic.

Done at Brussels, 24 April 1997.

*For the EFTA
Surveillance Authority*
Knut ALMESTAD
President
