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⁽¹⁾ Text with EEA relevance

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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 74/98**of 12 January 1998****establishing the standard import values for determining the entry price of
certain fruit and vegetables**

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

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

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

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 13 January 1998.

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

Done at Brussels, 12 January 1998.

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 12 January 1998 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 00	204	66,2
	212	109,2
	624	122,0
	999	99,1
0707 00 05	624	201,3
	999	201,3
0709 10 00	220	165,2
	999	165,2
0709 90 70	052	136,3
	204	149,9
	999	143,1
0805 10 10, 0805 10 30, 0805 10 50	052	35,6
	204	44,2
	220	46,2
	448	29,8
	624	45,0
	999	40,2
0805 20 10	052	61,8
	204	60,8
	624	72,4
	999	65,0
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	75,3
	464	117,3
	600	85,8
	624	70,0
	999	87,1
0805 30 10	052	81,7
	204	67,2
	400	51,5
	528	39,7
	600	61,6
	999	60,3
0808 10 20, 0808 10 50, 0808 10 90	060	48,9
	400	86,8
	404	87,9
	720	124,9
	728	86,0
	999	86,9
0808 20 50	052	76,3
	064	99,9
	400	99,4
	999	91,9

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

COMMISSION REGULATION (EC) No 75/98

of 12 January 1998

amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁽¹⁾, as last amended by European Parliament and Council Regulation (EC) No 82/97⁽²⁾, and in particular Article 249 thereof,

Whereas it is appropriate to insert in Commission Regulation (EEC) No 2454/93⁽³⁾, as last amended by Regulation (EC) No 1427/97⁽⁴⁾, a definition of the term 'EFTA countries', as used in the context of the Community transit rules; whereas account should therefore be taken of the fact that countries other than the original Community and EFTA States have acceded to the Convention of 20 May 1987 on a common transit procedure⁽⁵⁾, hereinafter referred to as 'the Convention';

Whereas the provisions on transit and proof of the Community status of goods carried by sea needs to be amended to simplify the tasks both of economic operators and of customs administrations;

Whereas the provisions on transit and proof of the Community status of goods carried by sea are inadequate because of the particular features of sea transport which have no counterpart in other types of transport; whereas it is consequently impossible under the current provisions to guarantee collection of customs debt and other charges on goods;

Whereas the Community transit procedure, which is obligatory for carriage by sea of non-Community goods, is almost impossible to apply in practice because of those features;

Whereas a guarantee is needed to ensure collection of customs debt and other charges where goods are carried under these transit rules, by sea, by regular shipping services;

Whereas it is necessary to establish a way of identifying goods consigned to or from a part of the customs territory of the Community where the provisions of Council Directive 77/388/EEC⁽⁶⁾, as last amended by Directive 96/95/EC⁽⁷⁾, do not apply; whereas such goods should be identified by means of a T2LF document or, where they are carried under the internal Community transit procedure, by means of a specific entry in the T2 declaration form;

Whereas Community goods consigned from one point to another in the customs territory of the Community, which are carried entirely by sea or air through the territory of one or more countries which have acceded to the Convention, should not be required to move under the Community's internal transit rules solely because they are carried through the territory of those countries;

Whereas experience has shown that it is advisable to restrict the ban on the use of the comprehensive guarantee within the Community transit regime to a limited period;

Whereas, for the purpose of simplifying administrative procedures, it would seem advisable to harmonize several of the forms used in the Community procedure and common transit procedure, and to combine in a single list the lists of certain sensitive goods contained in Annexes 52 and 56 to Regulation (EEC) No 2454/93;

Whereas the extension of the Community transit procedure to Andorra and San Marino requires some changes to the forms;

Whereas the transition period for trade between the Community as constituted on 31 December 1985, on the one hand, and Spain and Portugal on the other, and trade between those two Member States, ended on 31 December 1995, with the result that documents and procedures are no longer needed to identify goods so traded; whereas Commission Regulation (EEC) No 409/86⁽⁸⁾, as amended by Regulation (EEC) No 3716/91⁽⁹⁾, should therefore be repealed;

⁽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.

⁽⁵⁾ OJ L 226, 13. 8. 1987, p. 2.

⁽⁶⁾ OJ L 145, 13. 6. 1977, p. 1.

⁽⁷⁾ OJ L 338, 28. 12. 1996, p. 89.

⁽⁸⁾ OJ L 46, 25. 2. 1986, p. 5.

⁽⁹⁾ OJ L 351, 20. 12. 1991, p. 21.

Whereas Article 188 of Regulation (EEC) No 2913/92, hereinafter referred to as 'the Code', grants import tariff reductions on fisheries products caught by Community vessels in the territorial waters of a third country; whereas a certificate in the form of a standard model incorporating all the necessary declarations needed in support of the declaration for release for free circulation would be the best way to deal with those products;

Whereas a simple obligation on the part of the Member States to keep at the disposal of the Commission the lists of cases referred to in Articles 870 and 889(2) of Regulation (EEC) No 2454/93 is sufficient not only to allow checks carried out in the framework of own resources controls to be carried out properly but also to protect the financial interests of the Community; whereas it is therefore convenient, with a view to simplifying the obligations of the Member States, to put an end to the obligation to send these lists to the Commission;

Whereas the codes established by Regulation (EEC) No 2454/93 do not cover returned goods within the meaning of Article 185 of the Code or goods from third countries released for free circulation in a country with which the Community has concluded a customs union agreement before being redispached to the Community; whereas, therefore, those categories should be included in the list of codes;

Whereas the provisions of this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2454/93 is hereby amended as follows:

1. in Article 309, the following point (f) is added:

'(f) "EFTA countries" means:

all EFTA countries and any country that has acceded to the Convention of 20 May 1987 on a common transit procedure (*).

(*) OJ L 226, 13. 8. 1987, p. 2.;

2. Article 311 is amended as follows:

(a) point (b) is deleted;

(b) the following paragraph is added:

'Goods covered by point (a) of the first paragraph which are carried entirely by sea or air shall not

be required to move under the internal Community transit rules.';

3. the title of Part II, Title II, Chapter 3 is replaced by the following:

'Customs status of goods';

4. Article 313 is replaced by the following:

'Article 313

1. Subject to Article 180 of the Code and the exceptions listed in paragraph 2 of this Article, all goods in the customs territory of the Community shall be deemed to be Community goods, unless it is established that they do not have Community status.

2. The following shall not be deemed to be Community goods unless it is established in accordance with Articles 314 to 323 that they do have Community status:

- (a) goods brought into the customs territory of the Community in accordance with Article 37 of the Code;
- (b) goods in temporary storage or in a free zone or free warehouse;
- (c) goods placed under a suspensive procedure.

By way of derogation from this provision and in accordance with Article 38(5) of the Code, goods brought into the customs territory of the Community shall be deemed to be Community goods unless it is established that they do not have Community status:

- where, if carried by air, the goods have been loaded or transhipped at a Community airport, for consignment to another airport in the customs territory of the Community, and carried under cover of a single transport document drawn up in a Member State,
- or where, if carried by sea, the goods have been shipped between ports in the customs territory of the Community by a regular shipping service authorized in accordance with Articles 313a and 313b.;

5. the following Articles 313a and 313b are inserted:

'Article 313a

1. A regular shipping service means a regular service which carries goods in vessels that ply only between ports situated in the customs territory of the Community and may not come from, go to or call at any points outside this territory or in a free zone of a port in this territory.

2. The customs authorities may require proof that the provisions on authorized shipping services have been observed.

Where the customs authorities establish that the provisions on authorized shipping services have not been observed, they shall immediately inform all the customs authorities concerned.

Article 313b

1. Where a shipping company makes an application, the customs authorities of a Member State in whose territory the company is established or represented may, with the agreement of the customs authorities of the other Member States concerned, authorize the establishment of a regular shipping service.

2. The application shall contain the following details:

- (a) the ports concerned;
- (b) the names of the vessels authorised to provide regular services; and
- (c) any further information required by the customs authorities, in particular the shipping service's timetable.

3. Authorisation shall be granted only to shipping companies which:

- (a) are established or represented in the customs territory of the Community and whose records will be available to the competent customs authorities;
- (b) have not committed any serious or repeated offences against customs or tax legislation;
- (c) are able to satisfy the customs authorities that they operate a regular shipping service as defined in Article 313a(1); and

(d) undertake that:

- on the routes for which authorisation is requested, no calls will be made at any port in a third country or at any free zone in a port in the customs territory of the Community, and that no transshipments will be made on the high seas, and that
- the authorisation certificate will be carried on board the vessel and presented on request to the competent customs authorities.

4. When they receive an application for authorisation, the customs authorities of the Member State to whom the application has been made (the authorising authorities) shall notify the customs authorities of the other Member States in whose territories the intended ports of call of the regular shipping service are situated (the corresponding authorities).

The corresponding authorities shall acknowledge receipt of the application.

Within 60 days of receipt of such notification, the corresponding authorities shall signify their agreement or refusal. Where a Member State refuses an application, it shall state the reasons. Where no reply is received, the authorising authority shall issue an

authorisation which shall be accepted by the other Member States concerned.

The authorising authorities shall issue an authorisation certificate, in one or more copies as required and conforming to the model set out in Annex 42 A, and shall inform the corresponding authorities of the other Member States concerned. Each authorisation certificate shall bear a serial number by which it can be identified. All copies of each certificate shall bear the same number.

5. Once a regular shipping service has been authorised, the shipping company concerned shall be required to use it. The shipping company shall communicate any withdrawal or change in the characteristics of the authorised service to the authorising authorities.

6. Where an authorisation is withdrawn, or a regular shipping service ceases operations, the authorising authorities shall notify the corresponding authorities of the Member States concerned. The authorising authorities shall also notify the corresponding authorities of any changes to a regular shipping service, using the procedure provided for in paragraph 4.

7. When a vessel of the type referred to in Article 313a(1) is forced by circumstances beyond its control to tranship at sea or temporarily put into a third-country port or a free zone of a port in the customs territory of the Community, the shipping company shall immediately inform the customs authorities of the subsequent ports of call along the vessel's scheduled route.';

6. Article 314 is replaced by the following:

Article 314

1. Where goods are not deemed to be Community goods within the meaning of Article 313, their Community status may not be established under paragraph 2 unless:

- (a) they have been brought from another Member State without crossing the territory of a third country on the way; or
- (b) they have been brought from another Member State through the territory of a third country, and carried under cover of a single transport document issued in a Member State; or
- (c) they have been transhipped in a third country on a means of transport other than that onto which they were initially loaded and a new transport document has been issued, provided that the new document is accompanied by a copy of the original document covering carriage from the Member State of departure to the Member State of destination. In line with the requirements of administrative cooperation between Member States, the customs authorities at the customs office of destination shall carry out post-clearance checks to determine the accuracy of the information entered in the copy of the original transport document.

2. Proof that the goods have Community status may be established solely:

- (a) by means of one of the documents provided for in Articles 315 to 318; or
- (b) in accordance with the rules laid down in Articles 319 to 323; or
- (c) by the accompanying document referred to in Commission Regulation (EEC) No 2719/92 (*) or
- (d) by the document provided for in Article 325; or
- (e) by the document provided for in Article 816 certifying the Community status of the goods; or
- (f) by the T5 control copy described in Article 843.

3. The documents or rules referred to in paragraph 2 shall not be used in respect of goods for which the export formalities have been completed or which have been placed under the inward processing procedure (drawback system).

4. Where the documents or rules referred to in paragraph 2 are used for Community goods with packaging not having Community status, the document certifying Community status shall be endorsed with one of the following phrases:

- envases N
- N-emballager
- N-Umschließungen
- Συσκευασία N
- N packaging
- emballages N
- imballaggi N
- N-verpakkingsmiddelen
- embalagens N
- N-pakkaus
- N förpackning.

(*) OJ L 276, 19. 9. 1992, p. 1.;

7. Article 315 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Where proof of the Community status of goods is furnished by the production of a T2L document, the said document shall be drawn up in accordance with paragraphs 2 to 7 of this Article.’;

(b) the following paragraph 1a is inserted:

‘1a. Proof of the Community status of goods consigned to or from a part of the customs territory of the Community where Directive 77/388/EEC does not apply shall be furnished by the production of a T2LF document.

Paragraphs 2 to 7 and Articles 316 to 324 shall apply *mutatis mutandis*’;

8. Article 317 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Proof of the Community status of goods shall be furnished, in accordance with the conditions set out below, by the production of the invoice or transport document relating to the goods.’;

(b) paragraph 4 is replaced by the following:

‘4. If the total value of the Community goods covered by the invoice or transport document, completed and signed in accordance with paragraph 2 of this Article or Article 224, does not exceed ECU 10 000, the declarant shall not be required to submit that document or invoice for endorsement by the customs authorities of the Member State of departure.

In that case, the invoice or transport document shall include, in addition to the information set out in paragraph 2, the particulars of the office of departure.’;

9. the following Article 317a is inserted:

‘Article 317a

1. Proof of the Community status of goods shall be furnished, in accordance with the conditions set out below, by the production of the shipping company’s manifest relating to the goods.

2. The manifest shall include at least the following information:

- (a) the name and full address of the shipping company;
- (b) the name of the vessel;
- (c) the place and date of loading;
- (d) the place of unloading.

The manifest shall further include, for each consignment:

- (a) the reference for the bill of lading or other commercial document;
- (b) the number, description, marks and reference numbers of the packages;
- (c) the description of the goods;
- (d) the gross mass in kilograms;
- (e) the container identification numbers, where applicable; and
- (f) the following indicators of customs status:
 - “C” against each item in the manifest declared as having Community status, or
 - “F” for goods consigned to or from a part of the customs territory of the Community where Directive 77/388/EEC does not apply, or
 - “N” for all other types of consignment.

3. At the shipping company's request, the manifest, duly completed and signed by the company, shall be authenticated by the customs authorities of the Member State of departure. Such authentication shall include the name and the stamp of the office of departure, the signature of the competent official and the date of authentication.';

10. the following Article 323a is inserted:

'Article 323a:

1. Where pursuant to Article 91(2)(f) of the Code, non-Community goods are carried from one point to another in the customs territory of the Community by post (including parcel post), the customs authorities of the Member State of dispatch shall be required to affix on the packaging and accompanying documents a label of the type shown in Annex 42, or have a label of this type so affixed.

2. Where Community goods are carried by post (including parcel post) to or from a part of the customs territory of the Community where Directive 77/388/EEC does not apply, the customs authorities of the Member State of dispatch shall be required to affix on the packaging and accompanying documents a label of the type shown in Annex 42 B, or have a label of this type so affixed.';

11. Article 362(2) and (3) are replaced by the following:

'2. The maximum period for which use of the comprehensive guarantee shall be prohibited in respect of any goods shall be 12 months, unless the Commission decides to extend the period in accordance with the Committee procedure.';

12. Article 376(1)(b) is replaced by the following:

'(b) which are listed in Annex 52 as involving increased risks, where the quantity exceeds that shown in column 3.';

13. in Article 381 the following paragraph 1a is inserted:

'1a. Where a T2 declaration is required for goods of the type referred to in Article 311(c), the letter "F" shall be entered after the symbol "T2" in the third subdivision of box 1 of the form, the model for which is shown in Annexes 31 to 34.';

14. Article 389 is replaced by the following:

'Article 389

Without prejudice to the application of Article 317(4), the customs authorities of each Member State may

authorise any person, hereinafter referred to as the "authorised consignor", who satisfies the requirements laid down in Article 390 and proposes to establish the Community status of goods by means of a T2L document in accordance with Article 315(1) or by means of one of the documents stipulated in Articles 317 and 317a, hereinafter referred to as "commercial documents", to use such documents without having to present them for authentication to the customs authorities of the Member State of departure.';

15. Article 419(2) is replaced by the following:

'2. The office of departure shall clearly enter in the box reserved for customs on sheets 1, 2 and 3 of the CIM consignment note:

- (a) the symbol "T1", where goods are moving under the external Community transit procedure;
- (b) the symbol "T2", where goods, with the exception of those referred to in Article 311(c), are moving under the internal Community transit procedure in accordance with Article 165 of the Code;
- (c) the symbol "T2F", where goods are moving under the internal Community transit procedure in accordance with Article 311(c).

The symbol "T2" or "T2F" shall be authenticated by the application of the stamp of the office of departure.';

16. Article 434(2), (3) and (4) are replaced by the following:

'2. The office of departure shall clearly enter in the box reserved for customs on sheets 1, 2, 3A and 3B of the TR transfer note:

- (a) the symbol "T1" where goods are moving under the external Community transit procedure;
- (b) the symbol "T2", where goods, with the exception of those referred to in Article 311(c), are moving under the internal Community transit procedure in accordance with Article 165 of the Code;
- (c) the symbol "T2F", where goods are moving under the internal Community transit procedure in accordance with Article 311(c).

The symbol "T2" or "T2F" shall be authenticated by the application of the stamp of the office of departure.

3. The office of departure shall enter in the box reserved for customs on sheets 1, 2, 3A and 3B of the TR transfer note separate references for the con-

tainer(s) depending on which type of goods they contain and the symbol "T1", "T2" or "T2F", as appropriate, wherever a TR transfer note covers:

- (a) containers carrying goods moving under the external Community transit procedure; and
- (b) containers carrying goods, with the exception of those referred to in Article 311(c), moving under the internal Community transit procedure in accordance with Article 165 of the Code;
- (c) containers carrying goods moving under the internal Community transit procedure in accordance with Article 311(c).

4. In cases covered by paragraph 3, where lists of large containers are used, separate lists shall be made out for each category of container and the serial number or numbers of the list or lists concerned shall be entered in the box reserved for customs on sheets 1, 2, 3A and 3B of the TR transfer note. The symbol "T1", "T2" or "T2F", as appropriate to the category of container used, shall be entered alongside the serial number(s) of the list(s).';

17. Article 444 is amended as follows:

- (a) paragraph 2 is replaced by the following:

'2. Where goods which must move under the external Community transit procedure and goods which must move under the internal Community transit procedure, as provided for in Article 311(c) of the Code, are carried simultaneously in a single transport operation, the goods shall be listed on separate manifests.';

- (b) in paragraph 3, the first subparagraph is replaced by the following:

'3. The manifest or manifests referred to in paragraphs 1 and 2 shall bear an endorsement dated and signed by the airline identifying them as a Community transit declaration and specifying the customs status of the goods to which they relate. Thus completed and signed, the manifest or manifests shall be treated as a T1 declaration or a T2F declaration, as the case may be.

Where a consignment listed in a manifest consists of goods already covered by a transit procedure or being carried under the inward processing, customs warehousing or temporary admission

procedure, the airline shall enter the letters "TD" against the relevant item in the manifest. It shall also enter the letters "TD" in the corresponding air waybill, stating the procedure used, the reference number of the transit or transfer document, its date of issue and the name of the issuing office.';

- (c) in paragraph 11(c), the third indent is replaced by the following:

'— the airline shall enter in the manifest the symbol "T1" against each item moving under the external Community transit procedure, the letters "TF" against each item moving under the internal Community transit procedure provided for in Article 311(c) and the letter "C" against each item carried under neither the external Community transit procedure nor the internal Community transit procedure provided for in Article 311(c); where a consignment listed in a manifest consists of goods already covered by a transit procedure or being carried under the inward processing, customs warehouse or temporary importation procedure, the airline shall enter the letters "TD" against the relevant item in the manifest. It shall also enter the letters "TD" in the corresponding air waybill together stating the procedure used, the reference number of the transit or transfer document, its date of issue and the name of the issuing office.';

18. Articles 446 and 447 are replaced by the following:

Article 446

Use of the Community transit procedure shall be compulsory for goods carried by sea only where they are carried by a regular shipping service authorized in accordance with Article 313a.

Article 447

1. In the case of goods placed under the transit procedure provided for in Article 446, a guarantee shall be furnished to secure the payment of the customs debt and other charges likely to arise in respect of the goods.

2. It shall not be necessary to furnish a guarantee for the procedures referred to in Article 448.';

19. Article 448 is amended as follows:

- (a) in paragraph 2, the first subparagraph is replaced by the following:

‘2. On receipt of a request, the customs authorities of the Member State where the shipping company is established or represented shall notify the customs authorities of the other Member States in whose territories the intended ports of departure and destination are situated.’;

- (b) paragraphs 4 and 5 are replaced by the following:

‘4. The authorisation referred to in paragraph 1 shall stipulate that, where the transport operation involves both goods which must be carried under the external Community transit procedure and goods which must be carried under the internal Community transit procedure provided for in Article 311(c), the goods shall be listed on separate manifests.

5. The manifest or manifests referred to in paragraphs 1 and 3 shall bear an endorsement dated and signed by the shipping company identifying them as a Community transit declaration and specifying the customs status of the goods to which they relate. Thus completed and signed, the manifest or manifests shall be deemed to be a T1 declaration or a T2F declaration, as appropriate.

Where a consignment listed in a manifest consists of goods already covered by a transit procedure or being carried under the inward processing, customs warehouse or temporary admission procedure, the shipping company shall enter the letters “TD” against the relevant item in the manifest. It shall also enter the letters “TD” in the corresponding bill of lading or other commercial document, as appropriate, together with the procedure used, the reference number of the transit or transfer document, its date of issue and the name of the issuing office.’;

- (c) in paragraph 11(a), the first and second subparagraphs are replaced by the following:

- ‘(a) In the case of international shipping companies which are either established or represented in the customs territory of the Community and fulfil the conditions of point (b), the Community transit procedure described in paragraphs 1 to 10 may be simplified further on request.

On receipt of a request, the customs authorities of the Member State to which the request was made shall notify the customs authorities

of the other Member States in whose territories the intended ports of departure and destination are situated.’;

- (d) in paragraph 11(c) the second indent is replaced by the following:

- ‘— the shipping company shall enter in the manifest the symbol “T1” against each item moving under the external Community transit procedure, the letters “TF” against each item moving under the internal Community transit procedure provided for in Article 311(c) and the letter “C” against each item moving under neither the external Community transit procedure nor the internal Community transit procedure provided for in Article 311(c); where a consignment listed in a manifest consists of goods already covered by a transit procedure or being carried under the inward processing, customs warehouse or temporary importation procedure, the shipping company shall enter the letters “TD” against the relevant item in the manifest. It shall also enter the letters “TD” in the corresponding bill of lading or other commercial document, as appropriate, together with the procedure used, the reference number of the transit or transfer document, its date of issue and the name of the issuing office.’;

20. Article 449 is deleted;

21. the title of Part III is replaced by the following:

‘Privileged operations

TITLE I

RETURNED GOODS’;

22. the following text is added after Article 856:

‘TITLE II

PRODUCTS OF SEA-FISHING AND OTHER PRODUCTS TAKEN FROM THE TERRITORIAL SEA OF A THIRD COUNTRY BY COMMUNITY FISHING VESSELS

Article 856a

1. Exemption from import duties for the products referred to in Article 188 of the Code shall be subject to the presentation of a certificate in support of the declaration for release for free circulation relating to those products.

2. For products to be released for free circulation in the Community, in the situations referred to in Article 329(a) to (d), the master of the Community vessel making the catch shall complete boxes 3, 4 and 5 and, if need be, box 9, of the certificate. If the catch has been processed on board, the master of the vessel shall also complete boxes 6, 7 and 8.

Articles 330, 331 and 332 shall apply to completion of the corresponding boxes on the certificate.

When the declaration is made for release for free circulation of these products, the declarant shall complete boxes 1 and 2 of the certificate.

3. The certificate must conform to the model set out in Annex 110a and be drawn up in accordance with paragraph 2.

4. Where the products are declared for release for free circulation at the port where they were unloaded from the Community fishing vessel which made the catch, the derogation referred to in Article 326(2) shall apply *mutatis mutandis*.

5. For the purposes of paragraphs 1 to 4, the meaning of "Community fishing vessel" and "Community factory vessel" shall be as defined in Article 325(1) while "products" shall be taken to mean those products and goods referred to in Articles 326 to 332, where reference is made to those provisions.

6. In order to ensure that paragraphs 1 to 5 are complied with, the Member State administrations shall accord each other mutual assistance in checking that certificates are authentic and the particulars in them accurate.;

23. Article 870 is replaced by the following:

'Article 870

Each Member State shall keep at the disposal of the Commission a list of the cases in which the provisions of Article 869(a), (b) or (c) have been applied.;

24. Article 889(2) is replaced by the following:

'2. Each Member State shall keep at the disposal of the Commission a list of the cases in which the provisions of the second subparagraph of paragraph 1 have been applied.;

25. Annex 37 is amended in accordance with Annex I hereto;

26. Annex 38 is amended in accordance with Annex II hereto;

27. Annex 42 A, as shown in Annex III to this Regulation, is inserted;

28. Annex 42 B, as shown in Annex IV to this Regulation, is inserted;

29. In Annexes 46, 47 and 54 the symbols 'T2ES' and 'T2PT' are replaced by the symbol 'T2F';

30. Annexes 48, 49, 50 and 51 are replaced by Annexes V, VI, VII and VIII hereto respectively;

31. Annex 52 (list of goods which, when transported, give rise to an increase in the flat-rate guarantee) is replaced by Annex IX hereto;

32. Annex 56 (list of goods presenting increased risks to which the guarantee waiver does not apply) is deleted;

33. Annex 110a, as shown in Annex X to this Regulation, is inserted.

Article 2

Regulation (EEC) No 409/86 is hereby repealed.

Article 3

The forms referred to in points 29 and 30 of Article 1 which were in use prior to the date of entry into force of this Regulation, may continue to be used, subject to the appropriate changes being entered, until stocks run out or until 31 December 1999 at the latest.

Article 4

Point 11 of Article 1 shall also apply to Decisions taken pursuant to Article 362(1) of Regulation (EEC) No 2454/93 which remain applicable at the date of the entry into force of this Regulation.

Article 5

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

Points 12, 26 (in respect of points 2 and 3 of Annex II), 31 and 32 of Article 1 shall apply from 1 February 1998.

Points 2 to 10, 13 to 20, 25, 26 (in respect of point 1 of Annex II), and 27, 28 and 29 of Article 1 shall apply from 1 July 1998.

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

Done at Brussels, 12 January 1998.

For the Commission

Mario MONTI

Member of the Commission

ANNEX I

In Title II A 1 of Annex 37, the third paragraph shall be replaced by the following:

‘In the third subdivision, enter “T1”, “T2” or “T2F” where the Community transit procedure is used, or “T2L” or “T2LF” where the Community transit procedure is not used but the Community status of goods must be proved.’

ANNEX II

Annex 38 shall be amended as follows:

1. The third subdivision of box 1, shall be replaced by following:

‘This subdivision must be completed only where the form is to be used for the purposes of the Community transit procedure or as a document proving the Community status of goods.

The following marks shall be used as shown below:

- T1: for goods moving under the external Community transit procedure;
- T2: for goods moving under the internal Community transit procedure in accordance with Article 165 of the Code, other than Article 311(c) goods;
- T2F: for goods moving under the internal Community transit procedure in accordance with Article 311(c);
- T: for a mixed consignment of goods to which at least two of the following apply:
- they are goods moving under the external Community transit procedure,
 - they are goods, other than those covered by Article 311(c), moving under the internal Community transit procedure in accordance with Article 165 of the Code,
 - they are goods of the type covered by Article 311(c) moving under the internal Community transit procedure;
- T2L: Document proving the Community status of goods;
- T2LF: Document proving the Community status of goods consigned to or from a part of the customs territory of the Community where the provisions of Directive 77/388/EEC do not apply.’

2. A footnote ^(a) shall be added to the wording relating to code 3 in the list of first digits of codes for box 36 so that it reads as follows:

‘3. Other tariff preferences (EUR 1, ATR ^(a) or equivalent document)

^(a) Where this is used to establish the originating status.’

3. The following shall also be added to the list of codes for box 36:

(a) first digit of code:

‘0 None of the following’.

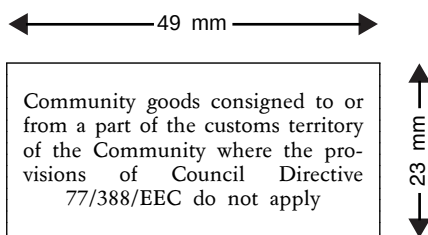
(b) next two digits:

‘99 Non-imposition of customs duties under Community legislation or the provisions of customs union agreements concluded by the Community.’

1. Applicant (name of the shipping company, or its representative, and full address) ☐	Serial number:
	CERTIFICATE OF REGULAR SHIPPING SERVICES — Article 313a of Regulation (EEC) No 2454/93
2. Ports concerned (route, with ports of call in order of calling)	
3. Vessels of the shipping service	
4. Other information	
5. Declaration by the shipping company I, the undersigned, hereby declare that the vessels forming part of the regular service in respect of which this application is made: 1. ply solely between ports in Community customs territory; 2. do not call at any points outside Community customs territory or at any free zone of a port in Community customs territory; and 3. do not tranship cargo on the high seas. Date: (Signature)	
A. Customs authority which issued the certificate authorizing the regular service: Date: Stamp Name: Address: Member State: (Signature)'	

*ANNEX IV**ANNEX 42 B*

YELLOW LABEL



Colour: black letters on a yellow background.'

ANNEX V

ANNEX 48

SPECIMEN I

COMMON TRANSIT/COMMUNITY TRANSIT PROCEDURE

COMPREHENSIVE GUARANTEE

(Comprehensive guarantee covering several transit operations under the Convention on a common transit procedure/several Community transit operations under the relevant Community regulations)

I. Undertaking by the guarantor

1. The undersigned ⁽¹⁾

.....

resident at ⁽²⁾

.....

hereby jointly and severally guarantees, at the office of guarantee of

up to a maximum amount of

in favour of the European Community comprising the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland, and of the Principality of Andorra, the Republic of Hungary, the Republic of Iceland, the Kingdom of Norway, the Republic of Poland, the Republic of San Marino, the Slovak Republic, the Swiss Confederation, and the Czech Republic ⁽³⁾ any amount of principal, further liabilities, expenses and incidentals — including duties, taxes and other charges but excluding fines

— for which ⁽⁴⁾

may be or become liable to the abovementioned States by reason of infringements or irregularities committed in the course of a transit operation carried out by the principal under the Convention on a common transit procedure/Community transit procedure.

2. The undersigned undertakes to pay upon the first application in writing by the competent authorities of the States referred to in paragraph 1 and without being able to defer payment beyond a period of 30 days from the date of application, the sums requested, up to the limit of the abovementioned maximum amount, unless he or she or any other person concerned establishes before the expiry of that period, to the satisfaction of the competent authorities, that the transit operation under the Convention on a common transit procedure/Community transit procedure was conducted without any infringement or irregularity within the meaning of paragraph 1.

The competent authorities may, upon request of the undersigned and for any reasons recognized to be valid, defer the period within which the undersigned is obliged to pay the requested sums beyond a period of 30 days from the date of application for payment. The expenses incurred by granting this additional period, and in particular any interest, must be calculated in such a way that the amount is equivalent to that which would be charged to that end on the money market or financial market in the State concerned.

This amount may not be reduced by any sums already paid to fulfil this undertaking unless recourse is had to the undersigned in respect of a transit operation under the Convention on a common transit procedure/Community transit procedure which began before receipt of the earlier application for payment or during the 30 days following such receipt.

⁽¹⁾ Surname and forenames, or name of firm.

⁽²⁾ Full address.

⁽³⁾ Delete the name of any Contracting Party or State (Andorra, San Marino) through whose territory the goods will not be carried.

⁽⁴⁾ Surname and forenames, or name of firm and full address of the principal.

3. This undertaking shall be valid from the day of its acceptance by the office of guarantee.

This guarantee may be cancelled at any time by the undersigned, or by the State in whose territory the office of guarantee is situated.

The cancellation shall take effect on the 16th day after notification thereof to the other party.

The undersigned shall remain responsible for payment of the sums which become due in respect of transit operations under the Convention on a common transit procedure/Community transit procedure covered by this undertaking which began before the date on which the cancellation took effect, even if the demand for payment is made after that date.

4. For the purposes of this undertaking the undersigned gives his address for service ⁽¹⁾ as ⁽²⁾

.....

and, in each of the other States referred to in paragraph 1, as care of:

State	Surname and forenames, or name of firm, and full address
.....	
.....	
.....	
.....	
.....	
.....	

The undersigned acknowledges that all correspondence and notices and any formalities or procedures relating to this undertaking addressed to or effected in writing at one of his addresses for service shall be accepted as duly delivered to him.

The undersigned acknowledges the jurisdiction of the courts of the places where he has an address for service.

The undersigned undertakes to maintain his addresses for service or, if he has to alter one or more of those addresses, to inform the office of guarantee in advance.

Done at on

.....

(Signature) ⁽³⁾

II. Acceptance by the office of guarantee

Office of guarantee

Guarantor's undertaking accepted on

.....

(Stamp and signature)

⁽¹⁾ If, in the law of the State, there is no provision for address for service the guarantor shall appoint, in each of the States referred to in paragraph 1, an agent authorized to receive any communications addressed to him. The courts of the places in which the addresses for service of the guarantor or of his agents are situated shall have jurisdiction in disputes concerning this guarantee.

⁽²⁾ Full address.

⁽³⁾ The signature must be preceded by the following in the signatory's own handwriting: "Guarantee for the amount of", with the amount written out in full.

ANNEX VI

'ANNEX 49

SPECIMEN II

COMMON TRANSIT PROCEDURE/COMMUNITY TRANSIT

GUARANTEE FOR A SINGLE OPERATION

(Guarantee covering a single transit operation under the Convention on a common transit procedure/a single Community transit operation under the relevant Community regulations)

I. Undertaking by the guarantor

1. The undersigned ⁽¹⁾

resident at ⁽²⁾

hereby jointly and severally guarantees, at the office of departure of

up to a maximum amount of

in favour of the European Community comprising the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland and of the Principality of Andorra, the Republic of Hungary, the Republic of Iceland, the Kingdom of Norway, the Republic of Poland, the Republic of San Marino, the Slovak Republic, the Swiss Confederation and the Czech Republic ⁽³⁾,

any amount for which a principal ⁽⁴⁾

may be or become liable to the abovementioned States by reason of infringements or irregularities committed in the course of a transit operation under the Convention on a common transit procedure/Community transit carried out by that person

from the office of departure of

to the office of destination of

in respect of the goods designated hereinafter, including duties, taxes and the other charges — with the exception of precuniary penalties — as regards principal or further liabilities, expenses and incidentals:

2. The undersigned undertakes to pay upon the first application in writing by the competent authorities of the States referred to in paragraph 1 and without being able to defer payment beyond a period of 30 days from the date of application the sums requested unless he or she or any other person concerned establishes before the expiry of that period, to the satisfaction of the competent authorities, that the transit operation under the Convention on a common transit procedure/Community transit procedure was conducted without any infringement or irregularity within the meaning of paragraph 1.

The competent authorities may, upon request of the undersigned and for any reasons recognized to be valid defer the period within which the undersigned is obliged to pay the requested sums beyond a period of 30 days from the date of application for payment. The expenses incurred, from granting this additional period, and in particular any interest, must be calculated in such a way that the amount is equivalent to that which would be charged to that end on the money market or financial market in the State concerned.

⁽¹⁾ Surname and forenames, or name of firm.

⁽²⁾ Full address.

⁽³⁾ Delete the name of any Contracting Party or Parties or States (Andorra, San Marino) of which the territory will not be used.

⁽⁴⁾ Surname and forenames, or name of firm, and full address of the principal.

3. This undertaking shall be valid from the day of its acceptance by the office of departure.
4. For the purpose of this undertaking, the undersigned gives his address for service ⁽¹⁾, as ⁽²⁾

.....

and, in each of the other States referred to in paragraph 1, as care of:

State	Surname and forenames, or name of firm, and full address
.....	
.....	
.....	
.....	
.....	
.....	
.....	

The undersigned acknowledges that all correspondence and notices and any formalities or procedures relating to this undertaking addressed to or effected in writing at one of his addresses for service shall be accepted as duly delivered to him.

The undersigned acknowledges the jurisdiction of the courts of the places where he has an address for service.

The undersigned undertakes to maintain his addresses for service or, if he has to alter one or more of those addresses, to inform the office of departure in advance.

Done at, on

.....
(Signature) ⁽³⁾

II. Acceptance by the office of departure

Office of departure

Guarantor's undertaking accepted on

to cover the T1/T2F ⁽⁴⁾ transit operation, issued on

..... under number

.....
(Stamp and signature)

⁽¹⁾ If in the law of the State, there is no provision for address for service the guarantor shall appoint, in each of the States referred to in paragraph 1, an agent authorized to receive any communications addressed to him. The courts of the places in which the addresses for service of the guarantor or of his agents are situated shall have jurisdiction in disputes concerning this guarantee. The acknowledgement in the second subparagraph and the undertaking in the fourth subparagraph of paragraph 4 must be made to correspond.

⁽²⁾ Full addresses.

⁽³⁾ The signature must be preceded by the following in the signatory's own handwriting: "Guarantee for the amount of", with the amount written out in full.

⁽⁴⁾ Delete as appropriate.

ANNEX VII

ANNEX 50

SPECIMEN III

COMMON TRANSIT/COMMUNITY TRANSIT PROCEDURE

FLAT-RATE GUARANTEE

(Flat-rate guarantee system)

I. Undertaking by the guarantor

1. The undersigned ⁽¹⁾

.....

resident at ⁽²⁾

.....

hereby jointly and severally guarantees, at the office of guarantee of

in favour of the European Community comprising the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland, and of the Principality of Andorra, the Republic of Hungary, the Republic of Iceland, the Kingdom of Norway, the Republic of Poland, the Republic of San Marino, the Slovak Republic, the Swiss Confederation and the Czech Republic, any amount of principal, further liabilities, expenses and incidentals — including duties, taxes and other charges but excluding fines — for which a principal may be or become liable to the abovementioned States by reason of infringements or irregularities committed in the course of a transit operation carried out under the Convention on a common transit procedure/Community transit procedure with regard to which the undersigned has agreed to be responsible by the issue of guarantee vouchers up to a maximum of ECU 7 000 per guarantee voucher.

2. The undersigned undertakes to pay upon the first application in writing by the competent authorities of the States referred to in paragraph 1, and without being able to defer payment beyond a period of 30 days from the date of application, the sums requested up to ECU 7 000 per guarantee voucher, unless her or she or any other person concerned establishes before the expiry of that period, to the satisfaction of the competent authorities, that the transit operation under the Convention on a common transit procedure/Community transit procedure was conducted without any infringement or irregularity within the meaning of paragraph 1.

The competent authorities may, upon request of the undersigned and for any reasons recognized to be valid, defer the period within which the undersigned is obliged to pay the requested sums beyond a period of 30 days from the date of application for payment. The expenses incurred by granting this additional period, and in particular any interest, must be calculated in such a way that the amount is equivalent to that which would be charged to that end on the money market of financial market in the State concerned.

3. This undertaking shall be valid from the day of its acceptance by the office of guarantee.

This guarantee may be cancelled at any time by the undersigned, or by the State in the territory of which the office of guarantee is situated.

The cancellation shall take effect on the 16th day after notification thereof to the other party.

The undersigned shall remain responsible for payment of the sums which become due in respect of transit operations under the Convention on a common transit procedure/Community transit procedure covered by this undertaking which began before the date on which the cancellation took effect, even if the demand for payment is made after that date.

⁽¹⁾ Surname and forenames, or name of firm.

⁽²⁾ Full address.

4. For the purposes of this undertaking the undersigned gives his address for service ⁽¹⁾ as ⁽²⁾

.....

and, in each of the other States referred to in paragraph 1, as care of:

State	Surname and forenames, or name of firm, and full address
.....	
.....	
.....	
.....	
.....	
.....	
.....	
.....	

The undersigned acknowledges that all correspondence and notices and any formalities or procedures relating to this undertaking addressed to or effected in writing at one of his addresses for service shall be accepted as duly delivered to him.

The undersigned acknowledges the jurisdiction of the courts of the places where he has an address for service.

The undersigned undertakes to maintain his addresses for service or, if he has to alter one or more of those addresses, to inform the office of guarantee in advance.

Done at, on

.....
(Signature) ⁽³⁾

II. Acceptance by the office of guarantee

Office of guarantee

Guarantor's undertaking accepted on

.....
(Stamp and signature)

⁽¹⁾ If, in the law of the State, there is no provision for address for service the guarantor shall appoint, in each of the States referred to in paragraph 1, an agent authorized to receive any communications addressed to him. The courts of the places in which the addresses for service of the guarantor or of his agents are situated shall have jurisdiction in disputes concerning this guarantee. The acknowledgement in the second subparagraph and the undertaking in the fourth subparagraph of paragraph 4 must be made to correspond.

⁽²⁾ Full address.

⁽³⁾ The signature must be preceded by the following in the signatory's own handwriting: "Guarantee", with the amount written out in full.

TC 31 — CERTIFICATE OF GUARANTEE

(Front)

NB This certificate must be returned without delay to the guarantee office on cancellation of the guarantee.

1. Valid until	Day	Month	Year		2. No
3. Principal (surname and forename, or name of company and complete address and country)					
4. Guarantor (surname and forename, or name of company and complete address and country)					
5. Guarantee office (complete address and country)					
6. Guarantee cover (in national currency)	in figures:			in words:	
7. The guarantee office certifies that the above named principal is authorized to carry out Community transit T1/T2/T2F in the following customs territories which have not been crossed through: EUROPEAN COMMUNITY, ANDORRA, HUNGARY, ICELAND, NORWAY, POLAND, SAN MARINO, SLOVAKIA, SWITZERLAND, CZECH REPUBLIC					
8. Validity extended until Day Month Year inclusive At , on (place of signature) (date) (Official signature and stamp of office of guarantee)				At , on (place of signature) (date) (Official signature and stamp of office of guarantee)	

9. Persons authorized to sign T1, T2 or T2F declarations on behalf of the principal

(Back)

10. Surname, forename and specimen signature of authorized person	11. Signature of principal (*)	10. Surname, forename and specimen signature of authorized person	11. Signature of principal (*)

(*) If the principal is a company, the person who signs in box 11 (eleven) must give his surname, forename and status in the company.

ANNEX IX

ANNEX 52

**LIST OF GOODS WHICH, WHEN TRANSPORTED, GIVE RISE TO AN INCREASE IN THE
FLAT-RATE GUARANTEE****LIST OF GOODS PRESENTING INCREASED RISKS TO WHICH THE GUARANTEE
WAIVER DOES NOT APPLY**

HS code	Description	Quantity corresponding to the standard amount of ECU 7 000
1	2	3
01.02	Live bovine animals	4 000 kg
02.02	Meat of bovine animals, frozen	3 000 kg
04.02	Milk and cream, concentrated or containing added sugar or other sweetening matter	5 000 kg
ex 04.05	Butter and other fats and oils derived from milk	3 000 kg
08.03	Bananas, including plantains, fresh or dried	8 000 kg
17.01	Cane or beet sugar and chemically pure sucrose, in solid form	7 000 kg
2207.10	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 % vol or higher	3 hl
ex 22.08	Spirits, liqueurs and other spirituous beverages	5 hl
2402.20	Cigarettes	35 000 items'

- ¹⁾ Approximate figure.
- ²⁾ Delete when no processing takes place on board.

11. Declaration when processing takes place on board the vessel onto which that catch has been transhipped ⁽³⁾

The products referred to in box 4 have undergone on board the vessel shown in box 10 processing which has been recorded on page of the logbook and the resulting goods are shown in box 6.

Date:

(Signature of master)

12. Declaration in the event of a second transhipment without further processing

The products and/or goods referred to in this document have been transhipped onto the following vessel:

(a) name:

(b) registration number:

(c) flag:

(d) full name of master:

The transhipment has been recorded on page of the logbook of the vessel from which the products and/or goods were transhipped.

The transhipment has been recorded on page of the logbook of the vessel onto which the products and/or goods were transhipped.

Date:

(Signature of the master of the transshipping vessel)

(Signature of the master of the receiving vessel)

13. Certification by the customs authority of the country or territory not forming part of Community customs territory

The undersigned customs authority, hereby certifies that the products and/or goods referred to in boxes 4 and/or 6 were under customs supervision throughout their stay and have undergone no handling other than that necessary for their preservation.

Date of arrival of the products/goods:

Date of departure of the products/goods:

Means of transport used for reconsignment to Community customs territory:

Full address of the customs office:

Stamp

Country or territory:

Date:

(Signature)

Remarks

COMMISSION REGULATION (EC) No 76/98

of 12 January 1998

on the issuing of import licences for bananas under the tariff quota for the first quarter of 1998 (second period)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organisation of the market in bananas ⁽¹⁾, as last amended by Regulation (EC) No 3290/94 ⁽²⁾,

Having regard to Commission Regulation (EEC) No 1442/93 of 10 June 1993 laying down detailed rules for the application of the arrangements for importing bananas into the Community ⁽³⁾, as last amended by Regulation (EC) No 1409/96 ⁽⁴⁾, and in particular Article 9 (3) thereof,

Having regard to Commission Regulation (EC) No 478/95 of 1 March 1995 on additional rules for the application of Council Regulation (EEC) No 404/93 as regards the tariff quota arrangements for imports of bananas into the Community and amending Regulation (EEC) No 1442/93 ⁽⁵⁾, as amended by Regulation (EC) No 702/95 ⁽⁶⁾, and in particular Article 4 (3) thereof,

Whereas Article 2 of Commission Regulation (EC) No 2534/97 of 16 December 1997 on the issuing of import licences for bananas under the tariff quota for the first quarter of 1998 and on the submission of new applications ⁽⁷⁾, fixes the quantities available for new licence applications under the tariff quota during the first quarter of 1998; whereas Article 4 (3) of Regulation (EC) No 478/95 lays down that the quantities for which licences may be issued for the origin(s) concerned must be determined without delay;

Whereas Article 9 (3) of Regulation (EEC) No 1442/93 lays down that where, in the case of a given quarter and

origin, for a country or group of countries referred to in Annex I to Regulation (EC) No 478/95, the quantities covered by import licence applications from one or more of the categories of operators exceed the quantity available, a reduction percentage is to be applied to application for that origin; whereas, however, that provision does not apply to category C licence applications nor to category A and B applications relating to a quantity of 150 tonnes or less, provided that the total quantity covered by the category A and B applications does not exceed, for a given origin, 15 % of the total of the quantities applied for;

Whereas the quantity applied for, for 'Costa Rica category B', exceeds the quantity available and a reduction coefficient should therefore be applied; whereas import licences may be issued for the quantity referred to in all other new applications;

Whereas this Regulation should apply immediately to permit licences to be issued as quickly as possible,

HAS ADOPTED THIS REGULATION:

Article 1

Import licences shall be issued under the tariff quota for the import of bananas during the first quarter of 1998 against new applications as referred to in Article 4 (1) of Regulation (EC) No 478/95:

1. for the quantity indicated in the licence applications multiplied, in the case of the origin 'Costa Rica' by the reduction coefficient of 0,0788 for category B licence applications, excluding applications relating to a quantity of 150 tonnes or less;
2. for the quantity indicated in licence application, in the case of an origin other than those referred to in point 1 above.

Article 2

This Regulation shall enter into force on 13 January 1998.

⁽¹⁾ OJ L 47, 25. 2. 1993, p. 1.

⁽²⁾ OJ L 349, 31. 12. 1994, p. 105.

⁽³⁾ OJ L 142, 12. 6. 1993, p. 6.

⁽⁴⁾ OJ L 181, 20. 7. 1996, p. 13.

⁽⁵⁾ OJ L 49, 4. 3. 1995, p. 13.

⁽⁶⁾ OJ L 71, 31. 3. 1995, p. 84.

⁽⁷⁾ OJ L 346, 17. 12. 1997, p. 75.

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

Done at Brussels, 12 January 1998.

For the Commission

Franz FISCHLER

Member of the Commission

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 22 April 1997

on the conclusion of the Agreements in the form of an Exchange of Letters between the European Community and, on the one hand, Barbados, Belize, the Republic of the Congo, Fiji, the Cooperative Republic of Guyana, the Republic of Côte d'Ivoire, Jamaica, the Republic of Kenya, the Republic of Madagascar, the Republic of Malawi, the Republic of Mauritius, the Republic of Suriname, Saint Christopher and Nevis, the Kingdom of Swaziland, the United Republic of Tanzania, the Republic of Trinidad and Tobago, the Republic of Uganda, the Republic of Zambia and the Republic of Zimbabwe and, on the other hand, the Republic of India on the guaranteed prices for cane sugar for the 1996/97 delivery period

(98/17/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113, in conjunction with the first sentence of Article 228(2), thereof,

Having regard to the proposal from the Commission,

Whereas implementation of Protocol 8 on ACP Sugar annexed to the Fourth ACP-EC Convention of Lomé⁽¹⁾ and of the Agreement between the European Economic Community and the Republic of India on cane sugar⁽²⁾ is carried out, in accordance with Article 1(2) of each, within the framework of the management of the common organisation of the sugar market;

Whereas it is appropriate to approve the Agreements in the form of an Exchange of Letters between the Community and, on the one hand, the States referred to in the Protocol and, on the other hand, the Republic of India on the guaranteed prices for cane sugar for the 1996/97 delivery period,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreements in the form of an Exchange of Letters between the European Community and, on the one hand, Barbados, Belize, the Republic of the Congo, Fiji, the

Cooperative Republic of Guyana, the Republic of Côte d'Ivoire, Jamaica, the Republic of Kenya, the Republic of Madagascar, the Republic of Malawi, the Republic of Mauritius, the Republic of Suriname, Saint Christopher and Nevis, the Kingdom of Swaziland, the United Republic of Tanzania, the Republic of Trinidad and Tobago, the Republic of Uganda, the Republic of Zambia and the Republic of Zimbabwe and, on the other hand, the Republic of India on the guaranteed prices for cane sugar for the 1996/97 delivery period are hereby approved on behalf of the Community.

The text of the Agreements is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person empowered to sign the Agreements referred to in Article 1 in order to bind the Community.

Article 3

This Decision will be published in the *Official Journal of the European Communities*.

Done at Luxembourg, 22 April 1997.

For the Council

The President

J. VAN AARTSEN

⁽¹⁾ OJ L 229, 17. 8. 1991, p. 216.

⁽²⁾ OJ L 190, 22. 7. 1975, p. 35.

AGREEMENT IN THE FORM OF AN EXCHANGE OF LETTERS

between the European Community and Barbados, Belize, the Republic of the Congo, Fiji, the Cooperative Republic of Guyana, the Republic of Côte d'Ivoire, Jamaica, the Republic of Kenya, the Republic of Madagascar, the Republic of Malawi, the Republic of Mauritius, the Republic of Suriname, Saint Christopher and Nevis, the Kingdom of Swaziland, the United Republic of Tanzania, the Republic of Trinidad and Tobago, the Republic of Uganda, the Republic of Zambia and the Republic of Zimbabwe on the guaranteed prices for cane sugar for the 1996/97 delivery period

A. Letter No 1

Brussels, 22 December 1997

Sir,

The representatives of the ACP States referred to in Protocol 8 on ACP sugar annexed to the Fourth ACP-EC Convention of Lomé and of the Commission, acting on behalf of the European Community, have agreed, pursuant to the provisions of the said Protocol, on the following:

For the delivery period 1 July 1996 to 30 June 1997, the guaranteed prices referred to in Article 5(4) of the Protocol shall, for the purpose of intervention within the terms of Article 6 of the Protocol, be:

- (a) for raw sugar: ECU 52,37 per 100 kilograms;
- (b) for white sugar: ECU 64,65 per 100 kilograms.

These prices shall refer to sugar of standard quality as defined in Community legislation, unpacked, cif, free out of European ports of the Community. The introduction of these prices no way prejudices the respective positions of the Contracting Parties in respect of the principles appertaining to the determination of the guaranteed prices.

I should be obliged if you would acknowledge receipt of this letter and confirm that this letter and your reply constitute an Agreement between the Governments of the above-mentioned ACP States and the Community.

Please accept, Sir, the assurance of my highest consideration.

*On behalf of the Council
of the European Union*

B. *Letter No 2*

Brussels, 22 December 1997

Sir,

I have the honour to acknowledge receipt of your letter of today which reads as follows:

‘The representatives of the ACP States referred to in Protocol 8 on ACP sugar annexed to the Fourth ACP-EC Convention of Lomé and of the Commission, acting on behalf of the European Community, have agreed, pursuant to the provisions of the said Protocol, on the following:

For the delivery period 1 July 1996 to 30 June 1997, the guaranteed prices referred to in Article 5(4) of the Protocol shall, for the purpose of intervention within the terms of Article 6 of the Protocol, be:

- (a) for raw sugar: ECU 52,37 per 100 kilograms;
- (b) for white sugar: ECU 64,65 per 100 kilograms.

These prices shall refer to sugar of standard quality as defined in Community legislation, unpacked, cif, free out of European ports of the Community. The introduction of these prices in no way prejudices the respective positions of the Contracting Parties in respect of the principles appertaining to the determination of the guaranteed prices.

I should be obliged if you would acknowledge receipt of this letter and confirm that this letter and your reply constitute an Agreement between the Governments of the abovementioned ACP States and the Community.’

I have the honour to confirm the agreement of the Governments of the ACP States referred to in this letter with the foregoing.

Please accept, Sir, the assurance of my highest consideration.

*For the Governments of the ACP States
referred to in Protocol 8*

En nombre del Consejo de la Unión Europea
På vegne af Rådet for Den Europæiske Union
Im Namen des Rates der Europäischen Union
Εξ ονόματος του Συμβουλίου της Ευρωπαϊκής Ένωσης
On behalf of the Council of the European Union
Au nom du Conseil de l'Union européenne
A nome del Consiglio dell'Unione europea
Namens de Raad van de Europese Unie
Em nome do Conselho da União Europeia
Euroopan unionin neuvoston puolesta
På Europeiska unionens råds vägnar



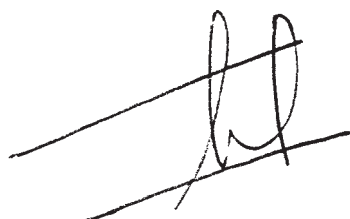
For the Government of Barbados



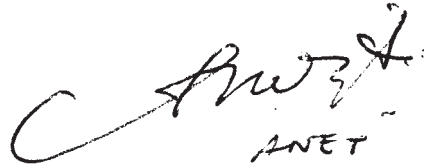
For the Government of Belize



Pour le gouvernement de la République du Congo



Pour le gouvernement de la République de Côte d'Ivoire



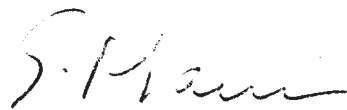
A. N'Gwenyema

For the Government of the Sovereign Democratic Republic of Fiji



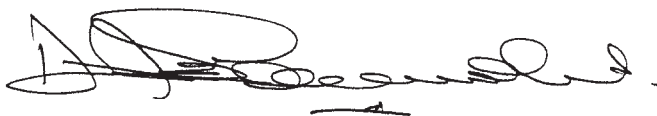
Laisi Laisi

For the Government of the Cooperative Republic of Guyana



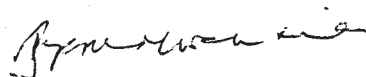
S. Han

For the Government of Jamaica



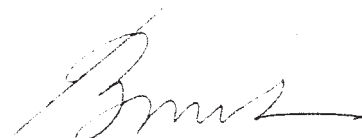
J. B. Williams

For the Government of the Republic of Kenya



J. M. Njiru

Pour le gouvernement de la République de Madagascar



J. M. Ratsiraha

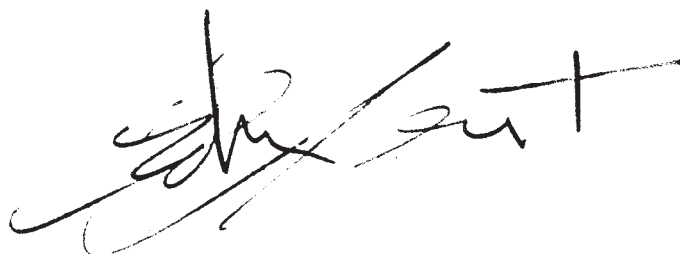
For the Government of the Republic of Malawi



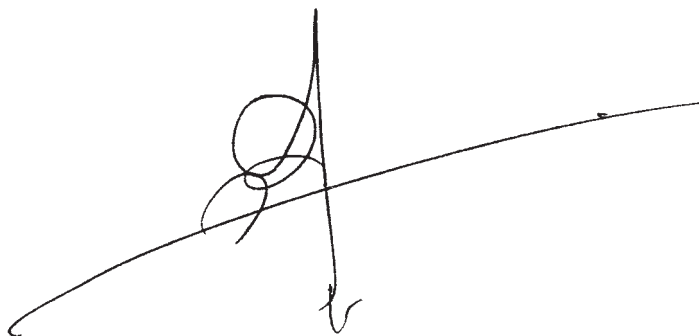
For the Government of the Republic of Mauritius



For the Government of Saint Kitts and Nevis



For the Government of the Republic of Suriname



For the Government of the Kingdom of Swaziland



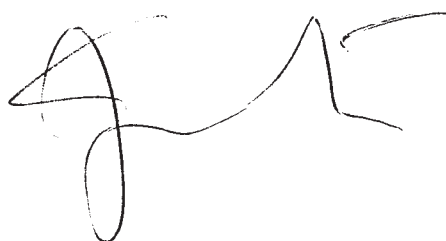
For the Government of the United Republic of Tanzania



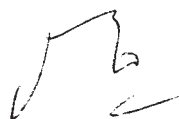
For the Government of the Republic of Trinidad and Tobago



For the Government of the Republic of Uganda



For the Government of the Republic of Zambia



For the Government of the Republic of Zimbabwe




AGREEMENT IN THE FORM OF AN EXCHANGE OF LETTERS
between the European Community and the Republic of India on the guaranteed
prices for cane sugar for the 1996/97 delivery period

A. Letter No 1

Brussels, 19 December 1997

Sir,

The Representatives of India and of the Commission, acting on behalf of the European Community, have agreed within the framework of the negotiations provided for in Article 5(4) of the Agreement between the European Economic Community and the Republic of India on cane sugar, on the following:

For the delivery period 1 July 1996 to 30 June 1997, the guaranteed prices referred to in Article 5(4) of the Agreement shall, for the purpose of intervention within the terms of Article 6 of the Agreement, be:

- (a) for raw sugar: ECU 52,37 per 100 kilograms;
- (b) for white sugar: ECU 64,65 per 100 kilograms.

These prices shall refer to sugar of standard quality as defined in Community legislation, unpacked, cif, free out of European ports of the Community. The introduction of these prices in no way prejudices the respective positions of the Contracting Parties in respect of the principles appertaining to the determination of the guaranteed prices.

I should be obliged if you would acknowledge receipt of this letter and confirm that this letter and your reply constitute an Agreement between your Government and the Community.

Please accept, Sir, the assurance of my highest consideration.

*On behalf of the Council
of the European Union*

B. *Letter No 2*

Brussels, 19 December 1997

Sir,

I have the honour to acknowledge receipt of your letter of today which reads as follows:

‘The Representatives of India and of the Commission, acting on behalf of the European Community, have agreed within the framework of the negotiations provided for in Article 5(4) of the Agreement between the European Economic Community and the Republic of India on cane sugar, on the following:

For the delivery period 1 July 1996 to 30 June 1997, the guaranteed prices referred to in Article 5(4) of the Agreement shall, for the purpose of intervention within the terms of Article 6 of the Agreement, be:

- (a) for raw sugar: ECU 52,37 per 100 kilograms;
- (b) for white sugar: ECU 64,65 per 100 kilograms.

These prices shall refer to sugar of standard quality as defined in Community legislation, unpacked, cif, free out of European ports of the Community. The introduction of these prices in no way prejudices the respective positions of the Contracting Parties in respect of the principles appertaining to the determination of the guaranteed prices.

I should be obliged if you would acknowledge receipt of this letter and confirm that this letter and your reply constitute an Agreement between your Government and the Community.’

I have the honour to confirm the agreement of my Government with the foregoing.

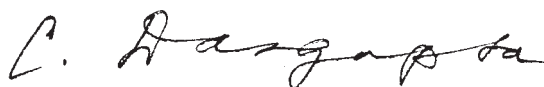
Please accept, Sir, the assurance of my highest consideration.

*For the Government of
the Republic of India*

En nombre del Consejo de la Unión Europea
På vegne af Rådet for Den Europæiske Union
Im Namen des Rates der Europäischen Union
Εξ ονόματος του Συμβουλίου της Ευρωπαϊκής Ένωσης
On behalf of the Council of the European Union
Au nom du Conseil de l'Union européenne
A nome del Consiglio dell'Unione europea
Namens de Raad van de Europese Unie
Em nome do Conselho da União Europeia
Euroopan unionin neuvoston puolesta
På Europeiska unionens råds vägnar



Por el Gobierno de la República de la India
For regeringen for Republikken Indien
Für die Regierung der Republik Indien
Για την κυβέρνηση της Δημοκρατίας της Ινδίας
For the Government of the Republic of India
Pour le gouvernement de la République de l'Inde
Per il governo della Repubblica dell'India
Voor de regering van de Republiek India
Pelo Governo da República da Índia
Intian tasavallan hallituksen puolesta
För Indiens regering



COUNCIL DECISION**of 27 November 1997****concerning the conclusion of the Agreement between the European Community and Canada on customs cooperation and mutual assistance in customs matters**

(98/18/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof, in conjunction with the first sentence of Article 228(2) thereof,

Having regard to the proposal from the Commission,

Whereas on 5 April 1993 the Council authorized the Commission to negotiate, on behalf of the Community, customs cooperation agreements with some of the Community's main trading partners;

Whereas the Agreement between the European Community and Canada on customs cooperation and mutual assistance in customs matters should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and Canada on customs cooperation and mutual assistance in customs matters is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

Article 2

The Commission, assisted by representatives of the Member States, shall represent the Community on the Joint Customs Cooperation Committee set up under Article 20 of the Agreement.

Article 3

The President of the Council is hereby authorized to designate the persons empowered to sign the Agreement on behalf of the Community.

Article 4

The president of the Council shall effect the notification provided for in Article 24 of the Agreement on behalf of the Community⁽¹⁾.

Article 5

This Decision shall be published in the *Official Journal of the European Communities*.

Done at Brussels, 27 November 1997.

For the Council

The President

M. PATIJN

⁽¹⁾ The date of entry into force of the Agreement will be published in the *Official Journal of the European Communities* by the General Secretariat of the Council.

AGREEMENT**between the European Community and Canada on customs cooperation and mutual assistance in customs matters**

THE EUROPEAN COMMUNITY and THE GOVERNMENT OF CANADA,

hereafter referred to as 'the Contracting Parties',

BUILDING on the privileged relationship established by the Framework Agreement for commercial and economic cooperation between the European Communities and Canada, signed at Ottawa on 6 July 1976,

TAKING ACCOUNT of the declaration of 22 November 1990 on EC-Canada relations,

RECOGNIZING the Joint Declaration on European Union-Canada relations signed at Ottawa on 17 December 1996,

CONSIDERING that breaches of customs legislation are prejudicial to their economic, fiscal, social, cultural and commercial interests,

BELIEVING that there should be an undertaking to develop customs cooperation of the widest possible scope in matters including, but not limited to, simplification and harmonization of customs procedures,

CONSIDERING the importance of accurate assessment of customs duties and taxes collected at importation or exportation and of ensuring proper enforcement of measures of prohibition, restriction and control,

RECOGNIZING the need for international cooperation in matters related to the application and enforcement of their customs laws,

CONVINCED that action against breaches of customs legislation can be made more effective by close cooperation between their customs administrations,

HAVING REGARD TO the relevant instruments of the Customs Cooperation Council, in particular the recommendation on mutual administrative assistance of 5 December 1953,

HAVING REGARD ALSO TO international conventions containing prohibitions, restrictions and special measures of control in respect of specific goods,

HAVE AGREED AS FOLLOWS:

TITLE I

under any customs procedure, including measures of prohibition, restriction and control,

GENERAL PROVISIONS

— for Canada: the statutory and regulatory provisions concerning the importation, exportation, transit of goods, and their placing under any customs procedure, including measures of prohibition, restriction and control, the administration and enforcement of which are specifically charged to the customs authority, and any regulations made by the customs authority under its statutory powers;

*Article 1***Definitions**

For the purposes of this Agreement,

1. 'customs authority' means:

- in the European Community: the competent services of the Commission of the European Communities and the customs authorities of the Member States of the European Community,
- in Canada: the competent services of the Department of National Revenue;

2. 'customs legislation' means:

- for the European Community: provisions adopted by the European Community and governing the import, export, transit of goods and their placing

3. 'breach of customs legislation' means any violation or attempted violation of customs legislation;

4. 'information' means any data, documents, reports, certified or authenticated copies thereof or other communications, including data which has been processed or analysed to provide an indication relevant to a breach of customs legislation;

5. 'person' means either a physical human being or a legal entity;

6. 'personal data' means all information relating to an identified or identifiable individual;
7. 'requested authority' means the competent customs authority from which assistance is requested;
8. 'requesting authority' means the competent customs authority which requests assistance.

TITLE II

CUSTOMS COOPERATION

Article 2

Scope of the cooperation

1. The Contracting Parties undertake to develop customs cooperation of the widest possible scope.
2. Under this Agreement, customs cooperation shall cover all matters relating to the application of customs legislation.

Article 3

Technical assistance to third countries

The Contracting Parties shall, where appropriate, inform each other on actions undertaken, or to be undertaken, with third countries in relation to technical assistance in the customs field, with the aim of improving these actions.

Article 4

Simplification and harmonization

The Contracting Parties agree to strive for simplification and harmonisation of their customs procedures, taking into account the work done in this connection by international organisations. They also agree to examine ways and means to solve any customs-related difficulties that might arise between them.

Article 5

Exchange of personnel

The customs authorities may exchange personnel when mutually beneficial, for the purpose of advancing their understanding of each other's customs techniques and procedures, and computerised systems.

Article 6

Computerization

The Contracting Parties shall cooperate in the computerisation of customs procedures and formalities, with the aim of facilitating trade between them.

TITLE III

MUTUAL ASSISTANCE

Article 7

Scope of assistance

1. The customs authorities shall assist each other, either on request or on their own initiative, by providing appropriate information which helps to ensure the proper application of customs legislation and the prevention, investigation and combating of any breach of customs legislation.
2. All assistance under this Title by either Contracting Party shall be performed in accordance with its relevant laws, rules and other legal instruments and within the limits of its customs authority's competence and available resources.
3. This Title is intended solely for the mutual administrative assistance between the Contracting Parties; the provisions of this Title shall not give rise to a right on the part of any private person to obtain information, to obtain, suppress or exclude any evidence or to impede the execution of a request.
4. This Title shall not prejudice the rules governing mutual assistance in criminal matters. Nor shall it apply to information obtained under powers exercised at the request of the judicial authority, except where communication of such information has the prior authorization of the said judicial authority consulted for this purpose on a case-by-case basis.

Article 8

Information on methods, trends and operations

1. Either customs authority shall communicate, either on request or on its own initiative, any available information relating to:
 - (a) new customs law enforcement techniques having proved their effectiveness;
 - (b) new trends, means or methods of committing breaches of customs legislation.
2. Either on request or on their own initiative, the customs authorities shall provide each other with information on operations, completed or planned, which constitute, or appear to constitute, a breach of customs legislation in the territory of the other Contracting Party.

Article 9

Assistance on request

1. On request, the requested authority shall inform the requesting authority of the customs legislation and pro-

cedures applicable in that Contracting Party and relevant to inquiries relating to a breach of customs legislation.

2. On request, the requested authority shall, in particular, provide the requesting authority with the following information:

- (a) whether goods imported into the territory of the requesting Contracting Party have been lawfully exported from the territory of the requested Contracting Party, and specifying, where appropriate, the customs procedure applied to the goods;
- (b) whether goods exported from the territory of the requesting Contracting Party have been lawfully imported into the territory of the requested Contracting Party, and specifying, where appropriate, the customs procedure applied to the goods.

3. On request, and subject to specific provisions under Article 13, the requested authority shall provide information on, and maintain special surveillance over:

- (a) persons known to the requesting authority to have committed a breach of customs legislation or suspected of doing so;
- (b) goods either in transport or in storage notified by the requesting authority as giving rise to suspected illicit traffic;
- (c) means of transport suspected by the requesting authority of being used to commit breaches of customs legislation;
- (d) premises suspected by the requesting authority of being used to commit breaches of customs legislation.

Article 10

Spontaneous assistance

In serious cases that could involve substantial damage to the economy, public health, public security or any other vital interest of one Contracting Party, the customs authority of the other Contracting Party shall, to the extent possible, supply information on its own initiative.

Article 11

Form in which information is to be communicated

1. The requested authority shall communicate appropriate information to the requesting authority in the form of documents, certified copies of documents, reports or electronic versions thereof. All relevant information for interpreting or utilizing that information shall be supplied at the same time.

2. Original files, documents and other materials shall be requested only in cases where copies would be insufficient. Upon specific request, copies of such files, docu-

ments and other materials shall be appropriately authenticated.

3. Original files, documents and other materials that have been transmitted shall be returned as soon as possible; rights of the requested authority or of third parties relating thereto shall remain unaffected.

Article 12

Experts and witnesses

1. The customs authority of one Contracting Party may authorize its employees, upon the request of the customs authority of the other Contracting Party, to appear as witnesses or experts in judicial or administrative proceedings in the territory of the other Contracting Party and to produce such files, documents or other materials, or authenticated copies thereof, as may be considered essential for the proceedings.

2. When appearing in judicial or administrative proceedings in the circumstances provided for in paragraph 1, witnesses or experts will be afforded the full protection of the law of the requesting Contracting Party pertaining to testimony of a privileged or confidential nature which may be protected from disclosure under that law.

3. Requests pursuant to paragraph 1 must indicate specifically on what matters and by virtue of what title or qualification the official will be questioned.

Article 13

Communication of requests

1. Requests for assistance under this Title shall be made in writing and shall be accompanied by any documents deemed useful. When the circumstances so require, requests may also be made verbally. Such requests shall be promptly confirmed in writing. Written requests may be made by electronic means from which a paper record may be made.

2. Requests pursuant to paragraph 1 shall include the following information:

- (a) the requesting authority;
- (b) the measure requested;
- (c) the object of, and the reason for, the request;
- (d) the laws, rules and other legal elements involved;
- (e) information which is as exact and comprehensive as possible on the persons who are the target of the investigation; and
- (f) a summary of the relevant facts and of the investigations already carried out, including the customs authorities involved at the time of the request.

3. The requested authority shall agree to follow a certain procedure in responding to a request, unless that procedure would conflict with legal and administrative provisions of the requested Contracting Party.

4. The information referred to in this Title shall be communicated only to officials who are specifically designated for this purpose by each customs authority. Lists of officials so designated shall be exchanged in accordance with Article 19(3).

5. Requests shall be submitted in an official language of the requested authority or in a language acceptable to that authority.

6. If a request does not meet the formal requirements, the requested authority may ask for its correction or completion. The requested authority may take interim measures.

Article 14

Execution of requests

1. If the requested authority does not have the information requested, it shall, in accordance with its legislation, either:

- (a) initiate inquiries to obtain that information;
- (b) promptly transmit the request to the appropriate agency; or
- (c) indicate which relevant authorities are concerned.

2. Any inquiry under paragraph 1(a) may include the taking of statements from persons from whom information is sought in connection with a breach of customs legislation and from witnesses and experts.

Article 15

Duties of officials

1. On written request, with the authorization of the requested authority and subject to conditions which the latter may impose, for the purpose of investigating a breach of customs legislation, officials specifically designated by the requesting authority may be present during an inquiry conducted by the requested authority in the territory of the requested Contracting Party and relevant to the requesting authority.

2. When officials of the requesting authority are present in the territory of the other Contracting Party in the circumstances provided for in paragraph 1, they must at all times be able to furnish proof of their official capacity.

3. Duly authorized officials of a Contracting Party may, with the agreement of the other Contracting Party and within the conditions laid down by the latter, obtain from the offices of the requested authority or other authority for which the requested authority is responsible, information relating to a breach of customs legislation which the requesting authority needs for the purposes of this Title.

Article 16

Confidentiality of information

1. Any information received under this Title shall be treated as confidential and shall at least be subject to the same protection and confidentiality as the same kind of information is subject to under the laws applicable in the Contracting Party where it is received.

2. Information obtained shall be used solely for the purposes of this Title. Where one of the Contracting Parties requests the use of such information for other purposes, it shall obtain the prior written consent of the customs authority which furnished the information. Such use shall then be subject to any restrictions laid down by that authority.

3. Paragraph 2 shall not impede the use of information in any judicial or administrative proceedings subsequently instituted for failure to comply with customs legislation. The Contracting Parties may, in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts, use evidence obtained in accordance with the provisions of this Title. The competent authority which supplied that evidence shall be notified in advance of such use.

4. Personal data may be exchanged only where the Contracting Party which will receive the data undertakes to protect such data in a way which is at least equivalent to the protection applicable to that particular case in the Contracting Party which may supply the data.

5. Dissemination of information among customs authorities within each Contracting Party will occur only on a need-to-know basis. Where information is shared pursuant to this paragraph, the Contracting Party that supplied the information shall be so informed in advance of sharing the information.

Article 17

Exceptions to the obligation to provide assistance

1. In cases where assistance under this Title would infringe upon the sovereignty of a Member State of the European Community or Canada or prejudice security, public policy or other essential interest (such as that referred to in Article 16(4)) of a Contracting Party, or would involve a violation of industrial, commercial or

professional secrecy or would be inconsistent with its legislation, assistance may be refused or made subject to the fulfilment of certain conditions or requirements.

2. If the requesting authority would be unable to comply were a similar request to be made by the request authority, it shall draw attention to that fact in its request. Compliance with such a request shall be at the discretion of the requested authority.

3. Assistance may be postponed by the requested authority on the grounds that it will interfere with an ongoing investigation, prosecution or proceeding. In such a case, the requested authority shall consult with the requesting authority to determine if assistance can be given subject to such terms or conditions as the requested authority may require.

4. Where assistance is denied or postponed, reasons for the denial or postponement shall be given without delay.

Article 18

Costs

1. The customs authorities shall waive all claims for reimbursement of costs incurred in the execution of this Title.

2. If expenses of a substantial or extraordinary nature are, or will be, required to execute the request, the Contracting Parties shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.

TITLE IV

FINAL PROVISIONS

Article 19

Implementation of the Agreement

1. The management of this Agreement shall be entrusted to the competent services of the Commission of the European Communities and, where appropriate, the customs authorities of the Member States and to the customs authority of Canada.

2. The customs authorities shall take measures so that their officials responsible for the investigation or combating of breaches of customs legislation maintain personal and direct relations with each other.

3. The customs authorities shall decide on detailed arrangements to facilitate the implementation of this Agreement.

4. The customs authorities shall endeavour to resolve any problem or doubt arising from the interpretation or application of this Agreement.

Article 20

Joint Customs Cooperation Committee

1. A Joint Customs Cooperation Committee is hereby established, consisting of representatives of the customs authorities of the Contracting Parties. The Joint Customs Cooperation Committee shall meet at a place and on a date with an agenda fixed by mutual consent.

2. The Joint Customs Cooperation Committee shall see to the proper functioning of this Agreement and shall examine all issues arising from its application. In fulfilling this role, its main functions will be to:

- (a) take the measures necessary for customs cooperation in accordance with the objectives of this Agreement and for the expansion of this Agreement with a view to increasing the level of customs cooperation and supplementing it on specific sectors or matters;
- (b) exchange views on any points of common interest regarding customs cooperation, including future measures and the resources for them;
- (c) in general terms, recommend solutions aimed at attaining the objectives of this Agreement.

3. The Joint Customs Cooperation Committee shall adopt its rules of procedure.

Article 21

Obligations imposed under other agreements

1. Taking into account the respective competencies of the European Community and the Member States, the provisions of this Agreement shall:

- not affect the obligations of the Contracting Parties under any other international agreement or convention,
- be deemed complementary with agreements on customs cooperation and mutual assistance which have been, or may be, concluded between individual Member States of the European Union and Canada, and
- not affect the provisions governing the communication between the competent services of the Commission and the customs authorities of the Member States on a need-to-know basis of any information obtained under this Agreement which could be of interest to the European Community.

2. Notwithstanding the provisions of paragraph 1, the provisions of this Agreement shall take precedence over the provisions of the bilateral agreements on customs cooperation and mutual assistance which have been, or may be, concluded between individual Member States of the European Union and Canada insofar as the provisions of the latter are incompatible with those of this Agreement.

3. In respect of questions relating to the applicability of this Agreement, the Contracting Parties shall consult each other to resolve the matter in the framework of the Joint Committee set up under Article 20.

Article 22

Territorial application

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty and, on the other hand, to the territory of Canada under the conditions laid down in Canadian law.

Article 23

Future developments

The Contracting Parties may by mutual consent expand this Agreement with a view to increasing the levels of customs cooperation and supplementing them, in accordance with their respective customs legislation, by means of agreements on specific sectors or matters.

Article 24

Entry into force and termination

1. This Agreement shall enter into force on the first day of the month following the date on which the Contracting Parties have notified each other of the completion of the procedures necessary for this purpose.

2. This Agreement is intended to be of unlimited duration but either Contracting Party may terminate it at any time by notification through diplomatic channels.

3. The termination shall take effect one month from the date of the notification of denunciation to the other Contracting Party. Ongoing proceedings at the time of termination shall nonetheless be completed in accordance with the provisions of this Agreement.

EN FE DE LO CUAL, los abajo firmantes, debidamente autorizados, suscriben el presente Acuerdo.

TIL BEKRÆFTELSE HERAF har undertegnede, der er behørigt beføjede hertil, undertegnet denne aftale.

ZU URKUND DESSEN haben die hierzu gehörig befugten Unterzeichneten ihre Unterschrift unter dieses Abkommen gesetzt.

ΣΕ ΠΙΣΤΩΣΗ ΤΩΝ ΑΝΩΤΕΡΩ, οι υπογεγραμμένοι πληρεξούσιοι έθεσαν την υπογραφή τους κάτω από την παρούσα συμφωνία.

IN WITNESS whereof the undersigned, being duly authorised thereto, have signed this Agreement.

EN FOI DE QUOI les soussignés, dûment autorisés, ont signé le présent accord.

IN FEDE di che i sottoscritti, debitamente autorizzati, hanno apposto le loro firme in calce al presente accordo.

TEN BLIJKE WAARVAN de ondergetekenden, daartoe naar behoren gemachtigd, deze overeenkomst hebben ondertekend.

EM FÉ DO QUE, os abaixo-assinados, devidamente autorizados para o efeito, apuseram as suas assinaturas no presente acordo.

TÄMÄN VAKUUDEKSI allekirjoittaneet asianmukaisesti valtuutetut edustajat ovat allekirjoittaneet tämän sopimuksen.

TILL BEVIS HÄRPÅ har undertecknade undertecknat detta avtal.

Hecho en Ottawa, el cuatro de diciembre de mil novecientos noventa y siete, en doble ejemplar en lenguas alemana, danesa, española, finesa, francesa, griega, inglesa, italiana, neerlandesa, portuguesa y sueca, siendo cada uno de estos textos igualmente auténtico.

Udfærdiget i Ottawa den fjerde december nitten hundrede og syvoghalvfems i to eksemplarer på dansk, engelsk, finsk, fransk, græsk, italiensk, nederlandsk, portugisisk, spansk, svensk og tysk, idet hver af disse tekster har samme gyldighed.

Geschehen zu Ottawa am vierten Dezember neunzehnhundertsiebenundneunzig in zwei Urschriften in dänischer, deutscher, englischer, finnischer, französischer, griechischer, italienischer, niederländischer, portugiesischer, schwedischer und spanischer Sprache, wobei jeder Wortlaut gleichermaßen verbindlich ist.

Η παρούσα συμφωνία έγινε στην Οτάβα, στις τέσσερις Δεκεμβρίου χίλια εννιακόσια ενενήντα επτά, σε δύο αντίτυπα στην αγγλική, γαλλική, γερμανική, δανική, ελληνική, ισπανική, ιταλική, ολλανδική, πορτογαλική, σουηδική και φινλανδική γλώσσα· όλα τα κείμενα είναι εξίσου αυθεντικά.

Done at Ottawa on the fourth day of December in the year one thousand nine hundred and ninety-seven, in two copies in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic.

Fait à Ottawa, le quatre décembre mil neuf cent quatre-vingt-dix-sept, en double exemplaire en langues allemande, anglaise, danoise, espagnole, finlandaise, française, grecque, italienne, néerlandaise, portugaise et suédoise, chaque texte faisant également foi.

Fatto a Ottawa, addì quattro dicembre millenovecentonovantasette. Il presente accordo è redatto in duplice esemplare in lingua danese, finnica, francese, greca, inglese, italiana, olandese, portoghese, spagnola, svedese e tedesca, tutti i testi facenti ugualmente fede.

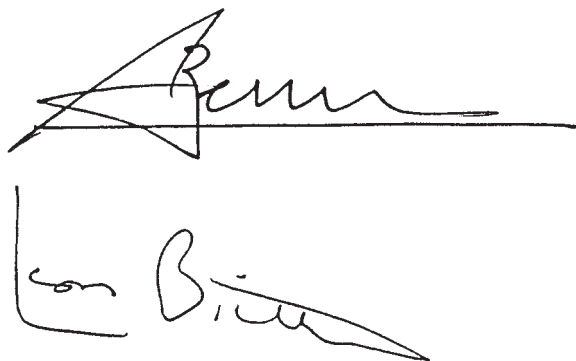
Gedaan te Ottawa, de vierde december negentienhonderd zevenennegentig in twee exemplaren in de Deense, de Duitse, de Engelse, de Finse, de Franse, de Griekse, de Italiaanse, de Nederlandse, de Portugese, de Spaanse en de Zweedse taal, zijnde alle teksten gelijkelijk authentiek.

Feito em Otava, em quatro de Dezembro de mil novecentos e noventa e sete, em duplo exemplar, nas línguas alemã, dinamarquesa, espanhola, finlandesa, francesa, grega, inglesa, italiana, neerlandesa portuguesa e sueca, fazendo igualmente fé todos os textos.

Tehty Ottawassa neljäntenä päivänä joulukuuta vuonna tuhatyhdeksänsataayhdeksänkymmentäseitsemän kahtena kappaleena englannin, espanjan, hollannin, italian, kreikan, portugalin, ranskan, ruotsin, saksan, suomen ja tanskan kielillä kaikkien tekstien ollessa yhtä todistusvoimaiset.

Som skedde i Ottawa den fjärde december nittonhundranittiosju i två exemplar på danska, engelska, finska, franska, grekiska, italienska, nederländska, portugisiska, spanska, svenska och tyska, vilka samtliga texter är lika giltiga.

Por la Comunidad Europea
For Det Europæiske Fællesskab
Für die Europäische Gemeinschaft
Για την Ευρωπαϊκή Κοινότητα
For the European Community
Pour la Communauté européenne
Per la Comunità europea
Voor de Europese Gemeenschap
Pela Comunidade Europeia
Euroopan yhteisön puolesta
På Europeiska gemenskapens vägnar



For the Government of Canada
Pour le gouvernement du Canada



Information on the entry into force of the Agreement between the European Community and Canada on Customs Cooperation and Mutual Assistance in Customs Matters

The Agreement between the European Community and Canada on customs cooperation and mutual assistance in customs matters which the Council decided to conclude on 27 November 1997 will enter into force on 1 January 1998, as the procedures laid down in Article 24 of the Agreement were completed on 4 December 1997.

COMMISSION

COMMISSION DECISION

of 6 January 1998

terminating the anti-dumping proceeding concerning imports of video tapes in cassettes originating in Hong Kong and the Republic of Korea

(98/19/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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⁾, as amended by Regulation (EC) No 2331/96⁽²⁾, and in particular Article 23(1) thereof,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidised imports from countries not members of the European Economic Community⁽³⁾, and in particular Articles 9(1) and 15,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

- (1) The Council, by Regulation (EEC) No 1768/89⁽⁴⁾, imposed a definitive anti-dumping duty on imports of video cassettes originating in the Republic of Korea and Hong Kong and terminated the anti-dumping proceeding with regard to imports of video tape reels originating in those same countries.

At the same time, the Commission accepted an undertaking offered by one Hong Kong exporter, Wing Shing Cassette Mfg Ltd⁽⁵⁾.

- (2) At the request of Hong Kong companies which had not exported during the original investigation period, newcomer reviews were subsequently carried out, pursuant to Article 14 of Council Regulation (EEC) No 2423/88 (hereinafter referred

to as Regulation 2423/88). As a result of one of these reviews, no measures were imposed on the imports concerned; in the others, variable and *ad valorem* duties were imposed⁽⁶⁾.

- (3) Following the publication of a notice of impending expiry of the measures in force⁽⁷⁾, a request for a review of the Regulation imposing the anti-dumping measures was lodged by the European Chemical Industrial Council (Cefic), acting on behalf of two producers of video cassettes in the Community, allegedly representing 45 % of total Community production.

Cefic claimed in its request that the expiry of the measures would lead to a recurrence of injury and that, despite the measures in force, continued and aggravated injurious effects from imported video cassettes from South Korea and Hong Kong were being felt, due to the low prices of these imports resulting from increased dumping. The evidence presented was considered sufficient, and in May 1994, the Commission gave notice of its intention to carry out a review⁽⁸⁾.

- (4) It should be recalled that in 1991 anti-dumping measures were adopted with regard to the same product originating in the People's Republic of China⁽⁹⁾.

These measures expired on the grounds that the Community industry failed to cooperate in the recently conducted expiry review investigation⁽¹⁰⁾.

⁽¹⁾ OJ L 56, 6. 3. 1996, p. 1.

⁽²⁾ OJ L 317, 6. 12. 1996, p. 1.

⁽³⁾ OJ L 209, 2. 8. 1988, p. 1.

⁽⁴⁾ OJ L 174, 22. 6. 1989, p. 1.

⁽⁵⁾ OJ L 174, 22. 6. 1989, p. 30.

⁽⁶⁾ OJ L 343, 7. 12. 1990, p. 1;

OJ L 139, 22. 5. 1992, p. 1;

OJ L 182, 2. 7. 1992, p. 6.

⁽⁷⁾ OJ C 344, 22. 12. 1993, p. 3.

⁽⁸⁾ OJ C 142, 25. 5. 1994, p. 2.

⁽⁹⁾ OJ L 293, 24. 10. 1991, p. 12.

⁽¹⁰⁾ OJ L 304, 7. 11. 1997, p. 19.

B. REVIEW INVESTIGATION

(5) By a notice published in September 1994⁽¹⁾, the Commission announced the initiation of a review investigation in accordance with Article 15 of Regulation 2423/88.

(6) The Commission officially advised the complainant Community industry, the exporters and the importers known to be concerned and the representatives of the exporting countries, and gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

(7) The Commission sent questionnaires to the parties known to be concerned and received replies from the two Community producers on behalf of which the review request had been lodged, from three Korean exporters and from importers in the Community related to two of the Korean exporters. Only one Hong Kong exporter cooperated by submitting a questionnaire response, from which it appeared that the company had not been exporting the product concerned during the investigation period, as defined in recital 11 below. No other Hong Kong exporters sent in questionnaire replies, although a number of companies in Hong Kong indicated that they were no longer exporting video cassettes to the Community.

The Commission received a submission from the Hong Kong government.

(8) The questionnaire response submitted by one of the two Community producers was considered to contain insufficient information; in addition, the company failed to submit a non-confidential version of its questionnaire response. Therefore, for the determination of injury, the Commission could not take into consideration the information supplied by this producer [see also recital (17)].

(9) On the basis of a request put forward by the Korean exporters, the three cooperating Korean exporters concerned and the Community industry met and exchanged views, in accordance with Article 7(6) of Regulation 2423/88.

(10) During the investigation, the Commission sought and verified all information it deemed necessary for the purposes of a determination and carried out verification visits at the premises of the following companies:

(a) Community producer:

— BASF Magnetics, GmbH, Mannheim (Germany), and its related sales companies,

— BASF Magnetics France, SA, Levallois-Perret (France),

— BASF, plc, Wembley, Middlesex (United Kingdom),

(hereinafter jointly referred to as BASF Magnetics);

(b) Producers/exporters in the Republic of Korea:

— SKC Ltd, Seoul,

— Kolon Industries Inc., Seoul,

— LG Electronics Inc., Seoul;

(c) Importers in the Community related to Korean producers/exporters

Germany:

— Kolon International GmbH, Frankfurt,

— SKC Europe GmbH, Frankfurt,

— LG Electronics Deutschland GmbH, Willich,

United Kingdom:

— Kolon Industries Inc., London (branch office),

— LG Electronics UK Ltd, Slough;

France:

— LG GoldStar France SARL, Marne La Vallée.

(11) The investigation period applied in the present proceeding was from 1 July 1993 until 30 June 1994. For the purposes of establishing whether the Community industry had suffered injury caused by the imports in question, the period from 1989, the year in which the measures under review were adopted, to the end of the investigation period was analysed. However, in that analysis, account had to be taken of two factors: first, for the period before 1991, the import data are only available in weight, and it is only from 1991 that more detailed statistical information has become available in respect of imports of video cassettes in units (both in volume and value), thus permitting a better analysis of the imports and their impact. Secondly, as outlined in recital 18, a significant change in the structure of the Community industry occurred in 1991, and consequently the analysis of the performance of the Community industry could only be done in a meaningful manner using figures from 1991 onward.

Consequently, the period between 1991 and the 30 June 1994 has provided the principal basis on which the existence of material injury to the Community industry has been examined.

(12) The investigation exceeded the indicative period of one year mentioned in Article 7(9)(a) of Regulation 2423/88, in the main due to the voluminous data to be analysed for a commodity product such as video cassettes which are sold in many varieties (i.e. different qualities and playing lengths), and the

⁽¹⁾ OJ C 260, 17. 9. 1994, p. 10.

fact that the quantity of transactions was extremely large. Furthermore, extensions were granted for replying to questionnaires upon request from various parties, including the Community industry. In addition, the Commission had to ask some parties to provide additional information on crucial issues.

Another element which influenced the investigation was the change of ownership of one of the complainants, as explained below (recital 18), which could have affected the continuation of the investigation. These negotiations, which led to the sale of BASF Magnetics to the Korean KOHAP group, were started in 1996 and came to a conclusion in January 1997.

C. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

- (13) The product which is covered by this review investigation is video tape in cassettes, prepared for recording but not recorded upon (i.e. video cassettes) operating under VHS standard, falling under CN code (ex) 8523 13 00.

As stated in Commission Regulation (EC) No 4062/88⁽¹⁾ imposing provisional duties on video cassettes from Hong Kong and Korea, video cassettes are in general manufactured under licence from JVC (Japan Victor Company). They are used in video cameras to take video films, or in video cassette recorders to record and play back television programmes, as well as pre-recorded movies or films taken with a video camera. Video cassettes may differ in relation to the length of the tape inserted in the cassette and the quality of the tape used, but can be considered as one category of products.

The investigation has shown that video cassettes produced and sold on the respective domestic market of Hong Kong and Korea and those exported to the Community from these countries have the same basic technical and physical characteristics, and have identical uses. The same is true when comparing the imported video cassettes from these countries into the Community and the video cassettes produced and sold by the Community industry. Furthermore, in terms of customer perception and sales channels, video cassettes from Hong Kong and Korea, and video cassettes sold by the Community industry are competing directly with each other.

Therefore, and in line with the findings of the Regulation under review, it was found that video cassettes originating in Korea and Hong Kong and those sold in the Community by the Community industry, form a like product within the meaning of Article 2(12) of Regulation 2423/88.

D. COMMUNITY INDUSTRY

- (14) At the time of the original investigation, the Community industry on behalf of which the complaint had been lodged, consisted of four producers. These producers were Agfa-Gevaert AG, BASF Magnetics GmbH, Magna Tonträger Produktions GmbH and PDM Magnetics.

After the imposition of the measures under review, Magna Tonträger Produktions GmbH ceased production of video cassettes. The production of Agfa-Gevaert was taken over by one of the other Community producers (BASF Magnetics GmbH). Furthermore, the production of PDM Magnetics was taken over by another company, Sauerland-Kunststoffe GmbH & Co., KG (hereinafter Sauerland). As a result, of the four complainant companies in the original investigation, two remained: BASF Magnetics and Sauerland. These two producers represented some 45 % of total production of video cassettes in the Community.

- (15) One of the exporters claimed that, based on Article 4(5) of Regulation 2423/88, BASF Magnetics should have been excluded from the definition of the Community industry, since BASF Magnetics was itself an importer of video cassettes. It was established during the investigation, however, that imports by BASF Magnetics from one of the countries concerned had indeed taken place in the past, but at low levels and during a limited period of time. The imports of video cassettes took place on an OEM basis, and consisted of specific orders for a particular market of a Member State where price competition was most severe. The volume of the imports was small in relation to total sales (at around 4 % for one year) and had been undertaken by the Community producer in an attempt to defend itself against fierce competition, including that from low priced imports, on that particular market. No imports were made by BASF Magnetics during the investigation period.

For these reasons, it was considered that BASF Magnetics should not be excluded from the definition of 'Community industry' in the sense of Article 4(5) of Regulation 2423/88.

⁽¹⁾ OJ L 356, 24. 12. 1988, p. 47.

- (16) Furthermore, it was claimed by Korean exporters that there was production in the Community by assemblers of video cassettes which should have been considered as part of the total production in the Community. The inclusion of this output would mean that the Community producers requesting the review would fall short of the required major proportion of Community production. However, when assessing the level of representativeness, it was considered, that the output of companies involved in mere assembly operations could not be regarded as genuine Community production. The value added in the assembly process of video cassettes is indeed limited. In addition, none of these assemblers claimed to be a Community producer. Consequently, only BASF Magnetics and Sauerland could be considered to be Community producers.

One of the two above companies, i.e. Sauerland, submitted an insufficient reply to the questionnaire. Therefore, the situation of this producer could not be taken into consideration for the purpose of the injury findings. It was found that the remaining cooperating Community producer, BASF Magnetics, representing by far the largest part of the total output of these two producers.

- (17) On the basis of the above factors, it was concluded that for the purpose of this proceeding, BASF Magnetics, alone fulfilled the requirements of Article 4(5) of Regulation 2423/88 and thus was considered as the Community industry within the meaning of this Article.
- (18) It is noted that after the investigation period, on 22 January 1997, change in ownership of BASF Magnetics occurred, and BASF Magnetics became part of the Korean KOHAP group. Subsequently the name of BASF Magnetics GmbH was altered to EMTEC Magnetics GmbH. This company expressed its continued support to the review request and the ongoing investigation.

E. INJURY

1. Community consumption of video cassettes

- (19) The most appropriate way to determine developments on the Community market was to carry out an analysis in unit terms. As regards Community consumption, it was found that figures coming from independent market research, and supplied by the Community industry, constituted the most reliable source, for two basic reasons; First, the calculation of apparent consumption was not

possible, since individual sales data from other market participants could not be obtained and secondly, official import statistics present data by weight (and not in units).

- (20) As regards the level of consumption, it appeared that after a steady rise in preceding years, Community consumption reached a peak in 1992 at 394 million units. On the basis of data available for 1993 and 1994, it was estimated that consumption in the investigation period was at 380 million units.

2. Factory relating to the imports

(a) Volume and market share of imports

- (21) It is recalled that the information available to the Commission from Eurostat covers a CN heading which includes video tape in cassettes as well as video tape on reels. Therefore, the Communities' official import statistics cannot give a precise picture of the level of imports of video tape in cassettes taken in isolation. For this reason, it was found necessary to consider other sources of information alongside Comext, such as official export statistics from the countries concerned, and other Community import data, containing more detailed information. These other Community import data, giving individual statistics for each type of video cassettes, are only available however from 1991, and conclusions drawn on this basis can therefore only relate to the period after 1991.

The Community industry claimed that the assessment of imports from Hong Kong should include imports from Macao, as these were allegedly of Hong Kong origin and were simply exported through Macao. However, an investigation conducted in 1994 by the Commission showed that the imports from Macao in question should be considered as being of Chinese origin. Consequently, there were no grounds to view imports from Macao as originating in Hong Kong.

With regard to imports from both Hong Kong and Korea, it is noted that the volume of imports recorded by Eurostat under CN heading 8523 13 00 (in tonnes) dropped drastically following the imposition of the original measures in 1989 as compared to 1988: in 1988, imports from Hong Kong were at 8 289 tonnes and fell to 1 314 tonnes in 1989, i.e. a drop of 84 %. Imports from Korea were at 17 511 tonnes in 1988, compared to 11 491 tonnes in 1989, i.e. a decline of 34 %.

Between 1989 and the end of the investigation period, imports from Hong Kong under the above CN code remained at a very low level, being at 1 279 tonnes in the investigation period. For Korea, imports showed in fact an increase between 1989 and 1990/1991 (from 11 491 tonnes to 20 938 tonnes), but steadily declined afterwards to 13 500 tonnes showing an overall decline of 23 % between 1988 and the investigation period.

As far as the development of imports in units is concerned, it appeared on the basis of data available that imports from Hong Kong remained at low levels between 1991 and the investigation period (4,8 million units). For Korea, imports declined from 37,3 million units in 1991 to 26,7 million units in the investigation period, i.e. a fall of 28 %.

- (22) As mentioned above (recital 19), Community consumption of video cassettes is expressed in units, whereas official import statistics present data by weight. Since not all imports of video tape from Hong Kong and Korea under the relevant customs code necessarily consisted of video tape in cassettes, the statistics of Comext could not be used to establish market share. Consequently, in order to assess the market share of the dumped imports, the information available from the above mentioned sources regarding imports in units was used.

That assessment showed that between 1991 and 1993, the market share for Hong Kong remained below 1 %, increasing to just 1,3 % in the investigation period, as a result of a slight increase in imports against a decrease in consumption. For Korea, market share decreased from 9,8 % in 1991 to 7 % in the investigation period.

- (23) The above evaluation of imports from the countries concerned and their market shares demonstrated that in general, imports from the countries concerned had decreased significantly over the period considered.

(b) *Prices of the imports*

Price developments

- (24) Given the fact that the data from Comext cover video tape in cassettes as well as video tape on reels, and the fact that these data covered a mixture of all types of video cassettes, import price data from Comext would not be meaningful.

An evaluation was therefore made using the information available in units. This was based on the two types of cassettes (E-180 and E-240) which

were most commonly imported and which represented the majority (more than 75 %) of the cassettes imported from the countries concerned during the investigation period.

It was established for these two types of cassettes that prices of imports from Hong Kong in fact increased between 1991 and the investigation period, by 57 % for the E-180 model and by 17 % for the E-240 model. For Korea, prices of imports of the E-180 model showed a certain increase (9 %) and prices of the E-240 model remained stable.

Price undercutting

- (25) It was examined whether the sales in the Community of video cassettes originating in Hong Kong and Korea were made at prices which undercut the prices of the Community producers. This analysis was done on the basis of sales made in three Member States which were considered representative given that their consumption of the product concerned accounted for more than two thirds of overall Community consumption.

- (26) It was found that for imports from Korea there was a certain amount of undercutting in two of the three Member States which were analysed, at levels varying between different types of video cassettes. For imports from Hong Kong, it was not possible to establish any particular level of undercutting as none of the exporters in Hong Kong cooperated in the investigation. Moreover, the Community industry was not able to provide any further evidence of sales on the Community market of video cassettes originating in Hong Kong, which in itself can be explained by the very low level of imports and market share held by imports from Hong Kong. Therefore, in accordance with Article 7(7)(b) of Regulation 2423/88, findings were made on the facts available to the Commission.

It was considered that statistical data provided the most appropriate source of information. The import figures, which were analysed for the two types of cassette most commonly imported, showed that during the investigation period imports from Hong Kong were sold at prices very similar to those of imports from Korea. Although a higher anti-dumping duty is applicable to imports from Hong Kong, 21,9 %, as opposed to 3,8 % for Korea, it was nevertheless concluded that imports from Hong Kong were also sold at prices which to a certain degree undercut those of the Community industry.

3. Factors relating to the Community industry

- (27) In describing the situation of the Community industry, account had to be taken of the fact that in 1991 the acquisition of Agfa by BASF AG took place. A comparison with prior years would, therefore, not be meaningful, as explained in recital 11. Given that the Community industry in the sense of Article 4(5) of Regulation 2423/88 consists of a single company, the figures relating to that company are, for reasons of confidentiality, given only in relative terms.

(a) Sales volume and market share

- (28) Between 1991 and 1993, sales of the product concerned by the Community industry decreased by some 27 %. However, between 1993 and the investigation period, an increase of nearly 6 % was recorded. The same trend applied to its market share, which after a decrease between 1991 and 1993, rose in the investigation period by 10 index points.

(b) Sales prices, turnover and profitability

- (29) As to the sales prices of the Community industry, a decrease of more than 20 % between 1991 and the investigation period was noted. This decrease was accompanied by a larger decrease of the cost of production. Some of this cost reduction was realised through the closing of one of the plants used for a part of video cassette production. The closure was due to a decision to outsource a particular part of the production process. Even though the Community industry had lost turnover as a result of decreasing sales and lower selling prices, it was able, as a result of important cost reductions, to achieve a significant improvement of its financial situation. From the period 1991/92, financial losses were progressively eliminated, with a situation of around break-even reached in the investigation period. However, in spite of this positive trend, the financial situation of the Community industry was still unsatisfactory in the investigation period.

(c) Production, capacity and capacity utilisation

- (30) Taking into consideration the abovementioned acquisition by BASF AG of Agfa in 1991, an increase in total production was recorded for 1992. Between 1992 and 1993, production dropped by 19 %, but increased again between 1993 and the investigation period (by 3 %). Capacity utilisation, according to BASF Magnetics, could be adjusted in

line with production requirements at any given time, resulting in a stable utilisation of the capacity available.

(d) Personnel employed

- (31) Between 1991 and the investigation period, the Community industry reduced the workforce involved in the production and sales of video cassettes by more than 40 %. This reduction of employment was to a significant degree the result of closure of the production site referred to above, which alone led to the disappearance of more than 450 jobs.

(e) Conclusion

- (32) The examination of the above mentioned indicators shows that negative developments occurred during the period 1991-1993. However, the situation of the Community industry has been more positive between 1993 and the investigation period, showing signs of a recovery and an improving trend. Nevertheless, in spite of the improvement, the financial position of the Community industry remained unsatisfactory, notably as regards its financial performance.

F. CAUSATION

- (33) The Commission investigated whether the volumes and prices of the imports concerned were responsible for the situation of the Community industry, and had an impact thereon to a degree which enables it to be classified as material injury within the meaning of Article 4(1) of Regulation 2423/88. Care was taken to ensure that any effects on the situation of the Community industry caused by other factors was not attributed to the imports concerned.
- (34) As far as Hong Kong is concerned, imports strongly decreased from 1988 levels and, during the investigation period, held only a 1,3 % market share. As a result, it cannot, in the specific circumstances of the case, be maintained that imports from Hong Kong continued to have an impact which can be classified as material on the situation of the Community industry.
- (35) In respect of Korea, imports also diminished, with a market share of 7 % in the investigation period, compared with a market share of about 9,8 % in 1991. This loss of market share was, in percentage terms, stronger than that recorded for the Community industry.

- (36) As to the developments of import prices for video cassettes of Korean origin, a stable slightly increasing trend was observed while for cassettes originating in Hong Kong, import prices rose significantly.
- (37) The investigation also showed that the downward movement in BASF's sales prices was accompanied by an even stronger decrease in its costs of production, leading to an improvement of the company's financial situation.
- (38) As regards imports from third countries, some of them increased their import volumes substantially over the period examined. Between the year of the adoption of the measures (1989) and the investigation period, imports in particular from India, Macao, Malaysia, Singapore, Taiwan, Thailand and Turkey increased from 4 415 tonnes to 21 310 tonnes. Between 1991 and the investigation period, the number of units imported from these countries went from nearly 32 million units to 82 million units. In terms of market share, this represents a move from an 8,5 % to 21,7 %, to which the market shares of the USA (2,2 %) and of Japan (6,7 %) in the investigation period must be added. It is also important to note that an assessment for the investigation period showed that prices of imports from these countries were considerably below those of imports from Hong Kong and Korea and consequently undercutting substantially those of the Community industry.

In summary, at the same time that imports from other countries were increasing, imports from Hong Kong and Korea were falling.

- (39) It should be noted that a number of other (non-complainant) producers exist in the Community together with a certain number of assemblers of video cassettes. None of these other producers/assemblers presented themselves in support of the request lodged on behalf of BASF Magnetics and Sauerland.

On the basis of the facts available, it was determined that in the investigation period some 40 % (in terms of market share) of the Community market was supplied by imported video cassettes, with the remaining 60 % accounted for by suppliers within the Community, including the Community industry. It is therefore likely that competitive pressure from these other Community sources has played a considerable part in the price decline on the Community market, to which the Community industry was forced to align. In this respect, it should also be noted that competition from suppliers within the Community increased since Saehan Media, one of the Korean exporters

subject to the measures under review, set up a production plant in Ireland in order to supply the market from within the Community.

Conclusion on causation

- (40) In the light of the above, it is concluded that the combined imports from Hong Kong and Korea did not, in isolation, have an impact on the situation of the Community industry which can be classified as material. The fact that the Community industry did not obtain better results appears rather to be attributable to imports from other third countries and competition from other sources within the Community.

G. RECURRENCE OF INJURY

- (41) In accordance with Article 15 of Regulation 2423/88, it was assessed whether the expiry of the measures would be likely to lead to a recurrence of injury.

In the light of the following arguments and the above analysis, the following was considered:

— As regards the volume of imports, the above mentioned factors show the existence of low imports from Hong Kong, and decreasing imports from Korea. In the light of this and the imports from other countries and competition from other sources, it cannot be expected that imports from Hong Kong and Korea will again increase to injurious levels should the existing measures expire. Regarding the claim of the Community industry that the potential for exports from Hong Kong could be demonstrated by imports from Hong Kong origin being shipped through Macao, this allegation could not be accepted, for the reasons outlined in recital 21.

Furthermore, it is worth recalling that imports from Korea are subject to relatively low anti-dumping duties and that, although these duties have in themselves had a remedial effect, it can not be expected that their disappearance would in the foreseeable future, have a strong impact on the export behaviour of the Korean producers and lead to significantly higher quantities of imports of video cassettes originating in Korea.

— As regards price depression, the limited volumes and higher prices of the imports from Hong Kong and Korea in comparison with imports from other countries, and the strong competition from other sources within the

Community, do not suggest that the expiry and the anti-dumping measures concerning these two countries will have an appreciable price depressing effect on the Community market.

- As to the existence of unused capacity in the countries subject to this proceeding, the statistics have shown that imports from Hong Kong have been at very low levels since the measures under review were imposed. It cannot be expected that, for this extended period of time, a significant production capacity has remained in place. This conclusion is strengthened by an analysis of Hong Kong export statistics, which show that world-wide exports from Hong Kong have strongly decreased since 1988. This is also an indication that its production capacity has also diminished. In this regard, it is noted that the estimate made by the Community industry of idle production capacity in Hong Kong of 28 million units has not been supported by evidence.

As to Korean production capacity, it should first of all be recalled that production capacity fell as a result of the relocation of production by Saehan to a site within the Community. Furthermore, the investigation showed that the average production capacity utilisation of the three cooperating producers, which in the investigation period accounted for the quasi totality of exports to the Community, was above 80 %. On the basis of these factors, it is concluded that, although the unused capacity would still represent a significant amount of video cassettes, large scope for increasing production and exports does not exist. In addition, no circumstances exist, such as the imposition of anti-dumping duties by third countries, which clearly indicate that the remaining production potential would be directed towards exports to the Community. The trends in Korean exports to the Community would indeed indicate the contrary, as the investigation showed a strong decrease in the volume of imports from Korea between 1992 and the investigation period, and a decrease in its market share, a trend which is confirmed by developments in more recent years.

- As regards stocks, the investigation showed that with average stocks being at slightly over 8 % of production for the co-operating Korean firms, no important excess volumes existed.

- (42) In view of the fact that the length of the investigation has substantially exceeded the normal time period, and in view of the changes in the structure of the Community industry mentioned in recital 18 it was deemed appropriate to assess whether the foregoing developments were sustained after the investigation period: this assessment revealed a further fall for the imports from Hong Kong to a level of 0,5 % market share in 1996 in the market of the 15 Member States and a drastic fall in imports from Korea which fell to a market share of 0,5 % in 1996 (in the Community of 15). At the same time, the Community industry showed further signs of recovery.
- (43) From the above factors, the conclusion is drawn that it cannot be expected that, as a result of the expiry of the current anti-dumping measures, imports originating in Hong Kong and Korea will have a renewed injurious impact on the Community industry which could be qualified as material.

H. DUMPING

- (44) In view of the above conclusions, i.e. that imports from Hong Kong and Korea have not had an impact which can be classified as material, and the fact that a recurrence of injury as a result of a lapsing of the measures is not expected, the conditions for a continuation of the current measures have not been met. The existence or not of a particular level of dumping for imports from individual sources could not alter the conclusions reached and has, therefore, not been established.

I. CONCLUSION

- (45) Given the above findings, it is considered that any existing injury suffered by the Community industry has not, to a degree which allows it to be classified as material, been caused by dumped imports of video cassettes from Hong Kong and Korea but by imports from other third countries and competition from non-complainant Community operators. Furthermore, as set out in recitals (41) to (43) it can not be expected that, as a result of the expiry of the current measures, there will be a recurrence of injury, or a threat of injury, caused by imports from these two countries. It is considered therefore that the anti-dumping proceeding concerning imports of video tapes in cassettes originating in Hong Kong and the Republic of Korea should be terminated, and that

the anti-dumping measures in force should expire forthwith. This conclusion is reinforced by the fact that anti-dumping measures applicable to imports of videocassettes originating in the People's Republic of China have expired as mentioned in recital (4) and that any discriminatory treatment of imports originating in Korea and Hong Kong should be avoided.

- (46) The Commission communicated its conclusions to the Community industry, which expressed its disagreement on particular points and on the conclusion reached. However, after examination of the information and arguments provided, the Commission confirms the above conclusion.
- (47) The Member States did not raise any objections to the termination of the review proceeding.

HAS DECIDED AS FOLLOWS:

Sole Article

The anti-dumping review proceeding concerning imports into the Community of video tapes in cassettes, falling within CN code ex 8523 13 00 originating in Hong Kong and the Republic of Korea is terminated.

Done at Brussels, 6 January 1998.

For the Commission

Leon BRITTAN

Vice-President
