

Official Journal

of the European Communities

ISSN 0378-6978

L 166

Volume 41

11 June 1998

English edition

Legislation

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I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC, ECSC, EURATOM) No 1197/98
of 5 June 1998**

amending Regulation (EEC, Euratom, ECSC) No 260/68 laying down the conditions and procedure for applying the tax for the benefit of the European Communities

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing a single Council and a single Commission of the European Communities,

Article 1

Having regard to the Protocol on the privileges and immunities of the European Communities, and in particular Articles 13 and 23 thereof,

Article 12a of Regulation (EEC, Euratom, ECSC) No 260/68 shall be repealed with effect from the day after the date on which the liquidation of the European Monetary Institute is completed.

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

Article 2

Having regard to the opinion of the European Parliament ⁽²⁾,

The following shall be inserted in Regulation (EEC, Euratom, ECSC) No 260/68:

- (1) Whereas the European Monetary Institute has delivered an opinion ⁽³⁾;
- (2) Whereas the European Central Bank is already established;
- (3) Whereas it is appropriate to extend the application of the tax for the benefit of the European Communities, on the terms and in accordance with the procedure laid down in Regulation (EEC, Euratom, ECSC) No 260/68 ⁽⁴⁾, to the salaries, wages and emoluments of the members of the Governing Council and the General Council of the European Central Bank and the staff of that Bank; whereas the application of this tax to the European Monetary Institute becomes irrelevant when the liquidation of the Institute is completed,

'Article 12c

This Regulation shall apply to the members of the Governing Council and of the General Council of the European Central Bank, to members of its staff and to recipients of the pensions paid by the Bank who are included in the categories determined by the Council pursuant to the first subparagraph of Article 16 of the Protocol on the privileges and immunities of the European Communities, with regard to salaries, wages and emoluments and to disability, retirement and survivors' pensions paid by the Bank.'

Article 3

This Regulation shall be applicable as from 1 June 1998.

Article 4

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

⁽¹⁾ OJ C 118, 17. 4. 1998, p. 14.

⁽²⁾ Opinion delivered on 28 May 1998 (not yet published in the Official Journal).

⁽³⁾ Opinion delivered on 6 April 1998 (not yet published in the Official Journal).

⁽⁴⁾ OJ L 56, 4. 3. 1968, p. 8. Regulation as last amended by Regulation (ECSC, EC, Euratom) No 2190/97 (OJ L 301, 5. 11. 1997, p. 1).

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

Done at Luxembourg, 5 June 1998.

For the Council

The President

G. BROWN

**COUNCIL REGULATION (EC, ECSC, EURATOM) No 1198/98
of 5 June 1998**

amending Regulation (Euratom, ECSC, EEC) No 549/69 determining the categories of officials and other servants of the European Communities to whom the provisions of Article 12, the second subparagraph of Article 13 and Article 14 of the Protocol on the privileges and immunities of the Communities apply

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing a single Council and a single Commission of the European Communities,

Having regard to the Protocol on the privileges and immunities of the European Communities, and in particular Article 16 and Article 23 thereof,

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

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Court of Justice ⁽³⁾,

Having regard to the opinion of the Court of Auditors ⁽⁴⁾,

- (1) Whereas the European Monetary Institute has delivered an opinion ⁽⁵⁾;
- (2) Whereas the European Central Bank is already established;
- (3) Whereas it is appropriate to extend to the European Central Bank the application of Regulation (Euratom, ECSC, EEC) No 549/69 ⁽⁶⁾, in order to ensure that the members of the staff of the European Central Bank, in view of their duties and responsibilities and of their particular situation, benefit from the same privileges, immunities and facilities,

HAS ADOPTED THIS REGULATION:

Article 1

Article 4a of Regulation (Euratom, ECSC, EEC) No 549/69 shall be repealed with effect from the day after the

date on which the liquidation of the European Monetary Institute is completed.

Article 2

The following shall be inserted in Regulation (Euratom, ECSC, EEC) No 549/69:

Article 4c

Without prejudice to Article 23 of the Protocol on the privileges and immunities of the European Communities with regard to the members of the Governing Council and of the General Council of the European Central Bank, the privileges and immunities provided for in Article 12, in the second subparagraph of Article 13 and in Article 14 of the Protocol shall apply under the same conditions and within the same limits as those laid down in Articles 1, 2 and 3 of this Regulation to:

- staff of the European Central Bank,
- persons receiving disability, retirement or survivors' pensions paid by the European Central Bank.

Article 3

This Regulation shall be applicable as from 1 June 1998.

Article 4

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

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

Done at Luxembourg, 5 June 1998.

For the Council
The President
G. BROWN

⁽¹⁾ OJ C 118, 17. 4. 1998, p. 15.

⁽²⁾ Opinion delivered on 28 May 1998 (not yet published in the Official Journal).

⁽³⁾ Opinion delivered on 6 May 1998 (not yet published in the Official Journal).

⁽⁴⁾ Opinion delivered on 14 May 1998 (not yet published in the Official Journal).

⁽⁵⁾ Opinion delivered on 6 April 1998 (not yet published in the Official Journal).

⁽⁶⁾ OJ L 74, 27. 3. 1969, p. 1. Regulation as last amended by Regulation (ECSC, EC, Euratom) No 2191/97 (OJ L 301, 5. 11. 1997, p. 3).

COMMISSION REGULATION (EC) No 1199/98
of 10 June 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 Commis-

sion 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 11 June 1998.

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

Done at Brussels, 10 June 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 10 June 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	85,8
	999	85,8
0707 00 05	052	86,9
	999	86,9
0709 90 70	052	59,3
	999	59,3
0805 30 10	382	59,8
	388	60,5
	528	53,0
	999	57,8
0808 10 20, 0808 10 50, 0808 10 90	388	71,0
	400	91,5
	404	91,0
	508	96,9
	512	76,0
	524	63,6
	528	72,7
	804	107,4
	999	83,8
	052	228,5
0809 10 00	999	228,5
	052	334,8
0809 20 95	616	376,1
	999	355,4

⁽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 1200/98
of 10 June 1998**

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

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

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

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

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

whereas offer prices which can be regarded as not representative of actual market trends must also be disregarded;

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

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

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 11 June 1998.

⁽¹⁾ OJ L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ L 141, 24. 6. 1995, p. 12.

⁽⁴⁾ OJ L 145, 27. 6. 1968, p. 12.

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

Done at Brussels, 10 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

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

CN code	Amount of the representative price in ECU per 100 kg net of the product in question	Amount of the additional duty in ECU per 100 kg net of the product in question	Amount of the duty to be applied to imports in ECU per 100 kg net of the product in question because of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 ⁽²⁾
1703 10 00 ⁽¹⁾	6,95	0,05	—
1703 90 00 ⁽¹⁾	8,27	—	0,00

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

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

COMMISSION REGULATION (EC) No 1201/98**of 10 June 1998****fixing the export refunds on white sugar and raw sugar exported in its unaltered state**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas Article 19 of Regulation (EEC) No 1785/81 provides that the difference between quotations or prices on the world market for the products listed in Article 1 (1) (a) of that Regulation and prices for those products within the Community may be covered by an export refund;

Whereas Regulation (EEC) No 1785/81 provides that when refunds on white and raw sugar, undenatured and exported in its unaltered state, are being fixed account must be taken of the situation on the Community and world markets in sugar and in particular of the price and cost factors set out in Article 17a of that Regulation; whereas the same Article provides that the economic aspect of the proposed exports should also be taken into account;

Whereas the refund on raw sugar must be fixed in respect of the standard quality; whereas the latter is defined in Article 1 of Council Regulation (EEC) No 431/68 of 9 April 1968 determining the standard quality for raw sugar and fixing the Community frontier crossing point for calculating cif prices for sugar ⁽³⁾, as amended by Regulation (EC) No 3290/94 ⁽⁴⁾; whereas, furthermore, this refund should be fixed in accordance with Article 17a (4) of Regulation (EEC) No 1785/81; whereas candy sugar is defined in Commission Regulation (EC) No 2135/95 of 7 September 1995 laying down detailed rules of application for the grant of export refunds in the sugar sector ⁽⁵⁾; whereas the refund thus calculated for sugar containing added flavouring or colouring matter must apply to their

sucrose content and, accordingly, be fixed per 1 % of the said content;

Whereas the world market situation or the specific requirements of certain markets may make it necessary to vary the refund for sugar according to destination;

Whereas, in special cases, the amount of the refund may be fixed by other legal instruments;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92 ⁽⁶⁾, as last amended by Regulation (EC) No 150/95 ⁽⁷⁾, are used to convert amounts expressed in third country currencies and are used as the basis for determining the agricultural conversion rates of the Member States' currencies; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93 ⁽⁸⁾, as last amended by Regulation (EC) No 961/98 ⁽⁹⁾;

Whereas the refund must be fixed every two weeks; whereas it may be altered in the intervening period;

Whereas it follows from applying the rules set out above to the present situation on the market in sugar and in particular to quotations or prices for sugar within the Community and on the world market that the refund should be as set out in the Annex hereto;

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 11 June 1998.

⁽¹⁾ OJ L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ L 89, 10. 4. 1968, p. 3.

⁽⁴⁾ OJ L 349, 31. 12. 1994, p. 105.

⁽⁵⁾ OJ L 214, 8. 9. 1995, p. 16.

⁽⁶⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁷⁾ OJ L 22, 31. 1. 1995, p. 1.

⁽⁸⁾ OJ L 108, 1. 5. 1993, p. 106.

⁽⁹⁾ OJ L 135, 8. 5. 1998, p. 5.

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

Done at Brussels, 10 June 1998.

For the Commission
 Franz FISCHLER
Member of the Commission

ANNEX

to the Commission Regulation of 10 June 1998 fixing the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Amount of refund
	— ECU/100 kg —
1701 11 90 9100	40,92 ⁽¹⁾
1701 11 90 9910	41,20 ⁽¹⁾
1701 11 90 9950	⁽²⁾
1701 12 90 9100	40,92 ⁽¹⁾
1701 12 90 9910	41,20 ⁽¹⁾
1701 12 90 9950	⁽²⁾
	— ECU/1 % of sucrose × 100 kg —
1701 91 00 9000	0,4448
	— ECU/100 kg —
1701 99 10 9100	44,48
1701 99 10 9910	44,79
1701 99 10 9950	44,79
	— ECU/1 % of sucrose × 100 kg —
1701 99 90 9100	0,4448

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

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

COMMISSION REGULATION (EC) No 1202/98
of 10 June 1998

fixing the maximum export refund for white sugar for the 42nd partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1408/97

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

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

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

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

Whereas, following an examination of the tenders submitted in response to the 42nd partial invitation to tender, the provisions set out in Article 1 should be adopted;

Whereas the Management Committee for Sugar has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

For the 42nd partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1408/97 the maximum amount of the export refund is fixed at ECU 47,800 per 100 kilograms.

Article 2

This Regulation shall enter into force on 11 June 1998.

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

Done at Brussels, 10 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ L 194, 23. 7. 1997, p. 16.

COMMISSION REGULATION (EC) No 1203/98
of 9 June 1998
establishing unit values for the determination of the customs value of certain
perishable goods

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

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

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽³⁾, as last amended by Regulation (EC) No 75/98 ⁽⁴⁾, and in particular Article 173 (1) thereof,

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

Whereas the result of applying the rules and criteria laid down in the abovementioned Articles to the elements communicated to the Commission in accordance with Article 173 (2) of Regulation (EEC) No 2454/93 is that unit values set out in the Annex to this Regulation should be established in regard to the products in question,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 12 June 1998.

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

Done at Brussels, 9 June 1998.

For the Commission

Martin BANGEMANN

Member of the Commission

⁽¹⁾ OJ L 302, 19. 10. 1992, p. 1.

⁽²⁾ OJ L 17, 21. 1. 1997, p. 1.

⁽³⁾ OJ L 253, 11. 10. 1993, p. 1.

⁽⁴⁾ OJ L 7, 13. 1. 1998, p. 3.

ANNEX

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	ECU FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
1.10	New potatoes 0701 90 51 0701 90 59	a) b) c)	39,81 238,19 343,93	551,43 262,80 1 616,49	78,36 31,07 26,99	298,55 77 179,25	13 306,53 88,33	6 653,92 8 025,30
1.30	Onions (other than seed) 0703 10 19	a) b) c)	46,52 278,34 401,90	644,37 307,09 1 888,95	91,57 36,30 31,54	348,87 90 187,86	15 549,36 103,22	7 775,45 9 377,97
1.40	Garlic 0703 20 00	a) b) c)	134,07 802,16 1 158,27	1 857,07 885,03 5 443,94	263,91 104,63 90,91	1 005,43 259 920,17	44 813,03 297,48	22 408,73 27 027,17
1.50	Leeks ex 0703 90 00	a) b) c)	39,59 236,87 342,03	548,38 261,34 1 607,56	77,93 30,90 26,84	296,90 76 752,74	13 233,00 87,84	6 617,15 7 980,95
1.60	Cauliflowers 0704 10 10 0704 10 05 0704 10 80	a) b) c)	75,84 453,76 655,20	1 050,50 500,64 3 079,50	149,29 59,18 51,42	568,75 147 030,25	25 349,60 168,28	12 676,05 15 288,59
1.70	Brussels sprouts 0704 20 00	a) b) c)	59,69 357,13 515,68	826,80 394,03 2 423,72	117,50 46,58 40,47	447,63 115 720,41	19 951,44 132,44	9 976,71 12 032,91
1.80	White cabbages and red cabbages 0704 90 10	a) b) c)	49,38 295,45 426,61	683,99 325,97 2 005,08	97,20 38,54 33,48	370,31 95 732,51	16 505,31 109,57	8 253,47 9 954,51
1.90	Sprouting broccoli or calabrese (<i>Brassica oleracea</i> L. <i>convar. botrytis</i> (L.) Alef var. <i>italica</i> Plenck) ex 0704 90 90	a) b) c)	105,95 633,92 915,33	1 467,57 699,40 4 302,12	208,56 82,68 71,84	794,55 205 404,21	35 413,89 235,09	17 708,69 21 358,46
1.100	Chinese cabbage ex 0704 90 90	a) b) c)	57,59 344,57 497,53	797,71 380,17 2 338,45	113,36 44,94 39,05	431,88 111 649,16	19 249,52 127,78	9 625,71 11 609,57
1.110	Cabbage lettuce (head lettuce) 0705 11 10 0705 11 05 0705 11 80	a) b) c)	152,67 913,45 1 318,96	2 114,71 1 007,81 6 199,20	300,53 119,14 103,52	1 144,92 295 979,80	51 030,10 338,75	25 517,57 30 776,75
1.120	Endives ex 0705 29 00	a) b) c)	21,82 130,55 188,51	302,24 144,04 886,01	42,95 17,03 14,80	163,63 42 302,22	7 293,36 48,42	3 647,04 4 398,69
1.130	Carrots ex 0706 10 00	a) b) c)	43,10 257,87 372,35	597,00 284,51 1 750,08	84,84 33,63 29,22	323,22 83 557,54	14 406,22 95,63	7 203,82 8 688,53
1.140	Radishes ex 0706 90 90	a) b) c)	173,89 1 040,41 1 502,28	2 408,64 1 147,89 7 060,84	342,30 135,70 117,91	1 304,05 337 118,80	58 122,91 385,84	29 064,32 35 054,49
1.160	Peas (<i>Pisum sativum</i>) 0708 10 90 0708 10 20 0708 10 95	a) b) c)	371,06 2 220,11 3 205,68	5 139,74 2 449,46 15 066,97	730,42 289,57 251,60	2 782,68 719 370,31	124 027,18 823,33	62 019,71 74 801,99

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	ECU FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
1.170	Beans:							
1.170.1	Beans (<i>Vigna</i> spp., <i>Phaseolus</i> spp.) ex 0708 20 90 ex 0708 20 20 ex 0708 20 95	a) b) c)	132,61 793,43 1 145,65	1 836,85 875,39 5 384,66	261,04 103,49 89,92	994,48 257 089,68	44 325,03 294,24	22 164,70 26 732,85
1.170.2	Beans (<i>Phaseolus</i> spp., <i>vulgaris</i> var. <i>Compressus Savi</i>) ex 0708 20 90 ex 0708 20 20 ex 0708 20 95	a) b) c)	138,76 830,22 1 198,78	1 922,03 915,99 5 634,38	273,14 108,29 94,09	1 040,60 269 012,62	46 380,67 307,89	23 192,62 27 972,63
1.180	Broad beans ex 0708 90 00	a) b) c)	157,74 943,78 1 362,76	2 184,94 1 041,28 6 405,06	310,51 123,10 106,96	1 182,94 305 808,96	52 724,75 350,00	26 364,98 31 798,81
1.190	Globe artichokes 0709 10 00	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
1.200	Asparagus:							
1.200.1	— green ex 0709 20 00	a) b) c)	334,19 1 999,51 2 887,15	4 629,03 2 206,07 13 569,85	657,84 260,80 226,60	2 506,18 647 890,81	111 703,34 741,52	55 857,18 67 369,36
1.200.2	— other ex 0709 20 00	a) b) c)	219,37 1 312,53 1 895,19	3 038,60 1 448,12 8 907,56	431,82 171,19 148,75	1 645,12 425 290,43	73 324,64 486,75	36 665,94 44 222,80
1.210	Aubergines (eggplants) 0709 30 00	a) b) c)	100,34 600,35 866,86	1 389,86 662,37 4 074,33	197,52 78,30 68,04	752,48 194 528,15	33 538,75 222,64	16 771,03 20 227,54
1.220	Ribbed celery (<i>Apium graveolens</i> L., var. <i>dulce</i> (Mill.) Pers.) ex 0709 40 00	a) b) c)	73,88 442,04 638,27	1 023,35 487,70 2 999,91	145,43 57,65 50,10	554,05 143 230,42	24 694,46 163,93	12 348,45 14 893,47
1.230	Chantarelles 0709 51 30	a) b) c)	1 156,82 6 921,44 9 994,07	16 023,69 7 636,46 46 972,91	2 277,17 902,76 784,40	8 675,32 2 242 715,37	386 668,24 2 566,82	193 353,21 233 203,34
1.240	Sweet peppers 0709 60 10	a) b) c)	182,85 1 094,02 1 579,69	2 532,75 1 207,04 7 424,66	359,93 142,69 123,98	1 371,24 354 489,47	61 117,80 405,72	30 561,91 36 860,73
1.250	Fennel 0709 90 50	a) b) c)	73,55 440,06 635,42	1 018,78 485,52 2 986,51	144,78 57,40 49,87	551,57 142 590,65	24 584,16 163,20	12 293,29 14 826,94
1.270	Sweet potatoes, whole, fresh (intended for human consumption) 0714 20 10	a) b) c)	90,95 544,17 785,74	1 259,79 600,38 3 693,04	179,03 70,98 61,67	682,06 176 323,86	30 400,13 201,81	15 201,56 18 334,61
2.10	Chestnuts (<i>Castanea</i> spp.), fresh ex 0802 40 00	a) b) c)	140,29 839,38 1 212,00	1 943,23 926,09 5 696,50	276,16 109,48 95,13	1 052,07 271 978,82	46 892,07 311,28	23 448,35 28 281,06
2.30	Pineapples, fresh ex 0804 30 00	a) b) c)	69,89 418,16 603,80	968,08 461,36 2 837,90	137,58 54,54 47,39	524,12 135 495,04	23 360,80 155,08	11 681,55 14 089,13

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	ECU FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
2.40	Avocados, fresh ex 0804 40 90 ex 0804 40 20 ex 0804 40 95	a) b) c)	105,70 632,42 913,17	1 464,10 697,15 4 291,97	208,07 82,49 71,67	792,67 204 919,53	35 330,33 234,53	17 666,91 21 308,06
2.50	Guavas and mangoes, fresh ex 0804 50 00	a) b) c)	100,85 603,40 871,27	1 396,92 665,74 4 095,03	198,52 78,70 68,38	756,30 195 516,89	33 709,21 223,77	16 856,27 20 330,35
2.60	Sweet oranges, fresh:							
2.60.1	— Sanguines and semi-sanguines 0805 10 10	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.60.2	— Navels, navelines, navelates, salustianas, vernas, Valencia lates, Maltese, shamoutis, ovalis, trovita and hamlins 0805 10 30	a) b) c)	40,05 239,63 346,00	554,75 264,38 1 626,24	78,84 31,25 27,16	300,35 77 644,53	13 386,75 88,87	6 694,04 8 073,68
2.60.3	— Others 0805 10 50	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.70	Mandarins (including tangerines and satsumas), fresh; clementines, wilkings and similar citrus hybrids, fresh:							
2.70.1	— Clementines 0805 20 10	a) b) c)	87,40 522,93 755,07	1 210,62 576,95 3 548,89	172,04 68,21 59,26	655,44 169 441,51	29 213,54 193,93	14 608,21 17 618,97
2.70.2	— Monreales and satsumas 0805 20 30	a) b) c)	69,60 416,43 601,29	964,06 459,45 2 826,12	137,01 54,31 47,19	521,95 134 932,82	23 263,87 154,43	11 633,08 14 030,66
2.70.3	— Mandarines and wilkings 0805 20 50	a) b) c)	81,55 487,93 704,53	1 129,59 538,33 3 311,35	160,53 63,64 55,30	611,57 158 100,17	27 258,17 180,95	13 630,43 16 439,66
2.70.4	— Tangerines and others ex 0805 20 70 ex 0805 20 90	a) b) c)	65,21 390,16 563,37	903,26 430,47 2 647,87	128,36 50,89 44,22	489,03 126 421,97	21 796,51 144,69	10 899,33 13 145,68
2.85	Limes (<i>Citrus aurantifolia</i>), fresh ex 0805 30 90	a) b) c)	115,50 691,05 997,83	1 599,85 762,44 4 689,90	227,36 90,13 78,32	866,17 223 918,70	38 605,99 256,28	19 304,90 23 283,65
2.90	Grapefruit, fresh:							
2.90.1	— white ex 0805 40 90 ex 0805 40 20 ex 0805 40 95	a) b) c)	53,51 320,16 462,29	741,19 353,23 2 172,78	105,33 41,76 36,28	401,29 103 739,30	17 885,77 118,73	8 943,77 10 787,08
2.90.2	— pink ex 0805 40 90 ex 0805 40 20 ex 0805 40 95	a) b) c)	60,41 361,44 521,90	836,77 398,78 2 452,96	118,92 47,14 40,96	453,03 117 116,26	20 192,10 134,04	10 097,05 12 178,05
2.100	Table grapes ex 0806 10 10	a) b) c)	223,35 1 336,34 1 929,58	3 093,73 1 474,39 9 069,17	439,66 174,30 151,45	1 674,96 433 006,41	74 654,96 495,58	37 331,17 45 025,13

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	ECU FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
2.110	Water melons 0807 11 00	a) b) c)	36,23 216,77 313,00	501,84 239,16 1 471,13	71,32 28,27 24,57	271,70 70 238,74	12 109,91 80,39	6 055,55 7 303,61
2.120	Melons (other than water melons):							
2.120.1	— Amarillo, cuper, honey dew (including cantalene), onteniente, piel de sapo (including verde liso), rochet, tendral, futuro ex 0807 19 00	a) b) c)	59,74 357,43 516,11	827,49 394,36 2 425,75	117,60 46,62 40,51	448,01 115 817,34	19 968,15 132,55	9 985,06 12 042,99
2.120.2	— other ex 0807 19 00	a) b) c)	90,24 539,92 779,61	1 249,96 595,70 3 664,21	177,63 70,42 61,19	676,74 174 947,39	30 162,81 200,23	15 082,89 18 191,48
2.140	Pears							
2.140.1	Pears — nashi (<i>Pyrus pyrifolia</i>) ex 0808 20 50	a) b) c)	152,13 910,22 1 314,29	2 107,23 1 004,25 6 177,27	299,46 118,72 103,15	1 140,87 294 932,91	50 849,60 337,56	25 427,31 30 667,89
2.140.2	Other ex 0808 20 50	a) b) c)	87,61 524,18 756,89	1 213,53 578,34 3 557,42	172,46 68,37 59,41	657,01 169 848,63	29 283,73 194,39	14 643,31 17 661,30
2.150	Apricots 0809 10 00	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.160	Cherries 0809 20 05 0809 20 95	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.170	Peaches 0809 30 90	a) b) c)	153,85 920,51 1 329,15	2 131,05 1 015,60 6 247,11	302,85 120,06 104,32	1 153,76 298 267,46	51 424,52 341,37	25 714,80 31 014,62
2.180	Nectarines ex 0809 30 10	a) b) c)	210,69 1 260,59 1 820,21	2 918,37 1 390,82 8 555,11	414,74 164,42 142,86	1 580,02 408 462,60	70 423,34 467,49	35 215,15 42 473,00
2.190	Plums 0809 40 05	a) b) c)	183,20 1 096,11 1 582,71	2 537,59 1 209,35 7 438,87	360,62 142,97 124,22	1 373,87 355 168,01	61 234,78 406,50	30 620,41 36 931,29
2.200	Strawberries 0810 10 10 0810 10 05 0810 10 80	a) b) c)	152,83 914,41 1 320,34	2 116,92 1 008,87 6 205,69	300,84 119,27 103,63	1 146,11 296 289,99	51 083,58 339,11	25 544,31 30 809,00
2.205	Raspberries 0810 20 10	a) b) c)	1 368,45 8 187,66 11 822,40	18 955,09 9 033,48 55 566,19	2 693,75 1 067,91 927,90	10 262,39 2 653 000,33	457 405,78 3 036,40	228 725,47 275 865,84
2.210	Fruit of the species <i>Vaccinium myrtillus</i> 0810 40 30	a) b) c)	647,43 3 873,68 5 593,32	8 967,88 4 273,85 26 289,02	1 274,45 505,24 439,00	4 855,26 1 255 166,07	216 404,12 1 436,56	108 212,75 130 515,41
2.220	Kiwi fruit (<i>Actinidia chinensis</i> Planch.) 0810 50 10 0810 50 20 0810 50 30	a) b) c)	123,25 737,42 1 064,79	1 707,20 813,60 5 004,59	242,61 96,18 83,57	924,29 238 943,54	41 196,44 273,47	20 600,25 24 845,97

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	ECU FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
2.230	Pomegranates ex 0810 90 85	a)	156,12	2 162,50	307,32	1 170,79	52 183,27	26 094,21
		b)	934,09	1 030,59	121,83	302 668,28	346,41	31 472,23
		c)	1 348,76	6 339,28	105,86			
2.240	Khakis (including sharon fruit) ex 0810 90 85	a)	264,52	3 664,00	520,70	1 983,71	88 416,07	44 212,40
		b)	1 582,67	1 746,16	206,43	512 822,28	586,93	53 324,59
		c)	2 285,26	10 740,89	179,36			
2.250	Lychees ex 0810 90 30	a)	449,92	6 232,07	885,65	3 374,08	150 386,21	75 200,53
		b)	2 691,94	2 970,03	351,11	872 255,40	998,31	90 699,37
		c)	3 886,98	18 269,09	305,08			

COMMISSION REGULATION (EC) No 1204/98

of 9 June 1998

imposing a provisional countervailing duty on imports of certain broad spectrum antibiotics originating in India

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidized imports from countries not members of the European Community⁽¹⁾ and in particular Article 12 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Initiation

- (1) On 12 September 1997, the Commission announced by a notice published in the *Official Journal of the European Communities*⁽²⁾ the initiation of an anti-subsidy proceeding with regard to imports into the Community of certain broad spectrum antibiotics (amoxicillin trihydrate, ampicillin trihydrate and cefalexin) originating in India, and commenced an investigation.
- (2) The proceeding was initiated as a result of a complaint lodged in July 1997 by six Community producers, i.e. Antibioticos SA, Spain, Antibioticos SpA, Italy, Biochemie GmbH, Austria, Biochemie SA, Spain, Biochemie SpA, Italy, and ACS Dobfar SpA, Italy, whose collective output of the said product represented a major proportion of Community production of these broad spectrum antibiotics.

The complaint contained evidence of subsidisation of the said product, and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

2. Investigation

- (3) The Commission officially advised the exporting producers and importers known to be concerned, the representatives of the exporting country and the complainants of the initiation of the proceeding and gave the parties concerned the opportunity to make their views known in writing and to request a hearing within the time limits set in the notice of initiation.

- (4) The Government of India and the exporting producers made their views known in writing and requested hearings, which were granted.

- (5) The Commission sent questionnaires to all parties known to be concerned and received replies from the complainant Community producers, the Government of India, nine Indian exporting producers and one related and one unrelated importer in the Community.

- (6) The Commission sought and verified all the information it deemed necessary for the purpose of a provisional determination of subsidisation and injury, and carried out verification visits at the premises of the following interested parties:

(a) *Complainant Community producers:*

- Antibioticos SA, Madrid (Spain) which also replied to the Commission's questionnaire on behalf of Antibioticos SpA (Italy),
- Biochemie GmbH, Kundl (Austria), which also replied to the Commission's questionnaire on behalf of Biochemie SA (Spain) and Biochemie SpA (Italy),
- ACS Dobfar SpA, Tribiano (Italy).

(b) *Government of India:*

- Ministry of Commerce, New Delhi,
- Undersecretariat for Customs, New Delhi,
- Ministry of Finance, New Delhi.

(c) *Producing exporters in India:*

- Ranbaxy Laboratories Ltd, New Delhi,
- Vitara Chemicals Ltd, Mumbai,
- Kopran Ltd, Mumbai,
- Lupin Laboratories Ltd, Mumbai,
- Gujarat Lyka Organics Ltd, Mumbai,
- Torrent Pharmaceuticals Ltd, Ahmedabad,
- Biochem Synergy Ltd, Indore,
- Orchid Chemicals & Pharmaceuticals Ltd, Chennai,
- Harshita Ltd, New Delhi.

(d) *Related importer in the Community:*

- Ranbaxy (Netherlands) BV, Netherlands (a related importer of Ranbaxy Laboratories Ltd).

⁽¹⁾ OJ L 288, 21. 10. 1997, p. 1.

⁽²⁾ OJ C 277, 12. 9. 1997, p. 2.

- (7) The investigation period for the determination of subsidization was 1 July 1996 to 30 June 1997 (hereinafter referred to as the 'investigation period'). The examination of injury covered the period 1 January 1993 up to the end of the investigation period (hereinafter referred to as the 'period examined').

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

- (8) This proceeding covers certain broad-spectrum antibiotics, namely amoxicillin trihydrate, ampicillin trihydrate and cefalexin, presented in bulk, which fall within CN codes ex 2941 10 10, ex 2941 10 20, and ex 2941 90 00 respectively.
- (9) The abovementioned antibiotics are betalactam antibiotic bulk pharmaceutical substance which are used to manufacture finished dosage forms, the purpose of which is the treatment of a variety of infectious diseases. They are produced from the same raw materials, penicillin G or penicillin V, which are obtained through fermentation. The resulting penicillin is then converted by chemical or biochemical syntheses into downstream intermediaries (called '6-APA' or '7-ADCA'), which are themselves converted into the three bulk active substances mentioned above. In spite of certain technical differences between these three antibiotics, they all belong to the same category of product, i.e. bulk semisynthetic broad spectrum antibiotics and have the same use, that of being incorporated into finished dosage forms which are effective in treating a variety of infectious diseases. Even though a given antibiotic may sometimes be preferred to another for the treatment of a specific disease, all three antibiotics are interchangeable to a large extent and are therefore considered, for the purpose of the present proceeding, as forming one single category of product.

2. Like product

- (10) The investigation established that the broad spectrum antibiotics produced in India and sold domestically or exported to the Community and the broad spectrum antibiotics produced and sold in the Community by the complainant Community producers had effectively identical physical characteristics and uses and where thus like products within the meaning of Article 1(5) of Regulation

(EC) No 2026/97 (hereinafter referred to as the 'Basic Regulation').

C. SUBSIDIES

1. Introduction

- (11) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the Commission investigated the following five schemes, which allegedly involve the granting of export subsidies:

- Passbook Scheme,
- Duty Entitlement Passbook Scheme,
- Export Promotion Capital Goods Scheme,
- Export Processing Zones Export Oriented Units,
- Income Tax Exemption Scheme.

Further details of these schemes are set out below.

- (12) The first four schemes are based on the Foreign Trade (Development and Regulation) Act 1992 (effective from 7 August 1992) which repealed the Imports and Exports Control Act of 1947. The Foreign Trade Act authorises the Government of India (hereinafter referred to as the 'GOI') to issue notifications regarding export and import policy. These are summarised in 'Export and Import Policy' documents which are issued every five years and updated every year. Two Export and Import Policy documents are relevant to the investigation period of this case i.e. the five-year plans relating to the years 1992 to 1997 and 1997 to 2002.

The last scheme, the Income Tax Scheme, is based on the Income Tax Act of 1961 which is amended yearly the Finance Act.

- (13) The declared objectives of India's current Export and Import Policy are:
- to accelerate the country's transition to a globally-oriented vibrant economy with a view to deriving maximum benefits from expanding global market opportunities,
 - to stimulate sustained economic growth by providing access to essential raw materials, intermediates, consumables and capital goods required for augmenting production,
 - to enhance the technological strength and efficiency of Indian agriculture, industry and services, thereby improving their competitive strength while generating new employment opportunities, and to encourage the attainment of internationally accepted standards of quality,

— to provide consumers with good quality products at reasonable prices.

- (14) The Commission examined these five schemes in the light of the policies set out in the relevant 'Export and Import Policy' plans and in the Income Tax Act of 1961 as amended.

2. Passbook Scheme

- (15) One instrument under the Export and Import Policy involving export related assistance is the PBS which entered into force on 30 May 1995.

(a) Eligibility

- (16) The PBS is available to certain categories of exporters, i.e. those which manufacture in India and subsequently export ('manufacturer-exporters') and exporters, whether manufacturer or only trader, granted an 'Export House/Trading House/Star Trading House/SuperStar Trading House certificate'. The latter category of exporters, which is defined in the Export and Import Policy document, has to provide in particular proof of prior export performance.

(b) Practical implementation

- (17) Any eligible exporter can apply for a Passbook. This takes the form of a book in which credit and debit amounts of duty are entered. It is issued automatically if the company is a recognised manufacturer/exporter or an approved Export/Trading House.
- (18) Upon the export of finished goods, the exporter is eligible to claim credit which can be used to pay customs duties on subsequent imports. Various elements are taken into consideration in calculating the amount of credit to be granted in accordance with 'Standard Input/Output norms' which are issued by the GOI for exported products. Standard Input/Output norms set out quantities of normally imported raw materials required to produce one unit of the finished product. The norms are established by the special Advance Licensing Committee on the basis of a technical analysis of the production process and global statistical information. By applying the Standard Input/Output norms, the credit is granted up to an amount corresponding to the basic customs duty

payable on the normally imported inputs used by the Indian antibiotics industry in producing the exported product. One other element is the 'minimum value addition' (MVA). The MVA is the minimum value which the Indian producer must add (i.e. through indigenously sourced inputs/labour costs) to the value of imported inputs in producing the finished goods. The MVA for exports of the products concerned is fixed at 33 % by the Indian authorities.

- (19) The credit granted is entered in the Passbook and is available to be offset against customs duties due on future imports of any goods (e.g. raw materials, capital goods, etc.) except those contained in the 'Negative List of Imports' as laid out in the Export and Import Policy. This list sets out goods which either may not be imported or which may only be imported after the GOI has issued a special licence to the importer. The imported goods need not have any relation to the actual production of the exporter and may be sold on the Indian market.
- (20) Passbook credits are not transferable. The passbook is valid for a period of 2 years from the date of issue. Any credit at the end of the two-year period is allowed to be utilised within a period of 12 months thereafter. At the end of the third year, any unutilised credit lapses. Within this general timetable there is no time limit for claims for credit to be made for a particular export transaction.
- (21) When all credits in the Passbook have been used, the passbook is closed and the Passbook holder has to pay a fee to the relevant authority.
- (22) The GOI has stated in its reply to the questionnaire in relation to the PBS that:
- 'Under this scheme, the exporter retrieves import charges on the exported product, whereas there is no remission of import charges on the like product destined for consumption within the exporting country. In this respect the Scheme is in accordance with Council Regulation (EC) No 3284/94 (the anti-subsidy Regulation)'.
- (23) In response to this point, it should be noted that there is no difference on this point between this latter Regulation, which has since been repealed, and its replacement, the Basic Regulation. Article 2(1)(ii) of the Basic Regulation provides that the exemption of an exported product from duties/

charges shall not be deemed to be a subsidy provided that it is granted in accordance with the provisions of Annexes I to III of the Basic Regulation. Item (i) of Annex I (the Illustrative List of Export Subsidies) specifies that the remission or drawback of import charges in excess of those levied on imported inputs that are consumed in the production of the exported product constitutes an export subsidy. Furthermore, Annex II to the Basic Regulation requires investigating authorities, in determining whether inputs are consumed in the production process, to establish whether the government of the exporting country has in place a system or procedure to confirm which inputs are consumed in the production process of the exported product. In this case, no such system exists. In fact, the benefit granted in India to exporters of the products concerned in the form of Passbook credits is automatically calculated on the basis of the Standard Input/Output norms independently of whether inputs have been imported, duty has been paid on them or whether the inputs were actually used for export production.

Furthermore, the export is under no obligation to either import actual inputs or consume the imported goods in the production process under the PBS. What happens in the PBS, is that upon export of a finished product, an exporter is granted an amount of credit based on the amount of customs duty which is deemed to have been paid on normally imported inputs used in producing the finished product. This credit amount can be used to offset customs duty due on future imports of any product. A benefit accrues to the exporter in the form of unpaid customs duty on imports of any product (whether raw materials or capital goods). This scheme therefore allows an exporter to import goods without paying customs duty once it has previously exported some goods. Hence, the PBS is not a remission/drawback scheme within the meaning of item (i) of Annex I or Annex II to the Basic Regulation.

(c) *Conclusions on PBS*

- (24) The PBS is not a permitted remission/drawback or substitution drawback scheme within the provisions of the Basic Regulation since the Passbook credit is not calculated in relation to inputs actually to be consumed in the production process. Furthermore, the exporter is under no obligation to import goods free of duty which must be consumed in the production process.

In any case, even if it were assumed that the scheme in question constituted a remission/drawback or substitution drawback scheme, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product within the meaning of item (i) of Annex I and Annexes II and III to the Basic Regulation. Annex II(II)(5) and Annex III(II)(3) of that Regulation provide that where it is determined that the government of the exporting country does not have such a system in place, a further examination by the exporting country based on actual inputs involved, or actual transactions, respectively, will normally need to be carried out in the context of determining whether an excess payment occurred. The GOI did not carry out such an examination. Hence, the Commission did not examine whether there was in fact an excess drawback of import charges on inputs consumed in the production of the exported product.

- (25) The schemes constitutes a subsidy as the financial contribution by the GOI in the form of duties forgone on imports confers a benefit upon the Passbook holder who can import goods duty free using credits earned on exports. It is a subsidy contingent in law upon export performance and is therefore deemed to be specific under Article 3(4)(a) of the Basic Regulation. In addition, the MVA requirement (see recital 18) is considered to require the use of domestic over imported goods. In this regard, the PBS is a specific subsidy within the meaning of Article 3(4)(b) of the Basic Regulation.
- (26) In early 1997, the GOI announced that the PBS was effectively terminated and credit claims could no longer be made for export transactions taking place after 31 March 1997. An exporter may, however, continue to use a Passbook which has already been issued, for a period of three years after the date of issue. Additionally, there is no time limit within which claims for credit must be made for export transactions made before 31 March 1997. While the scheme in that form has technically been terminated, exporters can continue to benefit from this scheme by importing goods, free of customs duties, until all credits have been exhausted or until 31 March 2000 at the latest. In these circumstances, it is considered that the scheme can be countervailed.

(d) *Calculation of the subsidy amount*

- (27) The benefit to the exporters has been calculated on the basis of the amount of customs duty normally due on imports made during the investigation

period but which remained unpaid under the PBS. In order to establish the full benefit to the recipient under this scheme, this amount has been adjusted by adding interest during the investigation period. Since the benefits from import duty exemptions are obtained regularly during the investigation period, they are equivalent to a series of grants. It is normal practice to reflect the benefit to the recipient of one-time grants by adding the annual commercial interest to the nominal amount of the grant, on the assumption that the grant is considered to have been made on the first day of the investigation period. However, in the present case, it is clear that individual grants can be made at any time between the first and the last day of the investigation period. Consequently, instead of adding annual interest to the whole amount, it is considered appropriate to assume that an average grant would have been received at the mid-point of the investigation period, and therefore the interest should cover a period of six months, equivalent to half of the annual commercial rate during the investigation period in India, i.e. 7,575 %. This amount (i.e. unpaid customs duty plus interest) has been allocated over total exports during the investigation period.

Three companies benefited from this scheme during the investigation period and obtained subsidies of between 0,01 and 5,89 %. None of the companies claimed a deduction for the application fee or other costs necessarily incurred in order to qualify for, or to obtain, the subsidy. Biochem Synergy did not provide any verifiable information relating to this scheme. In accordance with the provisions of Article 28(1) of the Basic Regulation, provisional findings relating to subsidies received by this company under the PBS have been made on the basis of the facts available. In view of the absence of other reliable information from independent sources and in order to avoid rewarding non-cooperation, it was considered appropriate to apply the highest rate of benefit under the PBS established for other cooperating exporters to this company, i.e. 5,89 %.

3. Duty Entitlement Passbook Scheme (DEPB)

- (28) Another instrument under the Export Import Policy involving export related assistance is the DEPB which became effective on 7 April 1997. The DEPB constitutes the successor to the PBS which was terminated on 31 March 1997. The DEPB is of two types:

- DEPB on pre-export basis,
- DEPB on post-export basis.

(a) *Eligibility for DEPB on pre-export basis*

- (29) The DEPB on pre-export basis is available to manufacturer-exporters (i.e. every manufacturer in India who exports) or merchant-exporters (i.e. traders) linked with manufacturers. To be eligible under this scheme, the company must have exported during a three-year prior to submitting a claim for credit.

(b) *Practical implementation of DEPB pre-export basis*

- (30) Any eligible exporter can apply for a licence which grants a credit amount to be used to offset customs duties due on future imports of goods. The licence granting the credit, which is calculated on the basis of 5 % of the average yearly value of all exports during the previous three years, is issued automatically. The granting of the licence carries with it an export obligation. When the DEPB holder has made exports of such a value which will entitle him to credit equivalent to the credit already given under DEPB on pre-export basis, his obligation against such DEPB is offset.
- (31) Unlike the PBS, the DEPB on pre-export basis allows for the use of such credits only for customs duties payable for subsequent imports of inputs (which are not on the 'Negative List of Imports') required for use in the production of goods in the factory of the company concerned ('Actual User condition'). Such imported inputs may not be transferred, loaned, sold, parted with, or disposed of in any manner.
- (32) DEPB credits are not transfereable. The DEPB licence is valid for a period of 12 months from the date of granting of the licence. Upon importation, the exporter undertakes to use the inputs for the export of the finished product. When a company uses all of the credits granted, the company may apply for a further credit amount calculated on the basis of 5 % of the average value of exports during the previous three years.
- (33) When a company is granted a credit amount, it is then allowed to import inputs free of customs duties. The GOI states that the Indian Customs Authorities are usually aware of the general import requirements of the importer with regard to the Actual User condition. However, there is no verification procedure in place to ensure that the Actual User condition is respected.

- (34) When all credits have been used, the company has to pay a fee to the relevant authority

(c) Conclusion on DEPB pre-export basis

- (35) The DEPB is not a permitted remission/drawback or substitution drawback scheme within the provisions of the Basic Regulation since, despite the existence of the 'Actual User condition', the DEPB credit is not calculated in relation to inputs actually to be consumed in the production process. Furthermore there is no system or procedure in place to confirm which inputs are consumed in the production process of the imported product and in what amounts. Annex II(II)(5) and Annex III(II)(3) to the Basic Regulation provide that where it is determined that the government of the exporting country does not have such a system in place, a further examination by the exporting country based on actual inputs involved, or actual transactions, respectively, will normally need to be carried out in the context of determining whether there an excess payment occurred. The GOI did not carry out such an examination. Hence, the Commission did not examine whether there was in fact an excess drawback of import charges on inputs consumed in the production of the exported product.

- (36) This scheme constitutes a subsidy as the financial contribution by the GOI in the form of duties forgone on imports confers a benefit upon a company which can import goods free of customs duty. It is a subsidy contingent in law upon export performance and is therefore deemed to be specific under Article 3(4)(a) of the Basic Regulation.

(d) Calculation of the subsidy amount for DEPB pre-export basis

- (37) The benefit to the exporters has been calculated on the basis of the amount of customs duty normally due on imports made during the investigation period but which remained unpaid under the DEPB. In order to establish the full benefit to the recipient under this scheme, this amount has been adjusted by adding interest during the investigation period. Given the nature of this subsidy, which is equivalent to a series of grants, a rate of 7,575 %, i.e. half the commercial interest rate during the investigation period in India, was considered appropriate for the same reasons as stated above in recital 27. The amount of benefit has been allocated over total exports during the investigation period.

One company availed of this scheme during the investigation period and obtained a benefit of 0,05 %. In calculating the benefit, the fee necessarily incurred to obtain the subsidy has been deducted as claimed by the company. Another company, Biochem Synergy did not provide any verified information relating to this scheme. In accordance with the provisions of Article 28(1) of the Basic Regulation, provisional findings relating to subsidies received by this company under the DEPB on pre-export basis have been made on the basis of the facts available. In view of the absence of other reliable information from independent sources and in order to avoid rewarding non-cooperation, it was considered appropriate to apply the highest rate of benefit established for other cooperating exporters to this company, i.e. 0,05 %.

(e) Eligibility for DEPB on post-export basis

- (38) The DEPB on post-export basis is virtually identical to the PBS described above. It is available to manufacturer/exporters (i.e. very manufacturer in India who exports) or merchant/exporters (i.e. traders).

(f) Practical implementation of DEPB post-export basis

- (39) Under this scheme, any eligible exporter can apply for credits which are calculated as a percentage of the value of exported finished products. Such DEPB rates have been established by the Indian authorities for most products, including the products concerned, on the basis of the Standard Input/Output norms. A licence stating the amount of credit granted is issued automatically.

DEPB on post-export basis allows for the use of such credits for any subsequent imports (e.g. raw materials or capital goods) not on the Negative List of Imports. Such imported goods can be sold on the domestic market (subject to sales tax) or used otherwise.

DEPB credits are freely transferable. The DEPB licence is valid for a period of 12 months from the date of granting of the licence.

- (40) When all credits have been used, the company has to pay a fee to the relevant authority.

(g) Conclusion on DEPB on post-export basis

- (41) This scheme is clearly contingent upon export performance. When a company exports goods, it is granted a credit which can be used to offset

amounts of customs duties due on future imports of any goods (whether raw materials or capital goods). Like the PBS, it is not a permitted drawback or substitution drawback scheme for the same reasons as stated above in recital 24. The scheme constitutes a subsidy as the financial contribution by the GOI in the form of duties forgone on imports confers a benefit upon a company which can import goods free of customs duty. It is a subsidy contingent in law upon export performance and is therefore deemed to be specified under Article 3(4)(a) of the Basic Regulation.

(h) *Calculation of the subsidy amount for DEPB post-export basis*

- (42) No evidence was found that the companies benefited from the DEPB on post-export basis during the investigation period. However, Biochem Synergy did not provide any verifiable information relating to this scheme. In accordance with the provisions of Article 28(1) of the Basic Regulation, provisional findings relating to subsidies received by this company under the DEPB on post-export basis have been made on the basis of the facts available. In view of the absence of other reliable information from independent sources and in order to avoid rewarding non-cooperation, a rate of 3,75 % has been applied. This rate was calculated on the basis of the actual DEPB rate applicable for exports of cefalexin (the only product exported by the company) of 15 % and acknowledging the fact that the scheme was only in force the last quarter of the investigation period.

4. Export Promotion Capital Goods Scheme (EPCGS)

- (43) Another instrument under the Export Import Policy involving export related assistance is the EPCGS introduced on 1 April 1990 and amended on 5 June 1995.

(a) *Eligibility*

- (44) The EPCGS is available to manufacturer/exporters (i.e. every manufacturer in India who exports) or merchant/exporters (i.e. traders). Since 1 April 1997, manufacturers linked with merchant/exporters can also benefit from the scheme.

(b) *Practical implementation*

- (45) To benefit from the scheme, a company must provide to the relevant authorities, details of the type and value of capital goods which are to be imported. Depending on the level of export commitment which the company is prepared to undertake, the company will be allowed to import capital goods at either a zero rate of duty or a reduced rate. A license authorising the import at preferential rates is issued automatically.
- (46) In order to meet the export obligation, goods exported must have been produced using the imported capital goods.
- (47) An application fee is payable to obtain a licence.

(c) *Conclusions on EPCGS*

- (48) The EPCGS is a countervailable subsidy as the payment by an exporter of a reduced or zero rate of duty constitutes a financial contribution by the GOI, revenue otherwise due is forgone and a benefit is conferred on the recipient by lowering the duties payable or fully exempting him from paying the import duties.
- (49) The subsidy is contingent in law upon export performance within the meaning of Article 3(4)(a) of the Basic Regulation, since it cannot be obtained without committing to export goods, and is therefore deemed to be specific.

(d) *Calculation of the subsidy amount*

- (50) The benefit to the exporters has been calculated on the basis of the amount of unpaid customs duty due on imported capital goods by spreading this amount across a period which reflects the normal depreciation of such capital goods in the antibiotics industry. This period has been established by using the weighted average (on the basis of production volume of the products concerned) of depreciation periods for capital goods actually imported under the EPCGS by each company, resulting into a normal depreciation period of 10 years. The amount so calculated which is attributable to the investigation period has been adjusted by adding interest during the investigation period in order to establish the full benefit to the recipient under this scheme. Given the nature of this subsidy, which is equivalent to a one-time grant, the commercial interest rate during the investigation period in India, i.e. 15,15 % was considered appropriate. This amount has then been allocated over total exports during the investigation period.

Three companies benefited from this scheme during the investigation period and obtained subsidies of between 0,03 % to 1,17 %. None of the companies claimed a deduction for the application fee or other costs necessarily incurred in order to qualify for, or to obtain, the subsidy.

5. Export Processing Zones (EPZ)/Export Oriented Units (EOU)

- (51) Another instrument under the Export Import Policy involving export related assistance is the EPZ/EOU scheme which was introduced on 22 June 1994.

(a) Eligibility

- (52) Companies located in any of the seven identified EPZs which undertake to export at least 75 % of their production can avail themselves of certain benefits. The same benefits are available to EOUs which can be located anywhere in India (also referred to as 'stand-alone EPZs'). EOUs are bonded units under the surveillance of customs officials. With effect from 1 April 1997, companies located in electronic hardware technology parks and software technology parks are also eligible for benefits similar to those available to companies in EPZs and EOUs.

(b) Practical implementation

- (53) Companies located in EPZs and EOUs can obtain the following benefits:
- suspension of collection of duties due on purchases of capital goods during the period of bonding,
 - exemption from customs duties due on purchases of raw materials and consumables,
 - exemption from excise duty on goods procured from indigenous sources,
 - reimbursement of central sales tax paid on goods procured locally.

Companies located in EPZs and companies requesting treatment as EOUs, must apply to the relevant authorities. Such application must include details for a period of the next five years, on, *inter alia*, planned production quantities, projected value of exports, imports requirements and indigenous requirements. If the authorities accept the company's application, the terms and conditions attached to the acceptance will be communicated to the company. Companies in EPZs and EOUs can be involved in the production of any product. The agreement to be recognised as a company in

an EPZ/EOU is valid for a five-year period. The agreement may be renewed for further periods.

(c) Conclusion on EPZ/EOU

- (54) The EOU/EPZ scheme involves the granting of countervailable subsidies as the concessions granted under the scheme constitute financial contributions by the GOI, since revenues otherwise due are forgone and a benefit is conferred on the recipient. The concessions granted relate to the suspension of collection of duties due on capital goods during the period of bonding, the exemption from customs duty on raw materials and consumables, the exemption from excise duty on goods procured from indigenous sources, and the reimbursement of central sales tax paid on goods procured locally. In the case of the suspension of the collection of duties on capital goods, this suspension is considered to have the same effect as an exemption since, as long as the export requirements are fulfilled, it is solely within the discretion of the company if and when to de-bond the capital goods.
- (55) All the above subsidies are contingent in law upon export performance within the meaning of Article 3(4)(a) of the Basic Regulation, since they cannot be obtained without the company accepting an export obligation, and are therefore deemed to be specific.

(d) Calculation of the subsidy amount

- (56) The benefit to the exporters has been calculated on the basis of the amount of duty or taxes normally due on imported or indigenously sourced goods (i.e. raw materials and capital goods) during the investigation period. In order to establish the full benefit to the recipient under this scheme, this amount has been adjusted by adding interest during the investigation period. Given the nature of this subsidy, which is equivalent to a series of grants, a rate of 7,575 %, i.e. half the commercial interest rate during the investigation period in India, was considered appropriate, in so far as raw materials were concerned, for the same reasons as stated above in recital 27. In the case of capital goods, the commercial interest rate during the investigation period in India, i.e. 15,15 % was considered appropriate since the subsidy is equivalent to a one-time grant, and this amount has been spread across a period which reflects the normal depreciation of such capital goods in the antibiotics industry (i.e. 10 years), as explained in recital 50. The amount of benefit so determined which is attributable to the investigation period has been allocated over total exports during the investigation period.

One company, Orchid Chemicals & Pharmaceuticals Ltd., is a recognised EOU. This company received all available benefits under this scheme at a rate of 34,38 %.

6. Income Tax Exemption Scheme (ITES)

- (57) The Income Tax Act 1961 is the legal basis under which the ITES operates. The Act, which is amended yearly by the Finance Act, sets out the basis for the collection of taxes as well as various exemptions/deductions which can be claimed. Among the exemptions which can be claimed by firms are those covered by Sections 10A, 10B and 80HHC of the Act.

(a) Eligibility

- (58) Exemption under Section 10A can be claimed by firms located in free trade zones. Exemption under Section 10B can be claimed by Export Oriented Units. Exemption under Section 80HHC can be claimed by any firm which exports goods.

(b) Practical implementation

- (59) To benefit from the abovementioned deductions/exemptions from paying tax, a company will make the relevant claim when submitting its tax return to the Tax Authorities at the end of the tax year. The tax year runs from 1 April to 31 March. The tax return must be submitted to the authorities by the following 30 November. The final assessment by the authorities can take up to three years after submitting the tax return. A company can only claim one of the deductions available under the three sections mentioned above.

Under Sections 10A, 10B and 80HHC companies can claim exemption from taxable income for profits realised on export sales. Under Sections 10A and 10B only, for companies established after 1 April 1994, 25 % of sales may be made in India but the company can still receive 100 % exemption from taxable income for profits realised on all sales (i.e. sales for export and sales in India); companies established before 1 April 1994 may claim pro rata deduction from taxable income based on the ratio of domestic sales to export sales.

(c) Conclusion on ITES

- (60) Item (e) of the illustrative list of export subsidies (Annex I to the Basic Regulation) refers to the 'full or partial exemption ... related to exports, of direct taxes' as constituting an export subsidy. Under the ITES, the GOI confers a financial contribution to the company by forgoing government revenue in

the form of direct taxes which would otherwise be due if the income tax exemptions were not claimed by the company. This financial contribution confers a benefit on the recipient by reducing its income tax liability.

- (61) The subsidy is contingent in law upon export performance in the meaning of Article 3(4)(a) of the Basic Regulation, since it exempts profits from export sales, and is therefore deemed to be specific.

(d) Calculation of the subsidy amount

- (62) As stated in recital 59, claims for benefit under Sections 10A, 10B and 80HHC are made when submitting a tax return at the end of the tax year. As the tax year in India runs from 1 April to 31 March, it is considered appropriate to calculate the benefit under this scheme on the basis of the tax year 1996/97 (i.e. 1 April 1996 to 31 March 1997) which covers nine months of the investigation period. The benefit to the exporters has therefore been calculated on the basis of the difference between the amount of taxes normally due with and without the benefit of the exemption. Account has been taken of the fact that some companies are liable to the payment of minimum alternate tax which is an alternative method of calculating tax due under the Income Tax Act. The rate of corporate tax applicable during this tax year was 43 %. In order to establish the full benefit to the recipient, this amount has been adjusted by adding interest during the investigation period. Given the nature of this subsidy, which is equivalent to a one-time grant, the commercial interest rate during the investigation period in India, i.e. 15,15 % was considered appropriate. The amount to benefit has been allocated over total exports during the tax year 1996/97. In the case of exemptions under Articles 10A and 10B of the Act, while proportional tax savings related to domestic sales can be made under these sections, it is considered that as the scheme is contingent upon export performance, total tax savings should be allocated over export sales only.

During the tax year 1996/97 one company benefited from this scheme under Section 10B and obtained a benefit of 2,88 % and six companies benefited from this scheme under Section 80HHC and obtained subsidies of from 0,82 % to 6,46 %.

7. Amount of countervailable subsidies

- (63) The amount of countervailable subsidies for each of the investigated exporters is as follows:

%	Passbook	DEPB		EPCGS	EPZ/EOU	Income tax	Total
		Pre-export	Post-export				
Entry into force	30.5.1995	7.4.1997		1.4.1990 (amended 5.6.1995)	22.6.1994	Annually	
Ranbaxy Laboratories Ltd	0,01	0,05	0	0,15	0	6,46	6,67
Vitara Chemicals Ltd	0	0	0	0	0	1,08	1,08
Kopran Ltd	5,43	0	0	1,17	0	2,23	8,83
Lupin Laboratories Ltd	5,89	0	0	0,03	0	5,34	11,26
Gujarat Lyka Organics Ltd	0	0	0	0	0	0	0
Torrent Pharmaceuticals Ltd	0	0	0	0	0	0,82	0,82
Biochem Synergy Ltd	5,89	0,05	3,75	0	0	0	9,69
Orchid Chemical & Pharmaceuticals Ltd	0	0	0	0	34,38	2,88	37,26
Harshita Ltd	0	0	0	0	0	9,61	9,61

D. COMMUNITY INDUSTRY

- (64) On the basis of the information available to the Commission at the time of initiation, the complainant Community producers accounted for a major proportion of the total production of the product concerned in the Community. They were therefore deemed to constitute the Community industry in accordance with Article 10(8) of the Basic Regulation.
- (65) Certain interested parties claimed that the complainant Community producers did not represent a major proportion of Community production of the like product with the meaning of the Basic Regulation because the company Gist-Brocades BV, Delft, The Netherlands, which is a leading producer of antibiotics, was not a party to the complaint. These parties contested the standing of the complainants and any subsequent injury findings in relation to the Community industry.

Upon further investigation of this claim by means of a questionnaire, it was established that the company Gist-Brocades BV had been steadily decreasing its production of the product concerned in the Community during the period examined and had instead concentrated on importing this product from subsidiaries and joint venture companies located outside the Community.

In addition, the Commission established, on the basis of available information, that, apart from the complainant producers and Gist-Brocades BV,

there are no other major producers in the Community of the product under investigation since the only other such producers in the Community do not sell the product under investigation as such but rather produce it for captive use, i.e. they incorporate it into finished dosage forms.

It can therefore be concluded that the complainant Community producers (hereinafter 'Community industry') represent all or almost all the Community production of the product under investigation.

E. INJURY

1. Consumption in the Community

- (66) In calculating the apparent Community consumption of the product concerned, the Commission added:
- the total sales volume in the Community of the complainant Community producers of the product concerned,
 - the total imports into the Community of the product concerned from all third countries, including India.
- (67) With a view to establishing, for the whole period examined, consistent figures covering the enlarged Community of 15, the total imports were based on

relevant Eurostat statistics, as declared under CN codes ex 2941 10 10, ex 2941 10 20, and ex 2941 90 00, combined with national statistics of Austria, Finland and Sweden before their accession to the Community. It should be noted that the confidentiality of import statistics of the product under investigation had been requested by one Member State and therefore these statistics were not readily available. However, this Member State agreed to provide these figures to the Commission, on a confidential basis and for the sole purpose of the present investigation. Therefore all figures concerning imports of the product under investigation into the Community which are mentioned below are given in an indexed form.

- (68) On this basis, the apparent Community consumption of the product under investigation was found to have increased by 54,6 % between 1993 and the investigated period.

2. Factors and considerations relating to the subsidised imports

(a) *Volume and market share of the subsidised imports*

- (69) The volume of subsidised imports of the product concerned originating in India increased by almost 300 % between 1993 and the investigation period. The share of the Community market held by these imports increased by 157 % during the same period. With regard to the developing country status of India and the provisions of Article 14(4) of the Basic Regulation, it was found that the volume of imports from India in the investigation period represented significantly more than 4 % of the total imports of the like product in the Community.

(b) *Prices of the subsidised imports*

- (70) Aggregate data from Eurostat and the National Statistical Offices of Austria, Finland and Sweden show that the import price of the product under investigation originating in India fell by around 40 % between 1993 and the investigation period. It should be noted however that since the abovementioned CN codes may also cover the broad-spectrum antibiotics in question in finished dosage forms, a price comparison on the basis of Eurostat data is not really meaningful but should be seen as a mere indication of a downward trend of prices.
- (71) For the investigation period, the Commission services compared the sales prices of the exporting producers' prices of the complainant Community producers. For the exporting producers, in the absence of any customs duty payable on importation, prices were based on export prices at cif level. For one related importer, the prices charged to the first independent customer in the

Community were compared to the prices of the complainant Community producers.

- (72) The prices of the complainant Community producers were adjusted, on the basis of available information, at a level known to be comparable to the level of the Indian exports, i.e. ex factory, by deducting transport and insurance costs. Any rebated, discounts or sales commissions which were granted or paid have been equally deducted.
- (73) Certain interested parties claimed that in comparing the prices of the exporting producers to the prices of the Community industry, an adjustment for differences in the level of trade should be made since it was claimed that the majority of exporting producers' sales are made to traders whilst the majority of sales by the Community industry are made to end-users. However, insufficient justification was provided to substantiate such a claim and it could not, at this stage, be taken into consideration. Moreover, the information provided by the cooperating exporting producers themselves in their replies to the Commission's questionnaire indicates that the exporting producers sell to both wholesalers and end-users in the Community. In addition, on the basis of this information, it was not possible to distinguish consistently different price levels according to whether sales were made to traders or end-users.
- (74) It should be noted that sales are carried out on a spot basis and therefore prices vary throughout the year according to pressure on the market. Some factors such as exchange rate fluctuations can have an impact on market trends according to the moment when a contract is concluded. The price levels of the Indian imports were analysed, on a monthly basis, throughout the investigation period. This analysis showed the existence of price undercutting throughout the entire investigation period with a peak during the second quarter of 1997. Consequently, the margins of price undercutting are an indication of continuous price pressure exerted by the Indian imports on the Community market.
- (75) The results of the comparison, when expressed as a percentage of the complainant Community producers' selling prices during the investigation period, showed significant price undercutting margins. On a company basis these margins were found to range between 0 and 11,8 %.

3. Situation of the Community industry

(a) *Production, production capacity and capacity utilisation*

- (76) Overall, the production of the product concerned by the Community industry increased from 3 698

tonnes in 1993 to 4 795 tonnes in the investigation period, an increase of 30 %. Most of the increase in production is attributable to export markets with exports outside the Community increasing from 2 122 tonnes in 1993 to 3 215 tonnes in the investigation period, i.e. an increase of 52 % of exports of the product under investigation by the Community industry.

- (77) The capacity utilisation rate has been stable at a relatively high level. Capacity utilisation stood at 92 % in 1993, in then fell to 87 % in 1994, was increased to 95 % in 1995 and 1996 and then slightly fell again to 92 % of the investigation period. Such a high rate of utilisation is common in this type of industry. The fact that the Community industry has succeeded in increasing output without significantly increasing its production capacity should be underlined, since it is due to an increased efficiency, mainly in the form of improved yields.

(b) *Sales and market share*

- (78) The volume of sales by the Community industry on the Community market increased during the period under consideration from 1 040 tonnes in 1993 to 1 253 tonnes in the investigation period, representing an increase of only 21 %. These trends should be seen against the increase of the total apparent Community consumption which, for the same period, stood at 54,6 %.

The volume of sales in the Community compared to the apparent Community consumption shows that the market share held by the Community industry decreased from 25 % in 1993 to 18,1 % in 1996 and then slightly increased to 19,5 % in the investigation period, i.e. an overall decrease by 5,5 percentage points representing at 22 % decline.

(c) *Stocks*

- (79) Even though it is not the policy of the Community industry to carry stocks of active substances such as broad spectrum antibiotics (indeed subject to 'expiry dates'), and the level of these was found to be marginal throughout the period of investigation, certain increases in stock levels were identified, which coincided with the periods of increased Indian imports.

(d) *Prices and profitability of the complainant Community producers*

- (80) The selling prices of the Community industry fell by 4 % between 1993 and the investigation period.
- (81) The overall profitability of the product concerned on the Community market increased from 16,8 % of turnover in 1993 to 21,1 % in 1994 and then steadily decreased to 5,6 % during the investigation period. This decline in profitability is considered as

particularly serious in the present case in view of the need for the Community industry to be able to invest in research and development (hereinafter 'R&D') in order to improve the production process of existing products and, more importantly, to finance research in order to bring new products to the market.

- (82) It should also be borne in mind that without the increased efficiency reached by the Community industry in the form of improved yields, it is considered that the Community industry would have made losses. It cannot be assumed, however, that the Community industry will be able to continue to achieve, in future, such productivity gains. This is particularly true in view of the declining levels of profits which will affect the level of resources available for R&D.

(e) *Employment*

- (83) Employment has been stable throughout the period examined. The number of people employed by the Community industry in the production of the product under investigation was 1 166 in 1993 and 1 173 in the investigation period, i.e. an increase of 0,5 %.

4. Conclusion

- (84) Despite increasing its production and thereby reducing its costs per unit, the Community industry has seen a steady erosion of its share of the Community market from 25 % in 1993 to 18,1 % in 1996, followed by an increase to 19,5 % in the investigation period.
- (85) Under these circumstances, it is considered that the pressure exerted on the prices of the Community industry, which decreased by 4 % between 1993 and the investigation period, led to the weak financial situation of the Community industry. It should be noted that the market for the semisynthetic antibiotics under investigation, which are a bulk commodity product, is highly price-sensitive and reacts swiftly to any downward pressure.
- (86) This price pressure has led to a decrease in the profitability of the Community industry, which has fallen by 66,5 % between 1993 and the investigation period. This last figure is a particular cause for concern since the minimum return on turnover required in the pharmaceutical industry is 15 %. A continued impediment of the Community industry to reach this target would have a snowball effect and will, ultimately, affect the ability of the Community industry to compete.
- (87) In the light of the foregoing analysis, it was concluded that, overall, the Community industry has suffered material injury within the meaning of Article 8(1) of the Basic Regulation.

F. CAUSATION OF INJURY

1. Introduction

- (88) In accordance with Article 8(7) of the Basic Regulation, the Commission examined whether the injury suffered by the Community industry had been caused by the subsidised Indian imports and whether other factors had caused or contributed to that injury.
- (89) It should be recalled that the antibiotics produced in the Community and imported antibiotics are in direct competition with each other, essentially on the basis of price competition. Indeed, the product under investigation is a bulk product, with more-over no significant differences of quality or applications between the imported product and the Community produced product. In this context, price difference is the major factor determining sales. Even relatively small quantities offered at prices undercutting the prices offered by the complainant producers can have a significant downward effect on the market.

2. Effect of the subsidised imports

- (90) The Community industry has been facing the adverse effects of the presence of subsidised imports on the Community market since the beginning of the period examined and more acutely since 1995.
- It appeared indeed that over the period examined the Indian imports increased by almost 300 %. India has now become the second largest exporter of the product under investigation to the Community.
- (91) With regard to price, it was also established, on the basis of verified export transactions, that the prices of Indian imports decreased over the period examined.
- (92) It was moreover established that the impossibility for the Community industry to maintain its profitability coincided with the growth in volume of the subsidised imports from India. In a price-sensitive market, this low-price policy had the effect of depressing the prices of the Community industry.
- (93) It was indeed found that, as a result of price undercutting by Indian imports, the Community industry had to adjust its prices downward. This defensive behaviour on the part of the Community industry is explained by the fact that for this high fixed cost production, the industry strongly needed to protect its production volume by maintaining market share and could not risk seeing its unit costs increase as a result of lost sales volumes.
- (94) It was therefore concluded that the subsidised imports from India had a considerable negative impact on the situation of the Community industry

during the period examined, in particular in terms of profitability.

3. Effect of other factors

- (95) Factors other than the low-priced imports from India which might have led or contributed to the weak situation of the Community industry and in particular the impact of imports from countries other than India were also examined.

(a) Imports from other third countries

- (96) Imports from countries not concerned by this proceeding increased by 56,4 % between 1993 and the investigation period, i.e. at a rate which is close to the increase of 54,6 % of Community consumption. Amongst these third countries the United States of America (USA) was the major supplier to the Community market and increased its market share by almost 100 %. Another important supplier to the Community market was the People's Republic of China which has seen its share of the Community market decline by 43 % between 1993 and the investigation period. As regards prices, the average price of imports other than those originating in India, as given by Eurostat, was considerably higher than the prices of the Indian imports even though this statement must be qualified since it is thought that imports from the USA include substantial quantities of higher-value products in finished-dosage forms.
- (97) It is therefore considered that imports from sources other than India could not be considered to have caused the precarious situation of the Community industry. This led to the conclusion that the impact of imports from other third countries was not such as to have broken the causal link between the subsidised Indian imports and the injury suffered by the Community industry.

(b) Development of consumption of the Community market

- (98) It should be recalled that consumption of the product under investigation on the Community market increased by 54,6 % between 1993 and the investigation period. Therefore, the injury suffered by the Community industry cannot be attributed to a contradiction of demand on the Community market.

(c) Over-capacity of the Community industry

- (99) Certain interested parties claimed that the Community industry had developed an over-capacity for the product under investigation and that this was one of the main causes of the negative trend in prices. The investigation has shown

however, that the increase in production capacity by the complainant Community producers, far from being excessive has in fact been lower than the increase in Community consumption. It should also be borne in mind that the Community industry must increase its capacity at a rate which will enable it to meet the forecasted increase in demand on the Community and world markets. Indeed, it is very difficult to remedy capacity shortages in the short term because of the very important capital costs and long time periods necessary for the commissioning of new plants. If there is an over-capacity in the world market for the product under investigation, it has been caused by the building up of new production capacities in India and the People's Republic of China rather than in the Community.

(d) *Competitiveness of the Community industry*

- (100) The competitiveness of the Community industry, which is amongst the world leaders for this product is not in doubt. This is evidenced by both its performance on export markets and also the reduction of costs and consequent gains in productivity which are at least in part due to its efforts in the field of R&D. It should also be noted that the Community industry has succeeded in increasing its production volume by 30 % whilst maintaining employment at a stable level.

Moreover, although the production processes are difficult to compare *per se*, it could be established that no inefficiency was to be found in terms of cost per tonne for the product concerned produced in the Community.

(e) *Fluctuation in the price of certain raw materials*

- (101) Certain interested parties have argued that the injury suffered by the Community industry was mainly due to the fluctuations of the price of the raw materials penicillin G on the world market.
- (102) Careful consideration has been given to this argument. It should be recalled, first of all, that whilst penicillin G is an essential raw material for the production of the product under investigation, it is not indispensable since alternative raw materials exist. In this respect the investigation established that one of the complainant Community producers which uses penicillin V rather than penicillin G for the production of amoxicillin and ampicillin was not in a situation which significantly differed from that of the two other complainant Community producers using penicillin G, as far as the injury

findings are concerned. Moreover, the parties which raised this argument stressed that the rationale behind their reasoning was that in a period of decreasing prices for the raw material (penicillin G), integrated producers were suffering, while producers purchasing penicillin G from external sources were less affected. However the investigation showed that one of the complainant Community producers using the raw material penicillin G was not an integrated producer and purchased this raw material at market prices. Since the situation of this producer did not significantly differ from the average of the Community industry, it was not possible to attribute the injury suffered by the Community industry to the falling prices of penicillin G. Finally it should be recalled that the fall in prices of penicillin G is largely attributable to the building up of new capacities in India.

- (103) Therefore, and without prejudice to any further evidence on this point, it has been concluded that the effect of the fluctuations on the world market of the price of the raw material penicillin G, if any, could not have broken the causal link between the subsidised imports originating in India and the injury suffered by the Community industry.

4. Conclusion

- (104) In view of the above, the Commission considers that, even though other factors may have contributed to depress the market for the product concerned, the subsidised imports from India, when taken in isolation, have nevertheless caused material injury to the Community industry. Indeed, it is considered that without the benefit of subsidies, undercutting of the Community industry's prices by Indian imports could not have taken place or at least reached its established magnitude and thus would not have been able to cause the Community industry to suffer injury. This conclusion is based on the various elements set out above, especially the quantities and prices concerned, which resulted in a strong downward price pressure on the Community market for the product concerned and in particular on the prices and profitability of the Community industry.

G. COMMUNITY INTEREST

1. Preliminary remark

- (105) The Commission examined, on the basis of all evidence submitted, whether, despite the conclusions on the injurious effects of the subsidised imports, compelling reasons existed which would

lead to the conclusion that it would not be in the Community interest to impose measures in this particular case. For this purpose, and pursuant to Article 31(1) of the Basic Regulation, the Commission considered the impact of possible measures for all parties involved in the proceeding, and also the consequences of not taking measures. In order to assess whether it is in the interest of the Community that measures be imposed, questionnaires were sent to users and importers of the product concerned, to upstream suppliers of raw materials, as well as to Gist-Brocades BV.

2. Interest of the Community industry

- (106) As has been shown above, the Community industry producing the product under investigation has been facing difficulties which are linked to the presence of subsidised Indian imports. The fact that the complainant Community producers are world leaders for the product under investigation and the good export performances of the Community industry should be recalled, as they are a clear indicator of their ability to compete.
- (107) It is considered that without measures to correct the effects of the subsidised imports the Community industry will continue to face price undercutting and the consequent price depression which has led to the deterioration of its profitability. In the event that such a situation were allowed to continue, the complainant Community producers would be left with no other alternative but to close down certain production lines or even entire plants which are devoted exclusively to the production of the antibiotics which are the subject of the present investigation.

Whilst the survival of the complainant Community producers would probably not be endangered by the absence of measures in view of the fact that in most cases the Community industry produces other products and is part of large groups, the above mentioned plants which could face imminent closure employ 1 173 people and are in most cases situated in areas of the Community with little or no alternative source of employment.

It goes without that such closures which, in any event, would not be the result of normal conditions of competition, would not be in the interest of the Community.

3. Interest of other Community-based companies

- (108) As has been mentioned above, a questionnaire was addressed to the Community producer Gist-Brocades BV, which is a world leader in the field of semisynthetic antibiotics, in order to establish its

volume of production in the Community and its volume of imports from third countries and also to assess the impact that the imposition of measures could have on this company. It should be recalled that the company Gist-Brocades BV was not a complainant and was therefore not (and moreover could not have been) included in the definition of the Community industry for the purpose of the injury investigation. In its reply this company, which has been reducing its production volume of the product under investigation in the Community in recent years, stated that it fully supported the imposition of countervailing measures, should the investigation conclude that such measures are warranted.

4. Interest of importers/traders

- (109) As has been mentioned above, questionnaires were sent to all known importers/traders of the product under investigation but only one meaningful reply was received. On the basis of the information obtained thus far it appears that importers/traders in the Community purchase the product under investigation from a variety of sources which include India and the Community industry.

Since there are no fundamental quality differences between the product imported from India or other origins and that produced in the Community, it is considered that the importers/traders in the Community would have no difficulty obtaining the product from other sources as well as from India, especially since there is no shortage of supply on the world market.

- (110) In addition, when asked to comment on the effects that a likely imposition of countervailing measures could have on their business, no importer/trader alleged that the imposition of such measures was likely to affect it negatively.

On this basis, it should thus be provisionally concluded that the imposition of countervailing measures is not likely to significantly affect importers/traders in the Community.

5. Interest of up-stream suppliers

- (111) In order to assess the likely effect that the imposition of countervailing measures could have on the up-stream suppliers of the Community industry, questionnaires were sent to all such known suppliers. In total six questionnaires were sent out and three replies were received. The three companies replying produce various raw materials which

are incorporated into the product under investigation such as sugar syrups, salts and numerous chemicals. These producers but they are also, in the case of one company, exported to India. When asked to comment on the expected impact of any countervailing measures on their business, the three companies which replied to the questionnaire stated that they expected such measures to have a positive impact in the form of increased orders from the Community industry.

It can thus be provisionally concluded that the imposition of countervailing measures would in any event have no negative impact but could be expected to have a positive impact on the Community producers of raw materials which are incorporated into the product under investigation.

6. Interest of users of the product concerned

- (112) Questionnaires were also sent to five known Community users of the product under investigation. There of these users which are pharmaceutical companies manufacturing down-stream products incorporating the product under investigation provided meaningful replies. It appears from these replies that the down-stream users, even though they concede that the imposition of measures may increase the price of their raw materials, are not opposed to the imposition of countervailing measures on Indian imports. One of the users even seemed to welcome the imposition of countervailing measures since this company had problems selling its products because of the competition from products incorporating low-priced subsidised imports.
- (113) In view of the above, the Commission considers that the impact of any possible measures on users of the product under investigation would be negligible.

7. Conclusion

- (114) In examining the various interests involved and all the above aspects, the Commission provisionally considers that there are no compelling reasons not to take action against the imports in question by restoring a competitive market situation of fair pricing practices and preventing further injury to the Community industry.

H. PROPOSED MEASURES

- (115) For the purpose of establishing the level of the provisional duty, account was taken of the level of subsidisation found and the amount of duty necessary to eliminate the injury suffered by the Community industry.

1. Injury elimination level

- (116) Since the injury was mainly in the form of declining prices and profits, it was considered that the removal of such injury would be achieved through the establishment of a non-injurious price level, i.e. a price level which would prevail in the absence of subsidised imports from India. In the circumstances of this case, it can be assumed that such non-injurious price levels would allow the Community industry to cover its costs and achieve a reasonable profit.

In this respect, it was considered that a price level adequate to remove the injury should be based on the weighted cost of production of the complainant Community producers, together with a profit of 15 % on turnover. This profit rate was considered to be an appropriate minimum in order to allow the Community industry to invest in R&D and thus to remain competitive and, in the long term, viable. Such a rate of return could reasonably be expected by the Community in the absence of injurious subsidisation.

This injury elimination level was then compared with the weighted average cif import price reported by the exporters concerned.

2. Form and level of the provisional measures

- (117) Since the injury elimination margins thus established are, in the case of four companies, higher than the subsidy margins, for these companies, duties corresponding to the subsidy margins are imposed. For two other companies, for which the injury elimination margins are lower than the subsidy margins, duties corresponding to the injury elimination margins in accordance with Article 12(1) of the Basic Regulation are imposed. For two other companies, the level of subsidisation was found to be *de minimis*, i.e. below 3 %, in accordance with Article 14(5)(b) of the Basic Regulation, and one other company did not receive any subsidies. For these latter three companies, the rate of duty is set at 0 %.

- (118) As regards the form of the measures, particular consideration was given to the fact that the injury established consisted mainly of a depression of the complainant Community producers' prices, together with the negative impact of these low prices on their profitability. It was therefore provisionally considered that the appropriate way to remedy injury would be the imposition of an *ad valorem* duty.

- (119) Since the cooperating exporters did not represent a majority of Indian exports to the Community and in order not to grant a bonus for non-cooperation, the residual duty should be set at the level of the average injury elimination margin established for the cooperating exporters, i.e. 14,6 % which is above the highest individual duty imposed on a cooperating.

I. RIGHTS OF INTERESTED PARTIES

- (120) In the interests of sound administration, a period should be fixed within which the parties concerned may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings made for the purposes of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive duty which the Commission may propose,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional countervailing duty is hereby imposed on imports of amoxicillin trihydrate, ampicillin trihydrate and cefalexin presented in bulk falling within CN codes ex 2941 10 10 (TARIC code 2941 10 10 *10) ex 2941 10 20 (TARIC code 2941 10 20 *10) and ex 2941 90 00 (TARIC code 2941 90 00 30) originating in India.

2. The rate of duty applicable to the net free-at-Community-frontier price, before duty for imports manufactured by the companies mentioned, shall be:

- 9,6 % for Biochem Synergy Ltd., Indore (TARIC additional code: 8219),
- 9,6 % for Harshita Ltd, New Delhi (TARIC additional code: 8219)
- 8,8 % for Kopran Ltd, Mumbai (TARIC additional code: 8220),
- 6,6 % for Ranbaxy Laboratories Ltd, New Delhi (TARIC additional code: 8221),
- 4,6 % for Lupin Laboratories Ltd, Mumbai (TARIC additional code: 8222),

- 12 % for Orchid Chemicals & Pharmaceuticals Ltd, Chennai (TARIC additional code: 8224),
- 0 % for Torrent Pharmaceuticals Ltd, Ahmedabad (TARIC additional code: 8225),
- 0 % for Vitara Chemicals Ltd, Mumbai (TARIC additional code: 8225),
- 0 % for Gujarat Lyka Organics Ltd, Mumbai (TARIC additional code: 8225),
- 14,6 % for other companies (TARIC additional code: 8900).

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

4. The release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 30 of Regulation (EC) No 2026/97, the parties concerned may make known their views in writing and apply to be heard orally by the Commission within 15 days of the date of entry into force of this Regulation.

Pursuant to Article 31(4) of Regulation (EC) No 2026/97, the parties concerned may comment on the application of this Regulation within one month of the date of the date of its entry into force.

Article 3

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

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

Done at Brussels, 9 June 1998.

For the Commission

Leon BRITTAN

Vice-President

COMMISSION REGULATION (EC) No 1205/98**of 10 June 1998****setting the amount of the payment on account of the cost of disposal of certain
distillation products for 1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organisation of the market in wine ⁽¹⁾, as last amended by Regulation (EC) No 2087/97 ⁽²⁾ and in particular Article 37(2) thereof,

Whereas, as regards alcohol from distillation as referred to in Articles 35 and 36 of Regulation (EEC) No 822/87, the European Agricultural Guidance and Guarantee Fund (EAGGF) is to bear only the costs arising from its disposal; whereas the amount of the payment on account of the cost of disposal of the products must be fixed having regard to depreciation in a way similar to that by which alcohol from distillation as referred to in Article 39 of that Regulation is depreciated,

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

Done at Brussels, 10 June 1998.

Article 1

The amount of the payment on account of the cost of disposal of the products of distillation pursuant to Articles 35 and 36 of Regulation (EEC) No 822/87 shall be determined by application of a coefficient to the value of purchase made by intervention agencies.

For the 1999 financial year this coefficient shall be 0,70.

Article 2

The expenditure amounts determined in this way shall be notified to the Commission under the declaration established pursuant to Commission Regulation (EC) No 296/96 ⁽³⁾.

Article 3

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

It shall apply from 1 October 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 84, 27. 3. 1987, p. 1.

⁽²⁾ OJ L 292, 25. 10. 1997, p. 1.

⁽³⁾ OJ L 39, 17. 2. 1996, p. 5.

COMMISSION REGULATION (EC) No 1206/98
of 10 June 1998

**fixing depreciation percentages to be applied when agricultural products are
bought in, for the 1999 financial year**

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

Having regard to the Council Regulation (EEC) No 1883/78 of 2 August 1978 laying down general rules for the financing of interventions by the European Agricultural Guidance and Guarantee Fund, Guarantee Section ⁽¹⁾, as last amended by Regulation (EC) No 1259/96 ⁽²⁾, and in particular Article 8 thereof,

Whereas, pursuant to Article 8 of Regulation (EEC) No 1883/78, systematic depreciation of public intervention agricultural products must take place when they are bought in; whereas accordingly the Commission determines the depreciation percentage for each product concerned before the beginning of each year; whereas such percentage shall not exceed the difference between the buying-in price and the foreseeable disposal price for each of these products;

Whereas, pursuant to Article 8(3) of Regulation (EEC) No 1883/78, the Commission may, at its discretion, restrict depreciation at the time of buying in to a proportion of this depreciation percentage, but such proportion may not be less than 70 %; whereas, coefficients to be applied also for the 1999 financial year by the intervention agencies to the monthly buying-in values of products should be fixed, to enable the agencies to establish the depreciation amounts;

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

HAS ADOPTED THIS REGULATION:

Article 1

In respect of the products listed in the Annex, which, having been bought in by public intervention have entered store or been taken over by the intervention agencies between 1 October 1998 and 30 September 1999, the authorities shall depreciate their value to account for the difference between the buying-in prices and the foreseeable selling prices of the relevant products.

Article 2

To establish the amount of the depreciation, the intervention agencies shall apply to the values of the products bought in every month the coefficients set out in the Annex.

The expenditure amounts determined in this way shall be notified to the Commission under the declarations established pursuant to Commission Regulation (EC) No 296/96 ⁽³⁾.

Article 3

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

It shall apply from 1 October 1998 onwards.

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

Done at Brussels, 10 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 216, 5. 8. 1978, p. 1.
⁽²⁾ OJ L 163, 2. 7. 1996, p. 10.

⁽³⁾ OJ L 39, 17. 2. 1996, p. 5.

ANNEX

'k' depreciation coefficients (Article 8(3) of Regulation (EEC) No 1883/78) to be applied to the monthly buying-in values

Products	k
Breadmaking common wheat	0,03
Durum wheat	0,00
Barley	0,10
Rye	0,25
Maize	0,11
Sorghum	0,11
Paddy rice	0,20
Olive oil	0,15
Butter	0,50
Skimmed-milk powder	0,45
Beef	0,55
Alcohol as referred to in Article 40(1) of Council Regulation (EEC) No 822/87 ⁽¹⁾	0,70

⁽¹⁾ OJ L 84, 27. 3. 1987, p. 1.

COMMISSION REGULATION (EC) No 1207/98
of 10 June 1998
amending Regulation (EEC) No 2191/81 on the granting of aid for the purchase
of butter by non-profit-making institutions and organisations

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

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EC) No 1587/96 ⁽²⁾, and in particular Article 12(3) thereof,

Whereas Commission Regulation (EEC) No 2191/81 ⁽³⁾, as last amended by Regulation (EC) No 2196/95 ⁽⁴⁾, provides for the grant of aid for the purchase of butter by non-profit-making institutions and organisations; whereas in view of the current situation on the butter market and the level of sales under this Regulation, the aid amount must be reduced;

Whereas the Management Committee for Milk and Milk Products has not delivered an opinion within the time limit laid down by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

In the first subparagraph of Article 2(1) of Regulation (EEC) No 2191/81, 'ECU 139' is replaced by 'ECU 105'.

Article 2

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

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

Done at Brussels, 10 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 21.

⁽³⁾ OJ L 213, 1. 8. 1981, p. 20.

⁽⁴⁾ OJ L 221, 19. 9. 1995, p. 1.

COMMISSION REGULATION (EC) No 1208/98
of 10 June 1998
on the issue of import licences for high-quality fresh, chilled or frozen beef and veal

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

Having regard to Commission Regulation (EC) No 936/97 of 27 May 1997 opening and providing for the administration of tariff quotas for high-quality fresh, chilled and frozen beef and for frozen buffalo meat⁽¹⁾, as last amended by Regulation (EC) No 260/98⁽²⁾,

Whereas Regulation (EC) No 936/97 provides in Articles 4 and 5 the conditions for applications and for the issue of import licences for meat referred to in Article 2(f);

Whereas Article 2(f) of Regulation (EC) No 936/97 fixes the amount of high-quality fresh, chilled or frozen beef and veal originating in and imported from the United States of America and Canada which may be imported on special terms for the period 1 July 1997 to 30 June 1998 at 11 500 tonnes;

Whereas it should be recalled that licences issued pursuant to this Regulation will, throughout the period of validity, be open for use only in so far as provisions on health protection in force permit,

HAS ADOPTED THIS REGULATION:

Article 1

All applications for import licences from 1 to 5 June 1998 for high-quality fresh, chilled or frozen beef and veal as referred to in Article 2(f) of Regulation (EC) No 936/97 shall be granted in full.

Article 2

This Regulation shall enter into force on 11 June 1998.

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

Done at Brussels, 10 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 137, 28. 5. 1997, p. 10.

⁽²⁾ OJ L 25, 31. 1. 1998, p. 42.

COMMISSION REGULATION (EC) No 1209/98

of 10 June 1998

on the sale, at prices fixed in advance, of beef held by the United Kingdom to the armed forces

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

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organisation of the market in beef and veal⁽¹⁾, as last amended by Regulation (EC) No 2634/97⁽²⁾, and in particular Article 7(3) thereof,

Whereas the introduction of intervention in beef has resulted in a build-up of stocks; whereas, in order to prevent storage being prolonged excessively, part of those stocks should be sold;

Whereas in the United Kingdom intervention beef is subject to certain restrictions on movement as laid down in Council Decision 98/256/EC⁽³⁾; whereas appropriate outlets should therefore be found within that Member State; whereas the armed forces and its associated personnel constitutes one such outlet;

Whereas a sale to the armed forces should be subject to the rules laid down in Commission Regulations (EEC) No 2173/79⁽⁴⁾, as last amended by Regulation (EC) No 2417/95⁽⁵⁾, in particular Titles I and III thereof, and (EEC) No 3002/92⁽⁶⁾, as last amended by Regulation (EC) No 770/96⁽⁷⁾, in particular Title II thereof, subject to certain exceptions on account of the particular use to which the products in question are to be put;

Whereas, to ensure the economic management of stocks, the intervention agency should give priority to selling the meat which has been stored the longest;

Whereas provisions should be laid down to cover the case where the products are purchased by an authorised agent acting on behalf of the beneficiaries;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. The United Kingdom intervention agency shall be authorised to sell stocks of boneless beef which it holds to

the United Kingdom armed forces for use by the United Kingdom armed forces and associated personnel, without prejudice to Decision 98/256/EC.

2. Detailed information concerning the products and their selling price is given in Annex I.

3. For the purposes of this Regulation, 'associated personnel' shall mean those persons employed by the United Kingdom armed forces in a civilian capacity, and those persons visiting military establishments.

4. The sales shall be carried out in accordance with the provisions of Regulation (EC) No 2173/79, in particular Titles I and III thereof, and of this Regulation.

5. For each product mentioned in Annex I hereto, the intervention agency shall first sell the meat which has been stored the longest.

6. Notwithstanding the second subparagraph of Article 2(2) of Regulation (EEC) No 2173/79, purchase applications shall not indicate in which store or stores the meat is held.

Article 2

1. The purchaser referred to in Article 1 may instruct an agent in writing to take delivery, on his behalf, of the products which he purchases. In this case the agent shall submit the purchase application of the purchaser whom he represents together with the written instruction referred to above.

2. The purchasers and agents referred to in the preceding paragraph shall maintain and keep up to date an accounting system which permits the delivery of the products to a military establishment to be ascertained with a view in particular to ensuring that the quantities of products purchased and delivered tally.

Article 3

1. The cartons of beef released under this Regulation shall be clearly marked in indelible lettering with the following:

'Intervention beef sold to the armed forces'.

2. The competent authority may, at the request of the purchaser, authorise the first stage processing and repackaging of the beef in a non-military establishment, provided the relevant operations take place under appropriate supervision.

⁽¹⁾ OJ L 148, 28. 6. 1968, p. 24.

⁽²⁾ OJ L 356, 31. 12. 1997, p. 13.

⁽³⁾ OJ L 113, 15. 4. 1998, p. 32.

⁽⁴⁾ OJ L 251, 5. 10. 1979, p. 12.

⁽⁵⁾ OJ L 248, 14. 10. 1995, p. 39.

⁽⁶⁾ OJ L 301, 17. 10. 1992, p. 17.

⁽⁷⁾ OJ L 104, 27. 4. 1996, p. 13.

In such cases, the re-packaged cartons shall be marked as in paragraph 1.

Article 4

1. The security provided for in Article 15(1) of Regulation (EEC) No 2173/79 shall be ECU 12 per 100 kilograms.

2. In addition to the requirements laid down in Article 15(3) of Regulation (EEC) No 2173/79, delivery of the beef to a military establishment shall also constitute a principal requirement.

Article 5

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

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

Done at Brussels, 10 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

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

Estado miembro	Productos (*)	Cantidad aproximada (toneladas)	Precio de venta expresado en ecus por tonelada
Medlemsstat	Produkter (*)	Tilnærmet mængde (tons)	Salgspriser i ECU/ton
Mitgliedstaat	Erzeugnisse (*)	Ungefähre Mengen (Tonnen)	Verkaufspreise, ausgedrückt in ECU/Tonne
Κράτος μέλος	Προϊόντα (*)	Κατά προσέγγιση ποσότητα (τόνοι)	Τιμές πώλησης εκφραζόμενες σε Ecu ανά τόνο
Member State	Products (*)	Approximate quantity (tonnes)	Selling prices expressed in ecus per tonne
État membre	Produits (*)	Quantité approximative (tonnes)	Prix de vente exprimés en écus par tonne
Stato membro	Prodotti (*)	Quantità approssimativa (tonnellate)	Prezzi di vendita espressi in ecu per tonnellata
Lidstaat	Producten (*)	Hoeveelheid bij benadering (ton)	Verkoopprijzen uitgedrukt in ECU per ton
Estado-membro	Produtos (*)	Quantidade aproximada (toneladas)	Preço de venda expresso em ecus por tonelada
Jäsenvaltio	Tuotteet (*)	Arvioitu määrä (tonneina)	Myyntihinta ecuina tonnilta
Medlemsstat	Produkter (*)	Ungefärlig kvantitet (ton)	Försäljningspris i ecu per ton

Carne deshuesada — Udbenet kød — Fleisch ohne Knochen — Κρέατα χωρίς κόκαλα — Boneless beef — Viande désossée — Carni senza osso — Vlees zonder been — Carne desossada — Luuton naudanliha — Benfritt kött

UNITED KINGDOM	— Intervention thick flank (INT 12)	95	2 750
	— Intervention topside (INT 13)	265	2 950
	— Intervention silverside (INT 14)	90	2 650
	— Intervention fillet (INT 15)	80	6 600
	— Intervention rump (INT 16)	380	3 250
	— Intervention striploin (INT 17)	270	4 200
	— Intervention forerib (INT 19)	20	1 850

(*) Véanse los anexos V y VII del Reglamento (CEE) n° 2456/93 (DO L 225 de 4. 9. 1993, p. 4), cuya última modificación la constituye el Reglamento (CE) n° 2602/97 (DO L 351 de 23. 12. 1997, p. 20).

(*) Se bilag V og VII til forordning (EØF) nr. 2456/93 (EFT L 225 af 4. 9. 1993, s. 4), senest ændret ved forordning (EF) nr. 2602/97 (EFT L 351 af 23. 12. 1997, s. 20).

(*) Vgl. Anhänge V und VII der Verordnung (EWG) Nr. 2456/93 (ABl. L 225 vom 4. 9. 1993, S. 4), zuletzt geändert durch die Verordnung (EG) Nr. 2602/97 (ABl. L 351 vom 23. 12. 1997, S. 20).

(*) Βλέπε παραρτήματα V και VII του κανονισμού (ΕΟΚ) αριθ. 2456/93 (ΕΕ L 225 της 4. 9. 1993, σ. 4), όπως τροποποιήθηκε τελευταία από τον κανονισμό (ΕΚ) αριθ. 2602/97 (ΕΕ L 351 της 23. 12. 1997, σ. 20).

(*) See Annexes V and VII to Regulation (EEC) No 2456/93 (OJ L 225, 4.9.1993, p. 4), as last amended by Regulation (EC) No 2602/97 (OJ L 351, 23.12.1997, p. 20).

(*) Voir annexes V et VII du règlement (CEE) n° 2456/93 (JO L 225 du 4. 9. 1993, p. 4). Règlement modifié en dernier lieu par le règlement (CE) n° 2602/97 (JO L 351 du 23. 12. 1997, p. 20).

(*) Cfr. allegati V e VII del regolamento (CEE) n. 2456/93 (GU L 225 del 4. 9. 1993, pag. 4), modificato da ultimo dal regolamento (CE) n. 2602/97 (GU L 351 del 23. 12. 1997, pag. 20).

(*) Zie de bijlagen V en VII van Verordening (EEG) nr. 2456/93 (PB L 225 van 4. 9. 1993, blz. 4), laatstelijk gewijzigd bij Verordening (EG) nr. 2602/97 (PB L 351 van 23. 12. 1997, blz. 20).

(*) Ver anexos V e VII do Regulamento (CEE) n° 2456/93 (JO L 225 de 4. 9. 1993, p. 4). Regulamento com a última redacção que lhe foi dada pelo Regulamento (CE) n° 2602/97 (JO L 351 de 23. 12. 1997, p. 20).

(*) Katso asetukset (ETY) N:o 2456/93 (EYVL L 225, 4. 9. 1993, s. 4), sellaisena kuin se on viimeksi muutettuna asetuksella (EY) N:o 2602/97 (EYVL L 351, 23.12.1997, s. 20), liitteitä V ja VII.

(*) Se bilagorna V och VII i förordning (EEG) nr 2456/93 (EGT L 225, 4.9.1993, s. 4), senast ändrad genom förordning (EG) nr 2602/97 (EGT L 351, 23.12.1997, s. 20).

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

**Direcciones de los organismos de intervención — Interventionsorganernes adresser —
Anschriften der Interventionsstellen — Διευθύνσεις των οργανισμών παρεμβάσεως — Addresses
of the intervention agencies — Adresses des organismes d'intervention — Indirizzi degli
organismi d'intervento — Adressen van de interventiebureaus — Endereços dos organismos de
intervenção — Interventioelinten osoitteet — Interventionsorganens adresser**

UNITED KINGDOM

Intervention Board Executive Agency
Kings House
33 Kings Road
Reading RG1 3BU
Berkshire
Tel. (01189) 58 36 26
Fax (01189) 56 67 50

COMMISSION REGULATION (EC) No 1210/98
of 10 June 1998
amending representative prices and additional duties for the import of certain
products in the sugar sector

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

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

Having regard to Commission Regulation (EC) No 1423/95 of 23 June 1995 laying down detailed implementing rules for the import of products in the sugar sector other than molasses ⁽³⁾, as last amended by Regulation (EC) No 624/98 ⁽⁴⁾, and in particular the second subparagraph of Article 1 (2), and Article 3 (1) thereof,

Whereas the amounts of the representative prices and additional duties applicable to the import of white sugar, raw sugar and certain syrups are fixed by Commission Regulation (EC) No 1222/97 ⁽⁵⁾, as last amended by Regulation (EC) No 1152/98 ⁽⁶⁾;

Whereas it follows from applying the general and detailed fixing rules contained in Regulation (EC) No 1423/95 to the information known to the Commission that the representative prices and additional duties at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties on imports of the products referred to in Article 1 of Regulation (EC) No 1423/95 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 11 June 1998.

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

Done at Brussels, 10 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ L 141, 24. 6. 1995, p. 16.

⁽⁴⁾ OJ L 85, 20. 3. 1998, p. 5.

⁽⁵⁾ OJ L 173, 1. 7. 1997, p. 3.

⁽⁶⁾ OJ L 159, 3. 6. 1998, p. 49.

ANNEX

to the Commission Regulation of 10 June 1998 amending representative prices and the amounts of additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 99

(ECU)

CN code	Amount of representative prices per 100 kg net of product concerned	Amount of additional duty per 100 kg net of product concerned
1701 11 10 ⁽¹⁾	17,31	7,65
1701 11 90 ⁽¹⁾	17,31	13,83
1701 12 10 ⁽¹⁾	17,31	7,46
1701 12 90 ⁽¹⁾	17,31	13,31
1701 91 00 ⁽²⁾	22,59	14,59
1701 99 10 ⁽²⁾	22,59	9,42
1701 99 90 ⁽²⁾	22,59	9,42
1702 90 99 ⁽³⁾	0,23	0,41

⁽¹⁾ For the standard quality as defined in Article 1 of amended Council Regulation (EEC) No 431/68 (OJ L 89, 10. 4. 1968, p. 3).

⁽²⁾ For the standard quality as defined in Article 1 of Council Regulation (EEC) No 793/72 (OJ L 94, 21. 4. 1972, p. 1).

⁽³⁾ By 1 % sucrose content.

DIRECTIVE 98/26/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 19 May 1998****on settlement finality in payment and securities settlement systems**

THE EUROPEAN PARLIAMENT AND THE COUNCIL
OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100a thereof,

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

Having regard to the opinion of the European Monetary Institute ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Acting in accordance with the procedure laid down in Article 189b of the Treaty ⁽⁴⁾,

- (1) Whereas the Lamfalussy report of 1990 to the Governors of the central banks of the Group of Ten Countries demonstrated the important systemic risk inherent in payment systems which operate on the basis of several legal types of payment netting, in particular multilateral netting; whereas the reduction of legal risks associated with participation in real time gross settlement systems is of paramount importance, given the increasing development of these systems;
- (2) Whereas it is also of the utmost importance to reduce the risk associated with participation in securities settlement systems, in particular where there is a close connection between such systems and payment systems;
- (3) Whereas this Directive aims at contributing to the efficient and cost effective operation of cross-border payment and securities settlement arrangements in the Community, which reinforces the freedom of movement of capital in the internal market; whereas this Directive thereby follows up the progress made towards completion of the internal market, in particular towards the freedom to provide services and liberalisation of capital movements, with a view to the realisation of Economic and Monetary Union;

(4) Whereas it is desirable that the laws of the Member States should aim to minimise the disruption to a system caused by insolvency proceedings against a participant in that system;

(5) Whereas a proposal for a Directive on the reorganisation and winding-up of credit institutions submitted in 1985 and amended on 8 February 1988 is still pending before the Council; whereas the Convention on Insolvency Proceedings drawn up on 23 November 1995 by the Member States meeting within the Council explicitly excludes insurance undertakings, credit institutions and investment firms;

(6) Whereas this Directive is intended to cover payment and securities settlement systems of a domestic as well as of a cross-border nature; whereas the Directive is applicable to Community systems and to collateral security constituted by their participants, be they Community or third country participants, in connection with participation in these systems;

(7) Whereas Member States may apply the provisions of this Directive to their domestic institutions which participate directly in third country systems and to collateral security provided in connection with participation in such systems;

(8) Whereas Member States should be allowed to designate as a system covered by this Directive a system whose main activity is the settlement of securities even if the system to a limited extent also deals with commodity derivatives;

(9) Whereas the reduction of systemic risk requires in particular the finality of settlement and the enforceability of collateral security; whereas collateral security is meant to comprise all means provided by a participant to the other participants in the payment and/or securities settlement systems to secure rights and obligations in connection with that system, including repurchase agreements, statutory liens and fiduciary transfers; whereas regulation in national law of the kind of collateral security which can be used should not be affected by the definition of collateral security in this Directive;

⁽¹⁾ OJ C 207, 18. 7. 1996, p. 13, and OJ C 259, 26. 8. 1997, p. 6.

⁽²⁾ Opinion delivered on 21 November 1996.

⁽³⁾ OJ C 56, 24. 2. 1997, p. 1.

⁽⁴⁾ Opinion of the European Parliament of 9 April 1997 (OJ C 132, 28. 4. 1997, p. 74), Council Common Position of 13 October 1997 (OJ C 375, 10. 12. 1997, p. 34) and Decision of the European Parliament of 29 January 1998 (OJ C 56, 23. 2. 1998). Council Decision of 27 April 1998.

- (10) Whereas this Directive, by covering collateral security provided in connection with operations of the central banks of the Member States functioning as central banks, including monetary policy operations, assists the European Monetary Institute in its task of promoting the efficiency of cross-border payments with a view to the preparation of the third stage of Economic and Monetary Union and thereby contributes to developing the necessary legal framework in which the future European central bank may develop its policy;
- (11) Whereas transfer orders and their netting should be legally enforceable under all Member States' jurisdictions and binding on third parties;
- (12) Whereas rules on finality of netting should not prevent systems testing, before the netting takes place, whether orders that have entered the system comply with the rules of that system and allow the settlement of that system to take place;
- (13) Whereas nothing in this Directive should prevent a participant or a third party from exercising any right or claim resulting from the underlying transaction which they may have in law to recovery or restitution in respect of a transfer order which has entered a system, e.g. in case of fraud or technical error, as long as this leads neither to the unwinding of netting nor to the revocation of the transfer order in the system;
- (14) Whereas it is necessary to ensure that transfer orders cannot be revoked after a moment defined by the rules of the system;
- (15) Whereas it is necessary that a Member State should immediately notify other Member States of the opening of insolvency proceedings against a participant in the system;
- (16) Whereas insolvency proceedings should not have a retroactive effect on the rights and obligations of participants in a system;
- (17) Whereas, in the event of insolvency proceedings against a participant in a system, this Directive furthermore aims at determining which insolvency law is applicable to the rights and obligations of that participant in connection with its participation in a system;
- (18) Whereas collateral security should be insulated from the effects of the insolvency law applicable to the insolvent participant;
- (19) Whereas the provisions of Article 9(2) should only apply to a register, account or centralized deposit system which evidences the existence of proprietary rights in or for the delivery or transfer of the securities concerned;
- (20) Whereas the provisions of Article 9(2) are intended to ensure that if the participant, the central bank of a Member State or the future European central bank has a valid and effective collateral security as determined under the law of the Member State where the relevant register, account or centralized deposit system is located, then the validity and enforceability of that collateral security as against that system (and the operator thereof) and against any other person claiming directly or indirectly through it, should be determined solely under the law of that Member State;
- (21) Whereas the provisions of Article 9(2) are not intended to prejudice the operation and effect of the law of the Member State under which the securities are constituted or of the law of the Member State where the securities may otherwise be located (including, without limitation, the law concerning the creation, ownership or transfer of such securities or of rights in such securities) and should not be interpreted to mean that any such collateral security will be directly enforceable or be capable of being recognised in any such Member State otherwise than in accordance with the law of that Member State;
- (22) Whereas it is desirable that Member States endeavour to establish sufficient links between all the securities settlement systems covered by this Directive with a view towards promoting maximum transparency and legal certainty of transactions relating to securities;
- (23) Whereas the adoption of this Directive constitutes the most appropriate way of realising the above-mentioned objectives and does not go beyond what is necessary to achieve them,
- HAVE ADOPTED THIS DIRECTIVE:
- SECTION I
- SCOPE AND DEFINITIONS
- Article 1*
- The provisions of this Directive shall apply to:
- (a) any system as defined in Article 2(a), governed by the law of a Member State and operating in any currency, the ecu or in various currencies which the system converts one against another;

- (b) any participant in such a system;
- (c) collateral security provided in connection with:
 - participation in a system, or
 - operations of the central banks of the Member States in their functions as central banks.

Article 2

For the purpose of this Directive:

- (a) 'system' shall mean a formal arrangement:
 - between three or more participants, without counting a possible settlement agent, a possible central counterparty, a possible clearing house or a possible indirect participant, with common rules and standardised arrangements for the execution of transfer orders between the participants,
 - governed by the law of a Member State chosen by the participants; the participants may, however, only choose the law of a Member State in which at least one of them has its head office, and
 - designated, without prejudice to other more stringent conditions of general application laid down by national law, as a system and notified to the Commission by the Member State whose law is applicable, after that Member State is satisfied as to the adequacy of the rules of the system.

Subject to the conditions in the first subparagraph, a Member State may designate as a system such a formal arrangement whose business consists of the execution of transfer orders as defined in the second indent of (i) and which to a limited extent executes orders relating to other financial instruments, when that Member State considers that such a designation is warranted on grounds of systemic risk.

A Member State may also on a case-by-case basis designate as a system such a formal arrangement between two participants, without counting a possible settlement agent, a possible central counterparty, a possible clearing house or a possible indirect participant, when that Member State considers that such a designation is warranted on grounds of systemic risk;

- (b) 'institution' shall mean:
 - a credit institution as defined in the first indent of Article 1 of Directive 77/780/EEC ⁽¹⁾ including the institutions set out in the list in Article 2(2) thereof, or

- an investment firm as defined in point 2 of Article 1 of Directive 93/22/EEC ⁽²⁾ excluding the institutions set out in the list in Article 2(2)(a) to (k) thereof, or
- public authorities and publicly guaranteed undertakings, or
- any undertaking whose head office is outside the Community and whose functions correspond to those of the Community credit institutions or investment firms as defined in the first and second indent,

which participates in a system and which is responsible for discharging the financial obligations arising from transfer orders within that system.

If a system is supervised in accordance with national legislation and only executes transfer orders as defined in the second indent of (i), as well as payments resulting from such orders, a Member State may decide that undertakings which participate in such a system and which have responsibility for discharging the financial obligations arising from transfer orders within this system, can be considered institutions, provided that at least three participants of this system are covered by the categories referred to in the first subparagraph and that such a decision is warranted on grounds of systemic risk;

- (c) 'central counterparty' shall mean an entity which is interposed between the institutions in a system and which acts as the exclusive counterparty of these institutions with regard to their transfer orders;
- (d) 'settlement agent' shall mean an entity providing to institutions and/or a central counterparty participating in systems, settlement accounts through which transfer orders within such systems are settled and, as the case may be, extending credit to those institutions and/or central counterparties for settlement purposes;
- (e) 'clearing house' shall mean an entity responsible for the calculation of the net positions of institutions, a possible central counterparty and/or a possible settlement agent;
- (f) 'participant' shall mean an institution, a central counterparty, a settlement agent or a clearing house.

According to the rules of the system, the same participant may act as a central counterparty, a settlement agent or a clearing house or carry out part or all of these tasks.

⁽¹⁾ First Council Directive 77/780/EEC of 12 December 1977 on the coordination of the laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (OJ L 322, 17. 12. 1977, p. 30). Directive as last amended by Directive 96/13/EC (OJ L 66, 16. 3. 1996, p. 15).

⁽²⁾ Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (OJ L 141, 11. 6. 1993, p. 27). Directive as last amended by Directive 97/9/EC (OJ L 84, 26. 3. 1997, p. 22).

A Member State may decide that for the purposes of this Directive an indirect participant may be considered a participant if it is warranted on the grounds of systemic risk and on condition that the indirect participant is known to the system;

(g) 'indirect participant' shall mean a credit institution as defined in the first indent of (b) with a contractual relationship with an institution participating in a system executing transfer orders as defined in the first indent of (i) which enables the abovementioned credit institution to pass transfer orders through the system;

(h) 'securities' shall mean all instruments referred to in section B of the Annex to Directive 93/22/EEC;

(i) 'transfer order' shall mean:

— any instruction by a participant to place at the disposal of a recipient an amount of money by means of a book entry on the accounts of a credit institution, a central bank or a settlement agent, or any instruction which results in the assumption or discharge of a payment obligation as defined by the rules of the system, or

— an instruction by a participant to transfer the title to, or interest in, a security or securities by means of a book entry on a register, or otherwise;

(j) 'insolvency proceedings' shall mean any collective measure provided for in the law of a Member State, or a third country, either to wind up the participant or to reorganise it, where such measure involves the suspending of, or imposing limitations on, transfers or payments;

(k) 'netting' shall mean the conversion into one net claim or one net obligation of claims and obligations resulting from transfer orders which a participant or participants either issue to, or receive from, one or more other participants with the result that only a net claim can be demanded or a net obligation be owed;

(l) 'settlement account' shall mean an account at a central bank, a settlement agent or a central counterparty used to hold funds and securities and to settle transactions between participants in a system;

(m) 'collateral security' shall mean all realisable assets provided under a pledge (including money provided under a pledge), a repurchase or similar agreement, or otherwise, for the purpose of securing rights and obligations potentially arising in connection with a

system, or provided to central banks of the Member States or to the future European central bank.

SECTION II

NETTING AND TRANSFER ORDERS

Article 3

1. Transfer orders and netting shall be legally enforceable and, even in the event of insolvency proceedings against a participant, shall be binding on third parties, provided that transfer orders were entered into a system before the moment of opening of such insolvency proceedings as defined in Article 6(1).

Where, exceptionally, transfer orders are entered into a system after the moment of opening of insolvency proceedings and are carried out on the day of opening of such proceedings, they shall be legally enforceable and binding on third parties only if, after the time of settlement, the settlement agent, the central counterparty or the clearing house can prove that they were not aware, nor should have been aware, of the opening of such proceedings.

2. No law, regulation, rule or practice on the setting aside of contracts and transactions concluded before the moment of opening of insolvency proceedings, as defined in Article 6(1) shall lead to the unwinding of a netting.

3. The moment of entry of a transfer order into a system shall be defined by the rules of that system. If there are conditions laid down in the national law governing the system as to the moment of entry, the rules of that system must be in accordance with such conditions.

Article 4

Member States may provide that the opening of insolvency proceedings against a participant shall not prevent funds or securities available on the settlement account of that participant from being used to fulfil that participant's obligations in the system on the day of the opening of the insolvency proceedings. Furthermore, Member States may also provide that such a participant's credit facility connected to the system be used against available, existing collateral security to fulfil that participant's obligations in the system.

Article 5

A transfer order may not be revoked by a participant in a system, nor by a third party, from the moment defined by the rules of that system.

SECTION III

PROVISIONS CONCERNING INSOLVENCY PROCEEDINGS*Article 6*

1. For the purpose of this Directive, the moment of opening of insolvency proceedings shall be the moment when the relevant judicial or administrative authority handed down its decision.

2. When a decision has been taken in accordance with paragraph 1, the relevant judicial or administrative authority shall immediately notify that decision to the appropriate authority chosen by its Member State.

3. The Member State referred to in paragraph 2 shall immediately notify other Member States.

Article 7

Insolvency proceedings shall not have retroactive effects on the rights and obligations of a participant arising from, or in connection with, its participation in a system earlier than the moment of opening of such proceedings as defined in Article 6(1).

Article 8

In the event of insolvency proceedings being opened against a participant in a system, the rights and obligations arising from, or in connection with, the participation of that participant shall be determined by the law governing that system.

SECTION IV

INSULATION OF THE RIGHTS OF HOLDERS OF COLLATERAL SECURITY FROM THE EFFECTS OF THE INSOLVENCY OF THE PROVIDER*Article 9*

1. The rights of:

- a participant to collateral security provided to it in connection with a system, and
- central banks of the Member States or the future European central bank to collateral security provided to them,

shall not be affected by insolvency proceedings against the participant or counterparty to central banks of the Member States or the future European central bank which provided the collateral security. Such collateral security may be realised for the satisfaction of these rights.

2. Where securities (including rights in securities) are provided as collateral security to participants and/or central banks of the Member States or the future European central bank as described in paragraph 1, and their right (or that of any nominee, agent or third party acting on their behalf) with respect to the securities is legally recorded on a register, account or centralised deposit system located in a Member State, the determination of the rights of such entities as holders of collateral security in relation to those securities shall be governed by the law of that Member State.

SECTION V

FINAL PROVISIONS*Article 10*

Member States shall specify the systems which are to be included in the scope of this Directive and shall notify them to the Commission and inform the Commission of the authorities they have chosen in accordance with Article 6(2).

The system shall indicate to the Member State whose law is applicable the participants in the system, including any possible indirect participants, as well as any change in them.

In addition to the indication provided for in the second subparagraph, Member States may impose supervision or authorisation requirements on systems which fall under their jurisdiction.

Anyone with a legitimate interest may require an institution to inform him of the systems in which it participates and to provide information about the main rules governing the functioning of those systems.

Article 11

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 11 December 1999. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the provisions of domestic law which they adopt in the field governed by this Directive. In this Communication, Member States shall provide a table of correspondence showing the national provisions which exist or are introduced in respect of each Article of this Directive.

Article 12

No later than three years after the date mentioned in Article 11(1), the Commission shall present a report to the European Parliament and the Council on the application of this Directive, accompanied where appropriate by proposals for its revision.

Article 13

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

Article 14

This Directive is addressed to the Member States.

Done at Brussels, 19 May 1998.

For the European Parliament

The President

J.M. GIL-ROBLES

For the Council

The President

G. BROWN

DIRECTIVE 98/27/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 19 May 1998****on injunctions for the protection of consumers' interests**

THE EUROPEAN PARLIAMENT AND THE COUNCIL
OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100a thereof,

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

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

Acting in accordance with the procedure laid down in Article 189b of the Treaty ⁽³⁾,

- (1) Whereas certain Directives, listed in the schedule annexed to this Directive, lay down rules with regard to the protection of consumers' interests;
- (2) Whereas current mechanisms available both at national and at Community level for ensuring compliance with those Directives do not always allow infringements harmful to the collective interests of consumers to be terminated in good time; whereas collective interests mean interests which do not include the cumulation of interests of individuals who have been harmed by an infringement; whereas this is without prejudice to individual actions brought by individuals who have been harmed by an infringement;
- (3) Whereas, as far as the purpose of bringing about the cessation of practices that are unlawful under the national provisions applicable is concerned, the effectiveness of national measures transposing the above Directives including protective measures that go beyond the level required by those Directives, provided they are compatible with the Treaty and allowed by those Directives, may be thwarted where those practices produce effects in a Member State other than that in which they originate;
- (4) Whereas those difficulties can disrupt the smooth functioning of the internal market, their consequence being that it is sufficient to move the source of an unlawful practice to another country in order to place it out of reach of all forms of

enforcement; whereas this constitutes a distortion of competition;

- (5) Whereas those difficulties are likely to diminish consumer confidence in the internal market and may limit the scope for action by organisations representing the collective interests of consumers or independent public bodies responsible for protecting the collective interests of consumers, adversely affected by practices that infringe Community law;
- (6) Whereas those practices often extend beyond the frontiers between the Member States; whereas there is an urgent need for some degree of approximation of national provisions designed to enjoin the cessation of the abovementioned unlawful practices irrespective of the country in which the unlawful practice has produced its effects; whereas, with regard to jurisdiction, this is without prejudice to the rules of private international law and the Conventions in force between Member States, while respecting the general obligations of the Member States deriving from the Treaty, in particular those related to the smooth functioning of the internal market;
- (7) Whereas the objective of the action envisaged can only be attained by the Community; whereas it is therefore incumbent on the Community to act;
- (8) Whereas the third paragraph of Article 3b of the Treaty makes it incumbent on the Community not to go beyond what is necessary to achieve the objectives of the Treaty; whereas, in accordance with that Article, the specific features of national legal systems must be taken into account to every extent possible by leaving Member States free to choose between different options having equivalent effect; whereas the courts or administrative authorities competent to rule on the proceedings referred to in Article 2 of this Directive should have the right to examine the effects of previous decisions;
- (9) Whereas one option should consist in requiring one or more independent public bodies, specifically responsible for the protection of the collective interests of consumers, to exercise the rights of

⁽¹⁾ OJ C 107, 13. 4. 1996, p. 3 and OJ C 80, 13. 3. 1997, p. 10.

⁽²⁾ OJ C 30, 30. 1. 1997, p. 112.

⁽³⁾ Opinion of the European Parliament of 14 November 1996 (OJ C 362, 2. 12. 1996, p. 236). Council common position of 30 October 1997 (OJ C 389, 22. 12. 1997, p. 51) and Decision of the European Parliament of 12 March 1998 (OJ C 104, 6. 4. 1998). Council Decision of 23 April 1998.

action set out in this Directive; whereas another option should provide for the exercise of those rights by organisations whose purpose is to protect the collective interests of consumers, in accordance with criteria laid down by national law;

- (10) Whereas Member States should be able to choose between or combine these two options in designating at national level the bodies and/or organisations qualified for the purposes of this Directive;
- (11) Whereas for the purposes of intra-Community infringements the principle of mutual recognition should apply to these bodies and/or organisations; whereas the Member States should, at the request of their national entities, communicate to the Commission the name and purpose of their national entities which are qualified to bring an action in their own country according to the provisions of this Directive;
- (12) Whereas it is the business of the Commission to ensure the publication of a list of these qualified entities in the *Official Journal of the European Communities*; whereas, until a statement to the contrary is published, a qualified entity is assumed to have legal capacity if its name is included in that list;
- (13) Whereas Member States should be able to require that a prior consultation be undertaken by the party that intends to bring an action for an injunction, in order to give the defendant an opportunity to bring the contested infringement to an end; whereas Member States should be able to require that this prior consultation take place jointly with an independent public body designated by those Member States;
- (14) Whereas, where the Member States have established that there should be prior consultation, a deadline of two weeks after the request for consultation is received should be set after which, should the cessation of the infringement not be achieved, the applicant shall be entitled to bring an action before the competent court or administrative authority without any further delay;
- (15) Whereas it is appropriate that the Commission report on the functioning of this Directive and in particular on its scope and the operation of prior consultation;
- (16) Whereas the application of this Directive should not prejudice the application of Community competition rules,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Scope

1. The purpose of this Directive is to approximate the laws, regulations and administrative provisions of the Member States relating to actions for an injunction referred to in Article 2 aimed at the protection of the collective interests of consumers included in the Directives listed in the Annex, with a view to ensuring the smooth functioning of the internal market.
2. For the purpose of this Directive, an infringement shall mean any act contrary to the Directives listed in the Annex as transposed into the internal legal order of the Member States which harms the collective interests referred to in paragraph 1.

Article 2

Actions for an injunction

1. Member States shall designate the courts or administrative authorities competent to rule on proceedings commenced by qualified entities within the meaning of Article 3 seeking:
 - (a) an order with all due expediency, where appropriate by way of summary procedure, requiring the cessation or prohibition of any infringement;
 - (b) where appropriate, measures such as the publication of the decision, in full or in part, in such form as deemed adequate and/or the publication of a corrective statement with a view to eliminating the continuing effects of the infringement;
 - (c) insofar as the legal system of the Member State concerned so permits, an order against the losing defendant for payments into the public purse or to any beneficiary designated in or under national legislation, in the event of failure to comply with the decision within a time-limit specified by the courts or administrative authorities, of a fixed amount for each day's delay or any other amount provided for in national legislation, with a view to ensuring compliance with the decisions.
2. This Directive shall be without prejudice to the rules of private international law, with respect to the applicable law, thus leading normally to the application of either the law of the Member State where the infringement originated or the law of the Member State where the infringement has its effects.

Article 3

Entities qualified to bring an action

For the purposes of this Directive, a 'qualified entity' means any body or organisation which, being properly constituted according to the law of a Member State, has a legitimate interest in ensuring that the provisions referred to in Article 1 are complied with, in particular:

- (a) one or more independent public bodies, specifically responsible for protecting the interests referred to in Article 1, in Member States in which such bodies exist and/or
- (b) organisations whose purpose is to protect the interests referred to in Article 1, in accordance with the criteria laid down by their national law.

Article 4

Intra-Community infringements

1. Each Member State shall take the measures necessary to ensure that, in the event of an infringement originating in that Member State, any qualified entity from another Member State where the interests protected by that qualified entity are affected by the infringement, may seize the court or administrative authority referred to in Article 2, on presentation of the list provided for in paragraph 3. The courts or administrative authorities shall accept this list as proof of the legal capacity of the qualified entity without prejudice to their right to examine whether the purpose of the qualified entity justifies its taking action in a specific case.
2. For the purposes of intra-Community infringements, and without prejudice to the rights granted to other entities under national legislation, the Member States shall, at the request of their qualified entities, communicate to the Commission that these entities are qualified to bring an action under Article 2. The Member States shall inform the Commission of the name and purpose of these qualified entities.
3. The Commission shall draw up a list of the qualified entities referred to in paragraph 2, with the specification of their purpose. This list shall be published in the *Official Journal of the European Communities*; changes to this list shall be published without delay, the updated list shall be published every six months.

Article 5

Prior consultation

1. Member States may introduce or maintain in force provisions whereby the party that intends to seek an injunction can only start this procedure after it has tried to achieve the cessation of the infringement in consultation with either the defendant or with both the defendant and a qualified entity within the meaning of Article 3(a) of the Member State in which the injunction is sought. It shall be for the Member State to decide whether the party seeking the injunction must consult the qualified entity. If the cessation of the infringement is not achieved within

two weeks after the request for consultation is received, the party concerned may bring an action for an injunction without any further delay.

2. The rules governing prior consultation adopted by Member States shall be notified to the Commission and shall be published in the *Official Journal of the European Communities*.

Article 6

Reports

1. Every three years and for the first time no later than five years after the entry into force of this Directive the Commission shall submit to the European Parliament and the Council a report on the application of this Directive.
2. In its first report the Commission shall examine in particular:
 - the scope of this Directive in relation to the protection of the collective interests of persons exercising a commercial, industrial, craft or professional activity;
 - the scope of this Directive as determined by the Directives listed in the Annex;
 - whether the prior consultation in Article 5 has contributed to the effective protection of consumers.

Where appropriate, this report shall be accompanied by proposals with a view to amending this Directive.

Article 7

Provisions for wider action

This Directive shall not prevent Member States from adopting or maintaining in force provisions designed to grant qualified entities and any other person concerned more extensive rights to bring action at national level.

Article 8

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 30 months after its entry into force. They shall immediately inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be adopted by Member States.

2. Member States shall communicate to the Commission the provisions of national law which they adopt in the field covered by this Directive.

Article 9

Entry into force

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

Article 10

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 19 May 1998.

For the European Parliament

The President

J.M. GIL-ROBLES

For the Council

The President

G. BROWN

*ANNEX***LIST OF DIRECTIVES COVERED BY ARTICLE 1 (*)**

1. Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (OJ L 250, 19.9.1984, p. 17).
2. Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ L 372, 31.12.1985, p. 31).
3. Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ L 42, 12.2.1987, p. 48), as last amended by Directive 98/7/EC (OJ L 101, 1.4.1998, p. 17).
4. Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities: Articles 10 to 21 (OJ L 298, 17.10.1989, p. 23 as amended by Directive 97/36/EC (OJ L 202, 30.7.1997, p. 60)).
5. Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ L 158, 23.6.1990, p. 59).
6. Council Directive 92/28/EEC of 31 March 1992 on the advertising of medicinal products for human use (OJ L 113, 30.4.1992, p. 13).
7. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).
8. Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis (OJ L 280, 29.10.1994, p. 83).
9. Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ L 144, 4.6.1997, p. 19).

(*) Directive Nos 1, 6, 7 and 9 contain specific provisions on injunctive actions.

CORRIGENDA

Corrigendum to Commission Regulation (EC) No 2571/97 of 15 December 1997 on the sale of butter at reduced prices and the granting of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs

(Official Journal of the European Communities L 350 of 20 December 1997)

On page 5 in Chapter II, Article 4(1)(b)(i), fifth line:

for: '... eggs or egg yolk, ...',

read: '... egg or egg yolk powder, ...'.

Corrigendum to Decision No 1/98 of the EC-Turkey Association Council of 25 February 1998 on the trade regime for agricultural products (98/223/EC)

(Official Journal of the European Communities L 86 of 20 March 1998)

On page 4 in Annex 1:

for:

'ex 0701 90	Potatoes, from 1 January to 31 March	100	—'			
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read:

'ex 0701 90 51	New potatoes, from 1 January to 31 March	100	—			
0701 90 59	New potatoes, from 16 May to 30 June	0'				

On page 7 in Annex 1, column A, eighth and ninth entries:

for: 'ex 2007',

read: 'ex 2207',

and:

for: '2009 00',

read: '2209 00'.