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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 1789/2002
of 9 October 2002
establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

- (1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

- (2) 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 10 October 2002.

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

Done at Brussels, 9 October 2002.

For the Commission

J. M. SILVA RODRÍGUEZ
Agriculture Director-General

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 9 October 2002 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	68,3
	096	44,6
	999	56,5
0707 00 05	052	92,6
	999	92,6
0709 90 70	052	82,6
	999	82,6
0805 50 10	052	59,7
	388	64,0
	524	62,2
	528	53,5
	999	59,9
0806 10 10	052	110,3
	064	124,7
	400	208,2
	999	147,7
0808 10 20, 0808 10 50, 0808 10 90	096	41,3
	388	127,7
	400	59,1
	512	89,3
	804	76,4
	999	78,8
0808 20 50	052	95,3
	999	95,3

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 1790/2002
of 8 October 2002
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 2700/2000 of the European Parliament and of the Council ⁽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 444/2002 ⁽⁴⁾, and in particular Article 173(1) thereof,

Whereas:

- (1) 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.

- (2) 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 11 October 2002.

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

Done at Brussels, 8 October 2002.

For the Commission

Erkki LIIKANEN

Member of the Commission

⁽¹⁾ OJ L 302, 19.10.1992, p. 1.

⁽²⁾ OJ L 311, 12.12.2000, p. 17.

⁽³⁾ OJ L 253, 11.10.1993, p. 1.

⁽⁴⁾ OJ L 68, 12.3.2002, p. 11.

ANNEX

Code	Description	Amount of unit values per 100 kg			
	Species, varieties, CN code	EUR	DKK	SEK	GBP
1.10	New potatoes 0701 90 50	—	—	—	—
1.30	Onions (other than seed) 0703 10 19	18,77	139,43	170,63	11,81
1.40	Garlic 0703 20 00	152,88	1 135,68	1 389,78	96,16
1.50	Leeks ex 0703 90 00	80,00	594,28	727,25	50,32
1.60	Cauliflowers 0704 10 00	55,28	410,65	502,53	34,77
1.80	White cabbages and red cabbages 0704 90 10	41,13	305,53	373,90	25,87
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	61,43	456,33	558,44	38,64
1.100	Chinese cabbage ex 0704 90 90	42,28	314,08	384,35	26,59
1.110	Cabbage lettuce (head lettuce) 0705 11 00	90,36	671,24	821,43	56,84
1.130	Carrots ex 0706 10 00	34,84	258,81	316,72	21,91
1.140	Radishes ex 0706 90 90	132,46	983,98	1 204,14	83,32
1.160	Peas (<i>Pisum sativum</i>) 0708 10 00	409,95	3 045,30	3 726,67	257,86
1.170	Beans:				
1.170.1	Beans (<i>Vigna</i> spp., <i>Phaseolus</i> spp.) ex 0708 20 00	95,68	710,76	869,79	60,18
1.170.2	Beans (<i>Phaseolus</i> ssp. <i>vulgaris</i> var. <i>Compressus</i> Savi) ex 0708 20 00	54,23	402,85	492,98	34,11
1.180	Broad beans ex 0708 90 00	157,74	1 171,77	1 433,95	99,22
1.190	Globe artichokes 0709 10 00	—	—	—	—
1.200	Asparagus:				
1.200.1	— green ex 0709 20 00	460,24	3 418,90	4 183,87	289,49
1.200.2	— other ex 0709 20 00	372,37	2 766,15	3 385,07	234,22
1.210	Aubergines (eggplants) 0709 30 00	109,01	809,76	990,95	68,57

Code	Description	Amount of unit values per 100 kg			
	Species, varieties, CN code	EUR	DKK	SEK	GBP
1.220	Ribbed celery (<i>Apium graveolens</i> L., var. <i>dulce</i> (Mill.) Pers.) ex 0709 40 00	100,48	746,42	913,42	63,20
1.230	Chantarelles 0709 59 10	1 043,98	7 755,23	9 490,43	656,67
1.240	Sweet peppers 0709 60 10	99,88	741,94	907,94	62,82
1.270	Sweet potatoes, whole, fresh (intended for human consumption) 0714 20 10	102,82	763,81	934,71	64,67
2.10	Chestnuts (<i>Castanea</i> spp.), fresh ex 0802 40 00	176,48	1 310,98	1 604,31	111,01
2.30	Pineapples, fresh ex 0804 30 00	133,90	994,70	1 217,27	84,23
2.40	Avocados, fresh ex 0804 40 00	210,38	1 562,82	1 912,49	132,33
2.50	Guavas and mangoes, fresh ex 0804 50 00	156,38	1 161,69	1 421,62	98,37
2.60	Sweet oranges, fresh:				
2.60.1	— Sanguines and semi-sanguines 0805 10 10	45,97	341,49	417,89	28,92
2.60.2	— Navels, navelines, navelates, salustianas, vernas, Valencia lates, Maltese, shamoutis, ovalis, trovita and hamlins 0805 10 30	43,02	319,59	391,10	27,06
2.60.3	— Others 0805 10 50	43,98	326,71	399,80	27,66
2.70	Mandarins (including tangerines and satsumas), fresh; clementines, wilkings and similar citrus hybrids, fresh:				
2.70.1	— Clementines ex 0805 20 10	93,65	695,68	851,33	58,91
2.70.2	— Monreales and satsumas ex 0805 20 30	87,53	650,22	795,70	55,06
2.70.3	— Mandarines and wilkings ex 0805 20 50	81,16	602,91	737,81	51,05
2.70.4	— Tangerines and others ex 0805 20 70 ex 0805 20 90	54,73	406,54	497,50	34,42
2.85	Limes (<i>Citrus aurantifolia</i> , <i>Citrus latifolia</i>), fresh 0805 50 90	133,35	990,62	1 212,27	83,88
2.90	Grapefruit, fresh:				
2.90.1	— white ex 0805 40 00	33,12	246,03	301,08	20,83
2.90.2	— pink ex 0805 40 00	61,68	458,19	560,71	38,80

Code	Description	Amount of unit values per 100 kg			
	Species, varieties, CN code	EUR	DKK	SEK	GBP
2.100	Table grapes 0806 10 10	—	—	—	—
2.110	Water melons 0807 11 00	44,68	331,91	406,17	28,10
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	63,32	470,37	575,61	39,83
2.120.2	— Other ex 0807 19 00	126,69	941,13	1 151,70	79,69
2.140	Pears				
2.140.1	Pears — nashi (<i>Pyrus pyrifolia</i>), Pears — Ya (<i>Pyrus bretschneideri</i>) ex 0808 20 50	—	—	—	—
2.140.2	Other ex 0808 20 50	—	—	—	—
2.150	Apricots ex 0809 10 00	149,44	1 110,12	1 358,50	94,00
2.160	Cherries 0809 20 95 0809 20 05	596,40	4 430,36	5 421,63	375,14
2.170	Peaches 0809 30 90	114,50	850,56	1 040,87	72,02
2.180	Nectarines ex 0809 30 10	114,50	850,56	1 040,87	72,02
2.190	Plums 0809 40 05	119,27	886,00	1 084,24	75,02
2.200	Strawberries 0810 10 00	131,51	976,92	1 195,50	82,72
2.205	Raspberries 0810 20 10	361,18	2 683,03	3 283,34	227,18
2.210	Fruit of the species <i>Vaccinium myrtillus</i> 0810 40 30	614,33	4 563,55	5 584,63	386,41
2.220	Kiwi fruit (<i>Actinidia chinensis</i> Planch.) 0810 50 00	164,27	1 220,29	1 493,33	103,33
2.230	Pomegranates ex 0810 90 95	188,40	1 399,56	1 712,71	118,51
2.240	Khakis (including sharon fruit) ex 0810 90 95	353,06	2 622,71	3 209,53	222,07
2.250	Lychees ex 0810 90 30	320,43	2 380,29	2 912,88	201,55

COMMISSION REGULATION (EC) No 1791/2002**of 9 October 2002****approving operations to check conformity with the marketing standards applicable to fresh fruit and vegetables carried out in Morocco prior to import into the European Community**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 545/2002 ⁽²⁾, and in particular Article 10 thereof,

Whereas:

(1) Commission Regulation (EC) No 1148/2001 of 12 June 2001 on checks on conformity to the marketing standards applicable to fresh fruit and vegetables ⁽³⁾, as amended by Regulation (EC) No 2379/2001 ⁽⁴⁾, lays down that the Commission may approve checking operations performed by certain third countries which so request prior to import into the Community, in compliance with the conditions laid down in Article 7 of Regulation (EC) No 1148/2001.

(2) On 2 August 2001 the Moroccan authorities sent the Commission a request for the approval of checking operations performed by the Etablissement Autonome de Contrôle et de Coordination des Exportations (EACCE) under the responsibility of the Minister for Agriculture, Rural Development, Water and Forests. This states that the EACCE has the necessary staff, equipment and facilities to carry out checks, that it uses methods equivalent to those referred to in Article 9 of Regulation (EC) No 1148/2001 and that the fresh fruit and vegetables exported from Morocco to the Community meet the Community marketing standards.

(3) The information sent by the Member States to the Commission shows that, in the period 1997 to 2000, the incidence of non-conformity with marketing standards among imports of fresh fruit and vegetables from Morocco was relatively low.

(4) For a number of years representatives of the Moroccan inspection body have been regular participants at various seminars and training activities organised by different Member States. They have also occasionally participated in international efforts to agree marketing standards for

fruit and vegetables, such as the Working Party on Standardisation of Perishable Produce and Quality Development of the United Nations Economic Commission for Europe (UNECE).

(5) On the basis of the information gathered, conformity with the marketing standards should be considered to be satisfactorily met, the approval provided for in Article 7 of Regulation (EC) No 1148/2001 should be granted and the official authority and the inspection body in Morocco should be designated.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Fresh Fruit and Vegetables,

HAS ADOPTED THIS REGULATION:

Article 1

Checks on conformity with marketing standards carried out by Morocco on fresh fruit and vegetables from Morocco are hereby approved in accordance with Article 7(1) of Regulation (EC) No 1148/2001.

Article 2

The particulars of the official authority in Morocco under whose responsibility the checking operations are performed and of the inspection body in charge of carrying out those checks, as referred to in Article 7(2) of Regulation (EC) No 1148/2001, are given in Annex I to this Regulation.

Article 3

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities*.

It shall apply from the date of publication in the C series of the *Official Journal of the European Communities* of the notice referred to in Article 7(8) of Regulation (EC) No 1148/2001, relating to the establishment of administrative cooperation between the Community and Morocco.

⁽¹⁾ OJ L 297, 21.11.1996, p. 1.

⁽²⁾ OJ L 84, 28.3.2002, p. 1.

⁽³⁾ OJ L 156, 13.6.2001, p. 9.

⁽⁴⁾ OJ L 321, 6.12.2001, p. 15.

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

Done at Brussels, 9 October 2002.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

Official authority referred to in Article 7(2) of Regulation (EC) No 1148/2001:

Minister for Agriculture, Rural Development, Water and Forests
Quartier Administratif
Place Abdallah Chefchouani
BP 607
Rabat
Morocco
Tel. (212-37) 76 36 57/76 05 29
Fax (212-37) 76 33 78
E-mail: webmaster@madprm.gov.ma

Inspection body referred to in Article 7(2) of Regulation (EC) No 1148/2001:

Etablissement Autonome de Contrôle et de Coordination des Exportations (EACCE)
Angle Boulevard Mohamed Smiha et Rue Moulay Mohamed El Baâmrani
Casablanca
Morocco
Tel. (212-22) 30 51 04/30 51 73/30 50 91/30 51 95
Fax (212-22) 30 51 68
E-mail: eacce@eacce.org.ma

COMMISSION REGULATION (EC) No 1792/2002**of 9 October 2002****derogating from Regulation (EC) No 449/2001 as regards applications for advance payment of aid for tomatoes for the marketing year 2002/03**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organisation of the markets in processed fruit and vegetable products ⁽¹⁾, as last amended by Commission Regulation (EC) No 453/2002 ⁽²⁾, and in particular Article 6(1) thereof,

Whereas:

- (1) Article 12 of Commission Regulation (EC) No 449/2001 of 2 March 2001 laying down detailed rules for applying Council Regulation (EC) No 2201/96 as regards the aid scheme for products processed from fruit and vegetables ⁽³⁾, as last amended by Regulation (EC) No 1426/2002 ⁽⁴⁾, lays down the conditions governing the aid applications which tomato, peach and pear producer organisations submit to the body designated by the Member State. Under Article 12(3), Member States may allow applications for advance payment of the aid to be submitted up to 30 September for the total quantity of tomatoes delivered for processing up to 15 September.
- (2) Article 13(3) of Regulation (EC) No 449/2001 lays down the conditions governing the payment by the competent body in the Member State of the amount due to a beneficiary in respect of an application for advance payment referred to in Article 12(3). Payment of the amount must be made between 16 and 31 October.
- (3) Exceptionally poor weather conditions, especially in Italy, have been a feature of the current tomato harvesting period. As a result, the quantity of raw materials delivered for processing before the cut-off date of 15 September has been appreciably smaller than usual. Applications for advance payment of the aid will therefore concern a small quantity only. There is therefore a danger that producers, receiving appreciably less aid than the amount envisaged, will find themselves in difficulties.
- (4) In order that producers should not be penalised in these exceptional circumstances, it should be made possible, in this marketing year only, for applications for advance payment of the aid for tomatoes to be submitted up to

10 October and to take into account quantities of tomatoes delivered for processing up to 30 September, provided that this does not have a negative impact on the checking of the production aid scheme. A derogation should also be allowed regarding the dates set for payment by the competent body in the Member State of the amount due to the beneficiary under an application for advance payment of the aid, and to the arrangements for the breakdown of the quantities covered by the final aid application.

- (5) Given the urgency of the situation, this Regulation should enter into force immediately.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Products Processed from Fruit and Vegetables,

HAS ADOPTED THIS REGULATION:

Article 1

For the current marketing year 2002/03, notwithstanding Article 12(3) of Regulation (EC) No 449/2001, Member States may allow applications for advance payment of the aid to be submitted up to 10 October 2002 for the total quantity of tomatoes delivered for processing up to 30 September 2002, provided that this does not have a negative impact on the checking of the production aid scheme.

Article 2

1. The competent body in a Member State which employs the derogation provided for in Article 1 shall pay the amount due between 16 October and 15 November 2002, notwithstanding the second subparagraph of Article 13(3) of Regulation (EC) No 449/2001.

2. Where an application for advance payment of the aid has been submitted under Article 1, the quantities covered by the final aid application shall be broken down into two periods, namely until 30 September and from 1 October, notwithstanding the sixth subparagraph of Article 13(3) of Regulation (EC) No 449/2001.

⁽¹⁾ OJ L 297, 21.11.1996, p. 29.

⁽²⁾ OJ L 72, 14.3.2002, p. 9.

⁽³⁾ OJ L 64, 6.3.2001, p. 16.

⁽⁴⁾ OJ L 206, 3.8.2002, p. 4.

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 October 2002.

For the Commission
Franz FISCHLER
Member of the Commission

COMMISSION REGULATION (EC) No 1793/2002

of 9 October 2002

fixing the estimated production of olive oil and the unit amount of the production aid that may be paid in advance for the marketing year 2001/02

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organisation of the market in oils and fats ⁽¹⁾, as last amended by Regulation (EC) No 1513/2001 ⁽²⁾,

Having regard to Council Regulation (EEC) No 2261/84 of 17 July 1984 laying down general rules on the granting of aid for the production of olive oil and of aid to olive oil producer organisations ⁽³⁾, as last amended by Regulation (EC) No 1639/98 ⁽⁴⁾, and in particular Article 17a(1) thereof,

Whereas:

- (1) Article 5 of Regulation No 136/66/EEC provides that the unit production aid must be reduced in each Member State where actual production exceeds the guaranteed national quantity referred to in paragraph 3 of that article. In assessing the extent of the overrun, account should be taken of the estimates for the production of table olives processed into olive oil, expressed as olive-oil equivalent using the relevant coefficients referred to, for Spain, in Commission Decision 2001/650/EC ⁽⁵⁾, as amended by Decision 2001/883/EC ⁽⁶⁾, for Greece, in Commission Decision 2001/649/EC ⁽⁷⁾, as amended by Decision 2001/880/EC ⁽⁸⁾, for Portugal in Commission Decision 2001/670/EC ⁽⁹⁾, as amended by Decision 2001/878/EC ⁽¹⁰⁾, for France in Commission Decision 2001/648/EC ⁽¹¹⁾, as amended by Decision 2001/879/EC ⁽¹²⁾ and, for Italy, in Commission Decision 2001/658/EC ⁽¹³⁾, as amended by Decision 2001/884/EC ⁽¹⁴⁾.
- (2) Article 17a of Regulation (EEC) No 2261/84 provides that in order to determine the unit amount of the production aid for olive oil that can be paid in advance, the estimated production for the marketing year concerned should be determined. That amount must be fixed at a level that avoids any risk of unwarranted payment to olive growers. The amount also applies to table olives, expressed as olive-oil equivalent.
- (3) In order to establish the estimated production, Member States must forward to the Commission data for the olive oil and, where appropriate, table olive production esti-

mates for each marketing year. The Commission may use other sources of information. On the basis of that data, the estimated production of olive oil and table olives, expressed as olive-oil equivalent, should be fixed for each Member State at the levels indicated below.

- (4) In determining the amount of the advance, account must be taken of the amount withheld for measures to improve the quality of olive oil and table olive production provided for in Article 5(9) of Regulation No 136/66/EEC.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Oils and Fats,

HAS ADOPTED THIS REGULATION:

Article 1

1. For the marketing year 2001/02, the estimated production of olive oil is:

- 1 575 575 tonnes for Spain,
- 2 592 tonnes for France,
- 398 588 tonnes for Greece,
- 713 620 tonnes for Italy,
- 33 808 tonnes for Portugal.

2. For the marketing year 2001/02, the estimated production of table olives, expressed as olive-oil equivalent, is:

- 64 155 tonnes for Spain, using a coefficient of equivalence of 11,5 %,
- 130 tonnes for France, using a coefficient of equivalence of 13 %,
- 13 000 tonnes for Greece, using a coefficient of equivalence of 13 %,
- 1 806 tonnes for Italy, using a coefficient of equivalence of 13 %,
- 782 tonnes for Portugal, using a coefficient of equivalence of 11,5 %.

⁽¹⁾ OJ L 72, 30.9.1996, p. 3025/66.

⁽²⁾ OJ L 201, 26.7.2001, p. 4.

⁽³⁾ OJ L 208, 3.8.1984, p. 3.

⁽⁴⁾ OJ L 210, 28.7.1998, p. 38.

⁽⁵⁾ OJ L 229, 25.8.2001, p. 20.

⁽⁶⁾ OJ L 327, 12.12.2001, p. 43.

⁽⁷⁾ OJ L 229, 25.8.2001, p. 16.

⁽⁸⁾ OJ L 326, 11.12.2001, p. 42.

⁽⁹⁾ OJ L 235, 4.9.2001, p. 16.

⁽¹⁰⁾ OJ L 326, 11.12.2001, p. 40.

⁽¹¹⁾ OJ L 229, 25.8.2001, p. 12.

⁽¹²⁾ OJ L 326, 11.12.2001, p. 41.

⁽¹³⁾ OJ L 327, 12.12.2001, p. 44.

⁽¹⁴⁾ OJ L 231, 29.8.2001, p. 16.

3. For the marketing year 2001/02, the advance referred to in Article 17a(1) of Regulation (EEC) No 2261/84 shall be:

- EUR 57,18 per 100 kilograms for Spain,
- EUR 117,36 per 100 kilograms for France,
- EUR 117,36 per 100 kilograms for Greece,

- EUR 90,54 per 100 kilograms for Italy,
- EUR 117,36 per 100 kilograms for Portugal.

Article 2

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

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

Done at Brussels, 9 October 2002.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 1794/2002**of 9 October 2002****correcting Regulation (EC) No 1249/2002 amending Regulation (EC) No 2366/98 laying down detailed rules for the application of the system of production aid for olive oil for the marketing years 1998/99, 1999/2000, 2000/01, 2001/02, 2002/03 and 2003/04**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Article 1

Article 1 of Regulation (EC) No 1249/2002 is hereby corrected as follows:

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organisation of the market in oils and fats ⁽¹⁾, as last amended by Regulation (EC) No 1513/2001 ⁽²⁾, and in particular Article 5 thereof,

1. In point 1, the text of new Article 12a of Regulation (EC) No 2366/98 is amended as follows:

(a) in the first subparagraph, the introductory sentence is replaced by the following:

‘On the basis of the declarations referred to in Articles 2 and 5 and the aid applications referred to in Article 12, producer Member States shall estimate the virgin olive oil production for 2002/03 of the additional olive trees referred to in the first subparagraph of Article 4 of Regulation (EC) No 1638/98 by multiplying the average yield per adult olive tree by the sum of:’

Having regard to Council Regulation (EEC) No 2261/84 of 17 July 1984 laying down general rules on the granting of aid for the production of olive oil and of aid to olive oil producer organisations ⁽³⁾, as last amended by Regulation (EC) No 1639/98 ⁽⁴⁾, and in particular Article 19 thereof,

(b) in the second subparagraph, the introductory sentence is replaced by the following:

‘The average yield per adult olive tree shall be calculated by dividing the quantity of virgin olive oil produced, as referred to in Article 12(1)(b), by the sum of:’

Having regard to Council Regulation (EC) No 1638/98 of 20 July 1998 amending Regulation No 136/66/EEC on the establishment of a common organisation of the market in oils and fats ⁽⁵⁾, as amended by Regulation (EC) No 1513/2001, and in particular Article 4 thereof,

2. Point 2 is replaced by the following:

Whereas:

‘2. The first subparagraph of Article 14(1) is replaced by the following:

(1) As a result of several clerical errors, Article 1(1) and (2) of Regulation (EC) No 1249/2002 ⁽⁶⁾ should be corrected.

Olive growers shall be eligible for aid in respect of the quantity of virgin olive oil they actually produce, less the production of the additional trees referred to in Article 12a, plus the flat-rate quantity of olive-residue oil provided for in paragraph 2 of this Article.’

(2) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Oils and Fats,

Article 2

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

It shall apply from 1 November 2002.

⁽¹⁾ OJ L 72, 30.9.1966, p. 3025/66.

⁽²⁾ OJ L 201, 26.7.2001, p. 4.

⁽³⁾ OJ L 208, 3.8.1984, p. 3.

⁽⁴⁾ OJ L 210, 28.7.1998, p. 38.

⁽⁵⁾ OJ L 210, 28.7.1998, p. 32.

⁽⁶⁾ OJ L 183, 12.7.2002, p. 5.

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

Done at Brussels, 9 October 2002.

For the Commission
Franz FISCHLER
Member of the Commission

COMMISSION REGULATION (EC) No 1795/2002

of 9 October 2002

amending Regulation (EC) No 1623/2000 laying down detailed rules for implementing Regulation (EC) No 1493/1999 on the common organisation of the market in wine with regard to market mechanisms

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine ⁽¹⁾, as last amended by Regulation (EC) No 2528/2001 ⁽²⁾, and in particular Article 33 thereof,

Whereas:

- (1) Title III, Chapter II of Commission Regulation (EC) No 1623/2000 of 25 July 2000 laying down detailed rules for implementing Regulation (EC) No 1493/1999 on the common organisation of the market in wine with regard to market mechanisms ⁽³⁾, as last amended by Regulation (EC) No 1315/2002 ⁽⁴⁾, provides for an aid scheme for the distillation of wine to produce potable alcohol. The scheme was introduced for the first time in the wine year 2000/01. Experience gained from the first two years of application indicate the need for adjustments.
- (2) The period during which distillation may take place needs to be redefined to bring it more into line with the production of wine in all producer Member States. For the same reason there should be a continuous period for the conclusion or approval of distillation contracts instead of the two-week periods currently in force.
- (3) Experience from previous wine years has shown that producers are making more use of subcontracted distillation; this results in a risk of disturbance on the alcohol market since the minimum purchase price of the wine cannot be verified. It is therefore necessary to stop that opportunity by amending Article 65 of Regulation (EC) No 1623/2000.
- (4) However, there are, in certain Community regions, special production and market structures, including distillery structures which were already identified by European legislators when the compulsory distillation scheme for by-products of wine-making was being introduced. These are producers in wine-growing zone A, in the German part of wine-growing zone B or in the areas planted with vines in Austria who, for the identified structural reasons, have been exempted from compulsory distillation. In one of those regions the rules governing crisis distillation have had to be amended to take account of the high costs of transport to the distilleries given their small number and geographical spread. If there were no opportunity to use sub-contracted distil-

ling, producers in those regions would have practically no access to the distillation of wine to make potable alcohol. In order not to exclude those producers from availing themselves of that Community measure, provision should be made for them to continue to use distilling on a subcontracting basis.

- (5) It is also necessary to redefine the periods and conditions for the storage of alcohol obtained from such distillation, including the definition of the unit of measurement for the aid, to take better account of the economic realities in the alcohol sector.
- (6) Experience has revealed certain omissions in the wording of Regulation (EC) No 1623/2000, in particular concerning the release of the security in the event that a contract is not quite performed in its entirety, the deadline for aid applications and the introduction of a margin of tolerance for the volume of distillation products stored. New provisions should be included in this Regulation in order to remedy those omissions.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Wine,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1623/2000 is hereby amended as follows:

1. Chapter II of Title III is replaced by the following:

‘CHAPTER II

OPTIONAL DISTILLATION

Article 63

Purpose

This chapter lays down the detailed rules for applying the arrangements for distilling wine to produce potable alcohol as referred to in Article 29 of Regulation (EC) No 1493/1999.

Article 63a

Opening of distillation

1. The distillation of table wine and wine suitable for yielding table wine referred to in Article 29 of Regulation (EC) No 1493/1999 shall be opened for the period from 1 October to 15 December each wine year, but from 1 October to 30 December for the wine year 2002/03.

⁽¹⁾ OJ L 179, 14.7.1999, p. 1.

⁽²⁾ OJ L 345, 29.12.2001, p. 10.

⁽³⁾ OJ L 194, 31.7.2000, p. 45.

⁽⁴⁾ OJ L 192, 20.7.2002, p. 24.

2. The volume of table wine and wine suitable for yielding table wine for which each producer may sign contracts shall be limited to a percentage to be specified of his wine production declared during one of the last three wine years including the production for the current year if already declared. During a given year the producer may not change the production year chosen as the reference for the calculation of that percentage. For the wine year 2002/03 that percentage shall be 25 %.

The volume of table wine and wine suitable for yielding table wine produced shall be only that given as wine in the column headed "Table wines" in the declaration of quantities produced referred to in Table C of Commission Regulation (EC) No 1282/2001 (*).

3. Each producer who, during the current wine year, has produced table wine or wine suitable for yielding table wine may conclude one or more contracts or make one or more declarations as referred to in Article 65 of this regulation. The contracts or declarations shall be accompanied by evidence of the lodging of a security of EUR 5 per hectolitre. Such contracts or declarations may not be transferred.

4. The Member States shall notify the Commission by 10 January of the current year at the latest of the total volume covered by contracts or declarations submitted under Article 65(1) for distillation during the period referred to in paragraph 1. However, for the wine year 2002/03 the above date shall be 15 January.

5. If the quantities covered by contracts or declarations notified to the Commission by the date referred to in paragraph 4 exceed or may exceed the quantities corresponding to available budget resources or are substantially in excess of the absorption capacity of the potable alcohol sector, the Commission shall set a single percentage for acceptance of the quantities covered by the contracts or declarations concerned. In that case, the security referred to in paragraph 3 shall be released for the quantities notified but not accepted.

6. The Member States shall approve such contracts or declarations between 25 January and 15 February:

- for the entire quantity if the Commission has not set the reduction percentage referred to in paragraph 5,
- for the quantity resulting from application of the reduction percentage if one has been set.

However, for the wine year 2002/03 the above dates shall be 1 February and 20 February.

The Member States shall notify the Commission of the total volume under approved contracts by 20 March of the current wine year at the latest.

Contracts or declarations submitted to the competent authorities in the Member States but not notified to the Commission pursuant to paragraph 4 cannot be approved.

7. Notwithstanding paragraph 5, the Member States may approve contracts or declarations before 25 January for a quantity not exceeding 30 % of the quantity given in the contracts or declarations. However, for the wine year 2002/03 that percentage shall be 35 %.

8. The amounts of wine to be supplied under contract shall be delivered to a distillery by 15 July of the wine year at the latest.

9. The security referred to in paragraph 3 shall be released in proportion to the quantities supplied when the producer provides evidence of delivery to a distillery. Where a contract is performed for at least 95 % of the quantity for which it is concluded the security shall be released in its entirety.

10. The wine supplied to the distillery shall be distilled by 30 September of the following wine year at the latest.

(*) OJ L 176, 29.6.2001, p. 14.

Article 64

Amount of aid and rules applying

1. The primary aid referred to in Article 29(4) of Regulation (EC) No 1493/1999, to be paid to distillers or, in cases as referred to in Article 65(3) of this Regulation, to producers for wine distilled under this chapter shall be fixed, in terms of alcoholic strength by volume per hectolitre of product obtained from distillation, as follows:

- EUR 1,751/% vol/hl for raw alcohol, wine distillate and spirits distilled from wine,
- EUR 1,884/% vol/hl for neutral alcohol.

Aid applications must be submitted to the competent authority no later than 30 November of the following wine year.

The competent authority shall pay the aid within three months of the date of submission of the proof referred to in Article 65(8) of this Regulation.

2. The secondary aid for the storage of alcohol obtained from distillation referred to in Article 29(6) of Regulation (EC) No 1493/1999 shall be EUR 0,00042/% vol/hl of product obtained from distillation per day.

Storage applications must be submitted to the competent authority not later than one month before the date on which storage is to begin. Applications may concern only alcohol which has already been produced. They shall state at least the quantity and the characteristics of the product to be stored and the anticipated dates of the beginning and end of storage.

Unless the competent authority objects within the above one-month time limit, the date when storage is scheduled to begin shall be deemed to be the actual beginning date.

The secondary aid shall be paid solely to distillers and only:

- for at least 100 hectolitres of product obtained from distillation stored in containers of a capacity of at least 100 hectolitres, and
- for no less than six months and no more than 12 months. From the seventh month, distillers who have not claimed the advance referred to in Article 66 of this Regulation may terminate the contract in advance by specifying the final date in a statement addressed to the competent authority at least one month before the chosen date.

The quantity of alcohol for which a distiller may conclude storage contracts during a given wine year may not exceed the quantity of products obtained by that distiller by distillation under this chapter during that wine year or one of the two years preceding it.

Distillation products eligible for storage contracts shall have been obtained by the distiller himself during the wine years referred to in the above paragraph or, where applicable, during preceding wine years.

A margin of tolerance of 0,2 % per month calculated in relation to alcohol content shall be allowed for the stored volume of products obtained from distillation. Where that percentage is not exceeded the aid shall remain payable; if it is exceeded no aid shall be paid.

Aid applications must be submitted to the competent authority no later than six months after the end of the storage period. The Member States shall establish the detailed rules for this.

The competent authority shall pay the secondary aid no later than three months after the date on which the aid application was submitted.

3. Distillation products qualifying for aid under this Article may not subsequently be bought in by the public authorities. Should distillers nevertheless wish to sell their alcohol to the public authorities, they must first reimburse the aid they have received.

As an exception, the first subparagraph shall not apply to quantities of alcohol sold by public authorities under programmes that do not interfere with traditional uses, such as agrienvironmental programmes for the sale of alcohol to the fuel sector.'

2. Article 65 is amended as follows:

- (a) In paragraph 3, the first subparagraph is replaced by the following:

'3. Producers as referred to in paragraph 1 of this article who themselves possess distillation facilities and who intend to carry out the distillation covered by this chapter shall submit a declaration of delivery for distillation, hereinafter referred to as the "declaration", to the competent authority for approval before a date to be specified.

Producers in wine-growing zone A or in the German part of wine-growing zone B or in areas planted with vines in Austria as referred to in Article 27(7) of Regulation (EC) No 1493/1999 may have the distillation referred to in this chapter carried out on the premises of an approved distiller working on a subcontracting basis. To that end they shall submit a declaration of delivery for distillation, hereinafter referred to as the "declaration", to the competent authority for approval before a date to be specified.'

- (b) In paragraph 7, the following sentence is added:

'Member States may stipulate shorter time limits or specific dates for the presentation of that proof to the competent authorities.'

- (c) In paragraph 8, the first subparagraph is replaced by the following:

'8. Distillers shall forward to the competent authority, within the time limit set by the Member State:

- (a) details of the quantity, colour and actual alcoholic strength by volume of the wine in each delivery from each producer from whom they have received deliveries of wine, together with the number of the document provided for in Article 70 of Regulation (EC) No 1493/1999 used for the transport of the wine to the distiller's premises;
- (b) proof that the total quantity of wine stipulated in the contract or declaration has been distilled within the time allowed;
- (c) proof that they have paid the producer the purchase price referred to in paragraph 6 within the time allowed.'

Article 2

Entry into force

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 October 2002.

For the Commission
Franz FISCHLER
Member of the Commission

COMMISSION REGULATION (EC) No 1796/2002**of 9 October 2002****amending Regulation (EC) No 1491/2002 laying down detailed rules for the application of the specific measures for wine in the outermost regions introduced by Council Regulations (EC) No 1453/2001 and (EC) No 1454/2001**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1453/2001 of 28 June 2001 introducing specific measures for certain agricultural products for the Azores and Madeira and repealing Regulation (EEC) No 1600/1992 (Poseima) ⁽¹⁾, and in particular Article 34 thereof,

Whereas:

- (1) Article 31 of Regulation (EC) No 1453/2001 introduced a new aid for the ageing of Azores 'verdelho' wine.
- (2) Article 11(1) of Commission Regulation (EC) No 1491/2002 ⁽²⁾ stipulates that applications for this aid must be lodged with the competent bodies by 30 September 2002.
- (3) So that the Portuguese authorities can adopt the domestic administrative decisions needed to administer the aid scheme, the Portuguese request to postpone the above deadline to 15 November 2002 should be acceded

to as an exceptional measure for the wine year 2001/02 alone.

- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Wine,

HAS ADOPTED THIS REGULATION:

Article 1

Article 11(1) of Regulation (EC) No 1491/2002 is replaced by the following:

'1. In respect of the wine year 2001/02, applications for the aid referred to in Article 2 shall be submitted to the competent bodies no later than 30 September 2002, while applications for the aid referred to in Article 4 shall be submitted no later than 15 November 2002.'

Article 2

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

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

Done at Brussels, 9 October 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 198, 21.7.2001, p. 26.

⁽²⁾ OJ L 224, 21.8.2002, p. 49.

COMMISSION REGULATION (EC) No 1797/2002
of 9 October 2002
fixing the import duties in the rice sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Commission Regulation (EC) No 411/2002 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1503/96 of 29 July 1996 laying down detailed rules for the application of Council Regulation (EC) No 3072/95 as regards import duties in the rice sector ⁽³⁾, as last amended by Regulation (EC) No 1298/2002 ⁽⁴⁾, and in particular Article 4(1) thereof,

Whereas:

- (1) Article 11 of Regulation (EC) No 3072/95 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation. However, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by a certain percentage according to whether it is husked or milled rice, minus the cif import price provided that duty does not exceed the rate of the Common Customs Tariff duties.
- (2) Pursuant to Article 12(3) of Regulation (EC) No 3072/95, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market or on the Community import market for the product.

- (3) Regulation (EC) No 1503/96 lays down detailed rules for the application of Regulation (EC) No 3072/95 as regards import duties in the rice sector.
- (4) The import duties are applicable until new duties are fixed and enter into force. They also remain in force in cases where no quotation is available from the source referred to in Article 5 of Regulation (EC) No 1503/96 during the two weeks preceding the next periodical fixing.
- (5) In order to allow the import duty system to function normally, the market rates recorded during a reference period should be used for calculating the duties.
- (6) Application of Regulation (EC) No 1503/96 results in import duties being fixed as set out in the Annexes to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 10 October 2002.

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

Done at Brussels, 9 October 2002.

For the Commission

J. M. SILVA RODRÍGUEZ
Agriculture Director-General

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 62, 5.3.2002, p. 27.

⁽³⁾ OJ L 189, 30.7.1996, p. 71.

⁽⁴⁾ OJ L 189, 18.7.2002, p. 8.

ANNEX I

Import duties on rice and broken rice

(EUR/t)

CN code	Duties ⁽¹⁾				
	Third countries (except ACP and Bangladesh) ⁽²⁾	ACP ⁽¹⁾ ⁽²⁾ ⁽³⁾	Bangladesh ⁽⁴⁾	Basmati India and Pakistan ⁽⁵⁾	Egypt ⁽⁶⁾
1006 10 21	(7)	69,51	101,16		158,25
1006 10 23	(7)	69,51	101,16		158,25
1006 10 25	(7)	69,51	101,16		158,25
1006 10 27	(7)	69,51	101,16		158,25
1006 10 92	(7)	69,51	101,16		158,25
1006 10 94	(7)	69,51	101,16		158,25
1006 10 96	(7)	69,51	101,16		158,25
1006 10 98	(7)	69,51	101,16		158,25
1006 20 11	264,00	88,06	127,66		198,00
1006 20 13	264,00	88,06	127,66		198,00
1006 20 15	264,00	88,06	127,66		198,00
1006 20 17	264,00	88,06	127,66	14,00	198,00
1006 20 92	264,00	88,06	127,66		198,00
1006 20 94	264,00	88,06	127,66		198,00
1006 20 96	264,00	88,06	127,66		198,00
1006 20 98	264,00	88,06	127,66	14,00	198,00
1006 30 21	(7)	133,21	193,09		312,00
1006 30 23	(7)	133,21	193,09		312,00
1006 30 25	(7)	133,21	193,09		312,00
1006 30 27	(7)	133,21	193,09		312,00
1006 30 42	(7)	133,21	193,09		312,00
1006 30 44	(7)	133,21	193,09		312,00
1006 30 46	(7)	133,21	193,09		312,00
1006 30 48	(7)	133,21	193,09		312,00
1006 30 61	(7)	133,21	193,09		312,00
1006 30 63	(7)	133,21	193,09		312,00
1006 30 65	(7)	133,21	193,09		312,00
1006 30 67	(7)	133,21	193,09		312,00
1006 30 92	(7)	133,21	193,09		312,00
1006 30 94	(7)	133,21	193,09		312,00
1006 30 96	(7)	133,21	193,09		312,00
1006 30 98	(7)	133,21	193,09		312,00
1006 40 00	(7)	41,18	(7)		96,00

⁽¹⁾ The duty on imports of rice originating in the ACP States is applicable, under the arrangements laid down in Council Regulation (EC) No 1706/98 (OJ L 215, 1.8.1998, p. 12) and amended Commission Regulation (EC) No 2603/97 (OJ L 351, 23.12.1997, p. 22).

⁽²⁾ In accordance with Regulation (EC) No 1706/98, the duties are not applied to products originating in the African, Caribbean and Pacific States and imported directly into the overseas department of Réunion.

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

⁽⁴⁾ The duty on imports of rice not including broken rice (CN code 1006 40 00), originating in Bangladesh is applicable under the arrangements laid down in Council Regulation (EEC) No 3491/90 (OJ L 337, 4.12.1990, p. 1) and amended Commission Regulation (EEC) No 862/91 (OJ L 88, 9.4.1991, p. 7).

⁽⁵⁾ No import duty applies to products originating in the OCT pursuant to Article 101(1) of amended Council Decision 91/482/EEC (OJ L 263, 19.9.1991, p. 1).

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

⁽⁷⁾ Duties fixed in the Common Customs Tariff.

⁽⁸⁾ The duty on imports of rice originating in and coming from Egypt is applicable under the arrangements laid down in Council Regulation (EC) No 2184/96 (OJ L 292, 15.11.1996, p. 1) and Commission Regulation (EC) No 196/97 (OJ L 31, 1.2.1997, p. 53).

ANNEX II

Calculation of import duties for rice

	Paddy	Indica rice		Japonica rice		Broken rice
		Husked	Milled	Husked	Milled	
1. Import duty (EUR/tonne)	(¹)	264,00	416,00	264,00	416,00	(¹)
2. Elements of calculation:						
(a) Arag cif price (EUR/tonne)	—	221,52	228,23	265,31	286,50	—
(b) fob price (EUR/tonne)	—	—	—	234,70	255,89	—
(c) Sea freight (EUR/tonne)	—	—	—	30,61	30,61	—
(d) Source	—	USDA and operators	USDA and operators	Operators	Operators	—

(¹) Duties fixed in the Common Customs Tariff.

COMMISSION REGULATION (EC) No 1798/2002**of 9 October 2002****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 1524/2002 ⁽²⁾,

Whereas:

- (1) 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).
- (2) 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 2002 to 30 June 2003 at 11 500 t.

- (3) 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

1. All applications for import licences from 1 to 5 October 2002 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.
2. Applications for licences may be submitted, in accordance with Article 5 of Regulation (EC) No 936/97, during the first five days of November 2002 for 4 461,279 t.

Article 2

This Regulation shall enter into force on 11 October 2002.

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

Done at Brussels, 9 October 2002.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 137, 28.5.1997, p. 10.

⁽²⁾ OJ L 229, 27.8.2002, p. 7.

COURT OF JUSTICE

AMENDMENT TO THE RULES OF PROCEDURE OF THE COURT OF JUSTICE of 17 September 2002

THE COURT OF JUSTICE,

Having regard to the Treaty establishing the European Community, and in particular the third paragraph of Article 245 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular the third paragraph of Article 160 thereof,

Having regard to the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community, and in particular Article 55 thereof,

Whereas:

- (1) Article 20 of the Protocol on the Statute of the Court of Justice of the European Communities, as amended by Council Decision 2002/653/EC ⁽¹⁾, permits non-member States to take part in preliminary-ruling proceedings before the Court in the event that an agreement relating to a specific subject-matter, concluded with one or more non-member States, provides for such participation where a court or tribunal of a Member State refers to the Court for a preliminary ruling a question falling within the scope of the agreement in question.
- (2) It is necessary to lay down the rules applicable to the languages to be used where a non-member State takes part in such proceedings for a preliminary ruling.

With the unanimous approval of the Council given on 12 July 2002,

HEREBY ADOPTS THE FOLLOWING AMENDMENTS TO ITS RULES OF PROCEDURE:

Article 1

1. The following subparagraph shall be added to Article 29(3):

‘Non-member States taking part in proceedings for a preliminary ruling pursuant to the final paragraph of Article 20 of the EC Statute may be authorised to use one of the languages mentioned in paragraph 1 of this Article other than the language of the case. This provision shall apply both to written documents and to oral statements. The Registrar shall in each case arrange for their translation into the language of the case.’

2. The following subparagraph shall be added to Article 104(1):

‘Where a non-member State has the right to take part in proceedings for a preliminary ruling pursuant to Article 20 of the EC Statute, the original version of the decision of the national court or tribunal shall be communicated to it together with a translation into one of the languages mentioned in Article 29(1), to be chosen by the non-member State concerned.’

Article 2

These amendments to the Rules of Procedure, which are authentic in the languages referred to in Article 29(1), shall be published in the *Official Journal of the European Communities* and shall enter into force on the day of their publication.

Done at Luxembourg on 17 September 2002.

⁽¹⁾ OJ L 218, 13.8.2002, p. 1.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 9 April 2002

on the aid schemes C 74/2001 (ex NN76/2001) implemented by Belgium and which Belgium is planning to implement for the diamond industry

(notified under document number C(2002) 1345)

(Only the Dutch and French texts are authentic)

(Text with EEA relevance)

(2002/778/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above ⁽¹⁾ and having regard to their comments,

Whereas:

I. PROCEDURE

- (1) In July 1999 the Commission received a complaint from the Belgian association of traders in rough diamonds (Vereniging van handelaars in ruwe diamant/Association des commerçants de diamant brut) concerning the diamond industry's internal compensation fund (hereinafter the 'compensation fund'). Following the complaint, it asked Belgium to provide further information by letter dated 15 November 1999 (D/64713). By letter dated 6 December 1999 (registered as received on the same day under A/39442), the Belgian authorities asked to be given until 31 January 2000 to provide the information; the Commission gave its agreement by letter dated 8 December 1999 (D/65127). By letter dated 27 January 2000 (registered as received on 28 January under No A/30751), Belgium requested an additional extension until 29 February 2000. It provided further information by letter dated 28 February 2000 (registered as received on 1 March under A/31802). A meeting between Belgium and the Commission took place on 3 February 2000; a second meeting was held on 25 April 2000. The complainant itself sent the Commission several letters containing further information.
- (2) On 13 March 2000 the Council of State annulled for procedural reasons the decree amending the provisions on which the compensation fund was based. Withdrawals and payments were suspended. Belgium found itself involved in various sets of legal proceedings to recover amounts paid in error.

⁽¹⁾ OJ C 363, 19.12.2001, p. 11.

- (3) At the meeting on 25 April 2000, the Belgian authorities undertook to recover the amounts paid to Lens Diamond Industries NV, the only recipient to have been paid more than EUR 100 000. By letter dated 8 August 2000 (D/54231), the Commission requested written confirmation of that undertaking and clarification of the recovery procedures. By letter dated 28 August 2000 (registered as received on 29 August under A/37035), Belgium asked to be given until 30 September 2000 to provide the information requested; the Commission gave its agreement by letter dated 31 August 2000 (D/54503). Belgium provided the information by letter dated 2 October 2000 (registered as received on 6 October under A/38191). The Commission requested further information by letter dated 11 October 2000 (D/55155) and sent a reminder to Belgium on 29 November 2000 (D/55935). Belgium replied by letter dated 11 December 2000 (registered as received on 13 December under A/40511). The Commission requested further information on the situation with regard to the recovery procedure by letters dated 18 January 2001 (D/50188), 26 March 2001 (D/51276), 17 May 2001 (D/52040) and 29 June 2001 (D/52666). The law firm representing Belgium replied by letters dated 9 April 2001 (registered as received on 10 April under A/32970) and 12 July 2001 (registered as received on the same day under A/35663). Belgium confirmed the information contained in the letter of 12 July by letter dated 24 July 2001 (registered as received on 26 July under No A/36056). Belgium and the law firm acting for it notified the Commission informally that they intended to bring in a new scheme to replace the one that had been annulled. Belgium confirmed this by letter dated 31 October 2001 (registered as received on 5 November under A/38610).
- (4) By letter dated 17 October 2001, the Commission informed Belgium of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty concerning the abovementioned aid. Belgium replied by letter dated 30 November 2001 (registered as received on 4 December under SG A/13215). The decision was published in the *Official Journal of the European Communities* ⁽²⁾. The Commission called on interested parties to submit their comments.
- (5) The only comments received in this connection were submitted by the original complainant (letter of 17 January 2002, registered as received under A/30398) and by the compensation fund itself (letter of 17 January 2002, registered as received under No A/30353). By letter dated 24 January 2002 (D/50280) the Commission forwarded these comments to Belgium so that it could give its observations on them. These observations were received from the law firm by letter dated 28 February 2002 (registered as received on 1 March under A/31591) and from the Belgian authorities by letter dated 6 March 2002 (registered as received on 11 March under A/31853). Lastly, by letter dated 20 March (registered as received on 22 March 2002 under A/32195), the law firm submitted a copy of the March edition of *National Geographic*, which contained a number of articles on the various aspects of diamonds.

II. DETAILED DESCRIPTION OF THE AID

- (6) The objective of the scheme is to promote Antwerp's diamond industry and to prevent it relocating to third countries outside the Community. This is to be achieved by making payments to employers in the industry which partly compensate for their social security contributions.
- (7) The original scheme was set up by the Law of 26 March 1999 on the 1998 employment action plan ⁽³⁾ and by the Royal Decree of 3 June 1999 ⁽⁴⁾ amending the Royal Decree of 21 November 1960 ⁽⁵⁾ laying down the rules governing the internal compensation fund for the diamond industry.
- (8) The scheme provided for a levy on the value of each diamond transaction that was payable by natural or legal persons whose main or subsidiary activity was in the diamond trade or the diamond industry. All companies based in Belgium were required to pay the levy. A transaction is understood

⁽²⁾ See footnote 1.

⁽³⁾ Belgian Official Gazette, 1.4.1999.

⁽⁴⁾ Belgian Official Gazette, 22.6.1999, p. 23426.

⁽⁵⁾ Belgian Official Gazette, 8.12.1960.

as meaning any agreement for the purpose of creating added value in diamond sales transactions as a whole, either on the domestic market or on the export market ⁽⁶⁾. With effect from 1 April 1999, the levy was set at 0,08 %. As from 1 April 2000, it was increased to 0,10 %. Total levies for 1999 were estimated at BEF 313 125 000 (7,76 million) ⁽⁷⁾.

- (9) The amounts collected were used to pay compensation allowances to employers whose workers were involved in diamond processing (cleaving, cutting, rough-cutting, shaping and sawing). The allowances were fixed by a management committee and limited to the amount of employers' general social security contributions. In practice, they covered these contributions only in part. The right of employers to receive allowances took effect on 1 July 1999. According to Belgium, the allowances accounted at the time for 33 % of the total wage; they averaged 1,2 % (in a range of 0,5 % to 3 %) of total production costs. Belgium claims that the scheme was degressive: if it proved successful, the number of employees would increase, leading to a reduction in the amount of the allowance per employee. Belgium takes the view that all but one of the recipients meet the Community definition of a small or medium-sized enterprise.
- (10) The Council of State annulled the 1999 measure by decision of 13 March 2000. The total amount paid out as compensation allowances was BEF 172 254 892 (EUR 4,27 million). Only in one case, namely Lens Diamond Industries NV, did the amount paid exceed EUR 100 000, i.e. BEF [...] ^(*) Since then, Belgium has undertaken to comply with the *de minimis* rule ⁽⁸⁾ (hereinafter referred to as the '*de minimis* Regulation') as regards implementation of the annulled scheme.
- (11) When Belgium informed the Commission of the scheme that was to replace the annulled scheme, not all aspects of the new scheme had been fully discussed, but overall it probably differed little from the original scheme. The levy was to be set at 0,10 %, while the tax base and allowances were to remain unchanged. The scheme was not to enter into force until the first or second quarter of 2002. In principle, it should remain in force for an unlimited period. Belgium has not undertaken to comply with the *de minimis* Regulation as regards implementation of the new scheme.

Grounds for initiating the Article 88(2) procedure

- (12) In its preliminary evaluation the Commission stated its view that the schemes constituted State aid within the meaning of Article 87(1) of the EC Treaty and that the aid was operating aid, for which no exemption under Article 87(2) and (3) applied.

III. COMMENTS FROM INTERESTED PARTIES

- (13) The complainant, the Belgian association of traders in rough diamonds, endorses the arguments put forward by the Commission in its decision to initiate the procedure since the scheme favours the Belgian diamond industry and, in addition, gives rise to discrimination between traders in rough diamonds because those not involved in processing activities derive no benefit from it. The scheme runs counter to the interests of the latter group of traders: a Belgian trader who purchases a rough diamond for the purpose of selling it in Germany would pay the levy, whereas a non-Belgian trader effecting the same transaction would not.
- (14) The compensation fund endorses the arguments put forward by Belgium.

IV. COMMENTS FROM BELGIUM

- (15) Firstly, Belgium is surprised that the decision to initiate the Article 88(2) procedure should concern not only the annulled scheme but also the proposed scheme, which it has not yet formally notified to the Commission.

⁽⁶⁾ As a result, the levy is also payable on exports but not on imports.

⁽⁷⁾ NB: In the Antwerp diamond trade, it is fairly standard practice for a consignment of diamonds to be sold to various brokers and dealers in succession, thus giving rise to several transactions, before a final purchaser is found. However, the levy is not charged on transactions which do not result in added value being created.

^(*) Business secret.

⁽⁸⁾ Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid (OJ L 10, 13.1.2002, p. 30).

- (16) Secondly, Belgium states that the resources of the compensation fund are not State resources as required by the definition of State aid set out in Article 87(1) and as confirmed by the *PreussenElektra* case ⁽⁹⁾. There is no transfer of State resources since the traders contributions replace the employers social security contributions. The budget impact for the State is neutral. This reasoning is unaffected by the fact that the contributions are levied under statutory provisions.
- (17) Thirdly, Belgium argues that the scheme merely involves a reinforcement of the solidarity mechanism that exists in every social security system. However, the employers' social security contributions are paid no longer by employers in the processing industry, but by the entire diamond industry, including diamond traders. Apart from that adjustment to the solidarity mechanism, no other change has been made to the scheme. This argument is borne out by the fact that a collaborating social security institution can assume responsibility for collecting compensation contributions. The scheme for the diamond industry can be compared to a social security system specific to a given industry, like the one for seamen.
- (18) Belgium adds that the scheme does not have any effect on trade between Member States. The position of Antwerp is very specific. The city is the most important centre for diamond trading in the Community ⁽¹⁰⁾. According to estimates, it accounts for 80 % of the rough diamond trade in the Community. Scarcely 0,1 % of rough diamonds sold in Antwerp is sent to other Member States for processing. The annual value of the rough diamonds processed in Belgium is approximately USD 500 million.
- (19) There is no distortion of competition in respect of rough diamond traders. The compensation allowances are granted for processing activities only and do not have a detrimental effect on traders. In addition, the allowances reduce the cost of processed diamonds, something which also benefits traders. Belgium has produced an interim report which indicates a positive effect for Antwerp's diamond industry as a whole.
- (20) Belgium also refers to the case involving the *Künstlersozialversicherung* (social insurance for artists) ⁽¹¹⁾ which appears to be similar to the scheme for the diamond industry. It was pointed out in this case that publishing houses and press agencies are required to pay a contribution to certain payments by artists and journalists. The Commission contested the scheme because it resulted in double taxation. At no time did it invoke the State aid rules, although Germany contributes to the system out of its own resources.
- (21) Belgium has provided an analysis carried out by an economic research bureau. The report begins by describing the competitors within and outside the Community. Diamond firms in the Netherlands are seen as being local in character since they focus mainly on visitors to Amsterdam and the local jewellery trade. According to the report, the sector is more industrialised in Germany and operates on a larger scale than in the Netherlands, with German firms specialising in processing diamonds for medical use and for use in repair activities. In any event, these firms do not compete with the Belgian diamond industry, which tends to specialise in the large-scale processing of relatively large, valuable diamonds. Its main competitors are located in India, Israel, the United States, Thailand, Sri Lanka, China, Russia and South Africa.
- (22) The report contains data on the trade in rough diamonds and processed diamonds. These figures do not indicate any effect on intra-Community trade. Exports of rough diamonds to the Netherlands, Germany, France and Italy increased during the period covered by the Belgian scheme. The percentage increase is even higher than that for exports to third countries. Belgian exports of processed diamonds to France declined after the scheme was introduced, while exports to the Netherlands, Germany and Italy rose. Indeed, they continued to rise after the scheme had been annulled, which suggests that it did not have much effect. The report also provides data on imports of processed diamonds into Belgium; however, these do not allow any clear conclusions to be drawn regarding the scheme's effects. In any event, the bulk (70 to 80 %) of processed diamond imports comprises diamonds which were exported and then reimported after being inspected.

⁽⁹⁾ Case C-379/98 *PreussenElektra AG v Schleswig AG* [2001] ECR I-2099.

⁽¹⁰⁾ The De Beers company has an effective monopoly. Some 40 'supervisors' sell rough diamonds in Antwerp. There are no such 'supervisors' in the other Member States.

⁽¹¹⁾ Case C-68/99 *Commission v Germany* [2001] ECR I-1865.

- (23) Thirdly, the report analyses the levy's effects on traders. It concludes that the levy does not give rise to discrimination in favour of traders also involved in other activities as opposed to 'pure' traders since no trader is deemed to use income from other activities to mitigate its effect. This reasoning also implies that the prices set by traders should not be affected by the allowances paid to them by virtue of their processing activities. In addition, the allowances represent only a small proportion of the total price (about 1,2 % of total costs) and contributions and they concern the same chain of diamond production, thereby reducing the net impact.
- (24) The report concludes with two general observations. Firstly, the scheme could be regarded as an adjustment designed to remedy a market failure. The diamond trade benefits from the 'externalities' resulting from the presence of the diamond industry. As a result of the scheme, these 'externalities' are internalised. Secondly, labour costs in Belgium are high and the system of taxation and social security contributions creates distortions. According to the report, the scheme is designed purely to iron out these distortions.

V. ASSESSMENT OF THE AID

V.1. State aid within the meaning of Article 87(1) of the EC Treaty

State resources and the PreussenElektra judgment

- (25) The amounts collected must be regarded as State resources. The scheme consists of a parafiscal levy. The size and use made of the proceeds are determined by Belgian law. The Court of Justice has established in several judgments that parafiscal levies may constitute State aid ⁽¹²⁾. The Commission takes the view that the *PreussenElektra* judgment ⁽¹³⁾ does not apply in the situation under consideration. Under no circumstances do the diamond firms receive the allowances direct from the firms paying the contribution. A minimum price for the product in question is not enshrined in law, as was the case in *PreussenElektra*. In the case of the compensation fund, a 'classic' parafiscal levy is enshrined in law and managed by a fund established under the same law, which also collects the amounts of the levy and pays out the allowances. The Ministry of Labour approves the level of the allowances. A government commissioner appointed by the King on a proposal from the Minister for Labour takes part in the meetings of the supervisory bodies in an advisory capacity. However, he may appeal against any decision which he deems to be against the law or incompatible with the statutes, such appeals having suspensive effect. A decision becomes definitive provided that the Minister does not pronounce it null and void within 20 days. The system is governed by public law. Under the annulled measure the King appointed all members of the general management board and all the members of the management committee, whose task was to assist the management board. As regards the proposed scheme, Belgium has explained that the negotiations and discussions on the rules governing the compensation fund are still ongoing.

Selective advantage and (potential) distortion

- (26) Aid in excess of EUR 100 000 granted to an individual company over a three-year period distorts or threatens to distort competition by favouring certain undertakings. According to the settled case-law of the Court of Justice, a partial reduction of social charges devolving upon undertakings of a

⁽¹²⁾ See in particular the judgment handed down on 22 March 1977 in Case 78/76 *Steinike & Weinlig v Germany* [1997] ECR 595. In paragraphs 21 and 22, the Court establishes the following: 'The prohibition contained in Article 92(1) covers all aid granted by a Member State or through State resources without its being necessary to make a distinction whether the aid is granted directly by the State or by public or private bodies established or appointed by it to administer the aid. In applying Article 92 regard must primarily be had to the effects of the aid on the undertakings or producers favoured and not the status of the institutions entrusted with the distribution and administration of the aid. A measure adopted by the public authority and favouring certain undertakings or products does not lose the character of a gratuitous advantage by the fact that it is wholly or partially financed by contributions imposed by the public authority and levied on the undertakings concerned'.

⁽¹³⁾ See footnote 9.

particular industrial sector constitutes aid within the meaning of Article 87(1) of the Treaty if that measure is intended partially to exempt those undertakings from the financial charges arising from the normal application of the general social security system, without there being any justification for this exemption on the basis of the nature or general scheme of this system ⁽¹⁴⁾. The compensation allowances constitute such an exemption in favour of Belgian diamond firms and, as regards the initial scheme, in favour of Lens Diamond Industries NV in particular. Neither employers in the diamond industry in other Member States nor employers in other branches of Belgian industry are eligible for a comparable reduction in their social charges. Under the Belgian social security system, employers make a flat-rate contribution to social security for their employees. The measure creates a selective exception, outside the general system, for employers in the diamond industry. The result is a distortion of competition in favour of those employers. This conclusion is unaffected by the argument that the specific scheme reinforces solidarity within the diamond industry. Belgium itself regards the scheme as a specific adjustment for the diamond industry and refers to the specific circumstances of this industry which lay behind its decision to adopt the schemes in question. This confirms that the measure is not justified by the nature and general scheme of the Belgian social security system. The Court established in *Maribel bis/ter* that a scheme which pursues an employment policy by means affording a direct advantage only in relation to the competitive situation of the undertakings concerned, which belong to certain sectors of economic activity, is not justified by the nature or measure of the social security scheme in force in Belgium ⁽¹⁵⁾.

- (27) With regard to the comment by Belgium that there are other sector-specific social security systems, and in particular the one for seamen, the Commission would point out that it has clarified the concept of State aid in this connection in the Community guidelines on State aid to maritime transport and, in the light of the highly specific characteristics of this sector, the conditions under which such aid may be compatible with the common market ⁽¹⁶⁾.
- (28) Annulment of the scheme by the Council of State means that the compensation funds general management board is no longer empowered to carry out management functions. The Minister for Labour has taken over provisional management of the available financial resources and has appointed for that purpose persons who are supervised by a panel of administrators. Annulment also entailed the disappearance of the basis for payments to and from the fund. As a result, the fund is involved in various sets of legal proceedings for the recovery of amounts paid unlawfully. However, the panel of administrators has decided in principle to recover amounts paid and to repay amounts only after a first ruling in principle has been delivered in connection with these proceedings. The Commission concludes that recovery will not take place immediately and is uncertain in so far as it depends on subsequent rulings. The advantage still exists. The information provided by Belgium suggests that the proposed scheme would create equivalent advantages which, in reality, would be far greater because it would be applicable for an unlimited period.

Adverse impact on trade between Member States

- (29) According to Court of Justice case-law, when State financial aid strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid ⁽¹⁷⁾. In the case in point, the allowances strengthen the position of diamond firms on the processed diamond market. These firms export the bulk of their production, a substantial part of which goes to other Member States. As Belgium has stated, minor concentrations of this activity are to be found in other Member States, in particular the Netherlands (Amsterdam) and Germany (Idar-Oberstein).

⁽¹⁴⁾ Case C-251/97 *France v Commission* [1999] ECR I-6639, paragraph 36. This paragraph refers to the judgments in Case 173/73 *Italy v Commission* [1974] ECR 709, paragraph 33, and in Case C-301/87 *France v Commission* [1990] ECR I-307, paragraph 41.

⁽¹⁵⁾ Case C-75/97 *Belgium v Commission* [1999] ECR I-3671, paragraph 39.

⁽¹⁶⁾ Community guidelines on State aid to maritime transport (OJ C 205, 5.7.1997).

⁽¹⁷⁾ Case 730/79 *Philip Morris v Commission* [1980] 2671, paragraph 11, and Case T-214/95 *Vlaams Gewest v Commission* [1998] II-717, paragraph 50.

- (30) The Commission cannot follow the argument that diamond firms in the Netherlands and Germany do not compete with Belgian firms. Competition does exist: local customers (local jewellers, the jewellery sector's wholesale trade, etc.) can be expected to compare the price/quality ratio of 'local' diamonds with that of diamonds exported from Belgium. It can even be assumed that tourists stimulate competition in so far as diamond centres are known throughout the world. A few Amsterdam-based firms, for example, sell a significant proportion of their production to Americans on the basis of their reputation. Customers have already taken account of competition from Antwerp when they decide on their trip.
- (31) What is more, Belgian diamond firms are generally active in the same market segment as their European competitors. Antwerp has already lost a substantial market share to firms based in low-wage countries. Belgian firms will be increasingly obliged to strengthen their position in the high-quality segment of the market. This is precisely the segment in which several Dutch firms (and probably German firms too) are active. The comment by the economic research bureau commissioned by Belgium to the effect that a distinction should be drawn between Belgian firms specialising in 'large-scale' activities and firms from other Member States which have 'smaller-scale' activities is irrelevant ⁽¹⁸⁾. They are operating on the same product market ⁽¹⁹⁾.
- (32) Although the initial consequence of the allowances is to reduce labour costs, it cannot be ruled out that they will also strengthen the position of recipients on input markets, particularly the rough diamond market. De Beers has a particularly strong position on that market. In the whole of Europe it allows just forty or so 'supervisors' based in Antwerp to sell rough diamonds. It is common practice for rough diamonds to be the subject of several successive transactions before being processed. The same firms from Belgium, the Netherlands, Germany, etc. therefore operate on this market.
- (33) The Commission endorses the conclusions of the research bureau's report (p. 2) to the effect that the trade figures must be interpreted with great care and cannot be regarded as providing decisive proof. The periods taken into consideration, the time that may be needed to establish the measure's effects and a whole series of other factors which may impact on the data provided are all open to discussion. The importance of the industry outside Belgium and within the common market should not be minimised either. For instance, it can be calculated from the data provided by Belgium that the number of diamond workers in the European Community and outside Belgium represents some 7 to 10 % of the total ⁽²⁰⁾.
- (34) Consequently, the annulled scheme and the proposed scheme reinforce the competitive position of Belgian diamond firms in relation to their competitors in other Member States. In so far as Belgium does not comply with the conditions of the *de minimis* Regulation, as in the case of Lens Diamond Industries NV at least, the Commission takes the view that the annulled scheme and the proposed scheme affect trade between Member States.
- (35) Given that all the factors determining aid are present, the Commission takes the view that the annulled scheme and the proposed scheme constitute State aid within the meaning of Article 87(1) in so far as Belgium does not comply with the conditions of the *de minimis* Regulation.
- (36) Accordingly, Belgium has infringed Article 88(3) of the Treaty by granting aid without prior notification and approval.

⁽¹⁸⁾ Most Belgian firms are very small as well, and there are also 'medium-sized' firms in Amsterdam.

⁽¹⁹⁾ The Belgian authorities have not demonstrated that the medical use of diamonds is totally distinct from other segments of the diamond industry nor shown that no Belgian company operates in that segment. Even if all these conditions were met, it would still be an exception, even in Germany: Idar-Oberstein is known mainly for its precious stones industry, not for surgical instruments.

⁽²⁰⁾ This figure does not take account of the different employment ratios or of the fact that a substantial part of diamond processing is done by the black economy.

Comparison with the Künstlersozialversicherung

- (37) The infringement file processed by the Court in Case C-68/99 is of limited scope, as indicated in recital 14, and does not affect the Commission's analysis of the schemes in the light of the State aid rules. In any event, the lack of such an analysis by the Commission does not affect its analysis of the compensation fund for the diamond industry.

V.2. Compatibility of the aid with the common market

- (38) The aid granted under the previous scheme, and to be provided under the proposed scheme, reduces the beneficiaries' current expenditure without a linkage to any eligible investment costs or job creation. Accordingly, the Commission regards it as operating aid.
- (39) The Commission is obliged to ascertain whether the aid is compatible with the EC Treaty. It has therefore examined whether the exemptions laid down in Article 87(2) and (3) of the Treaty apply. The exemptions in Article 87(2) do not apply since the measures in question (a) do not constitute aid having a social character granted to individual consumers, (b) are not designed to make good damage caused by natural disasters or exceptional occurrences and (c) are not required in order to compensate for the economic disadvantages caused by the division of Germany. Nor do the exemptions set out in Article 87(3)(a),(b) and (d) since the measures in question do not constitute aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, aid to promote the execution of an important project of common European interest or aid to promote culture and heritage conservation.
- (40) Indeed, the Belgian authorities made no attempt to justify the aid on the aforementioned grounds.
- (41) The second part of the exemption in Article 87(3)(c) of the Treaty, which refers to aid to facilitate the development of certain economic areas, does not apply either because the aid is not intended for initial investments or for job creation in a region where enterprises are eligible for aid of that type. Nor is the aid granted to enterprises located in outlying regions. The first part of this exemption, which refers to aid to facilitate the development of certain economic activities, is not applicable either: firstly, the aid is not intended for R & D, environmental objectives or investments by SMEs; secondly, while the aid is designed as sectoral employment aid, the conditions whereby the Commission can conclude that such aid is compatible with the common market have not been met. In the guidelines on aid to employment ⁽²¹⁾ and its notice on monitoring State aid and reduction of labour costs ⁽²²⁾, the Commission states that aid targeted on one or a few sensitive sectors experiencing overcapacity or in crisis is mostly such that, as a rule, it cannot be regarded as being compatible with the common market. Point 23 of the aforementioned notice states that a reduction in social charges cannot be genuinely effective unless it relates to sectors which are less exposed to international competition, in particular certain services. The diamond industry is in no way protected from international competition. Belgium argues that the payments in question redress market failures relating to 'externalities' linked to the diamond trade and resulting from the high level of social charges. However, in the Commission's view, these arguments do not provide a basis for concluding that the aid is compatible. The existence of market failures, which could be observed in a number of industries, did not convince the Commission, when drafting the guidelines and the notice on employment aid, that such measures could be regarded as compatible with the common market in view of the distortions of competition to which they give rise.

⁽²¹⁾ OJ C 334, 12.12.1995, p. 4. The extension of the period of validity was published in OJ C 371, 23.12.2000, p. 12.

⁽²²⁾ OJ C 1, 3.1.1997, p. 10.

- (42) Since none of the exemptions laid down in Article 87 applies, the annulled scheme and the proposed scheme are, in so far as Belgium does not comply with the conditions of the *de minimis* Regulation, incompatible with the common market.
- (43) Recovery of incompatible and unlawful aid is an obligation imposed on the Commission by Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽²³⁾. This measure is necessary to restore the previous situation and to cancel any financial advantages enjoyed by the recipient since the aid was paid. This aid must be repaid without delay and in accordance with the procedures of Belgian law, provided that they allow the immediate and effective execution of the Decision. The aid to be recovered includes interest as from the date on which the unlawful aid was at the disposal of the beneficiary until the date of its recovery. Interest is calculated on the basis of the commercial rate used to calculate the grant equivalent of regional aid.

VI. CONCLUSION

- (44) The allowances granted to Belgian diamond firms by the compensation fund set up under the annulled scheme, in particular the aid granted to Lens Diamond Industries NV, and the allowances to be paid by the compensation fund as provided for by Belgium constitute State aid within the meaning of Article 87(1) of the EC Treaty in so far as Belgium does not comply with the conditions of the *de minimis* Regulation.
- (45) The Commission finds that Belgium has unlawfully implemented the 1999 aid scheme in breach of Article 88(3) of the Treaty. The fact that the scheme has been annulled by the Council of State does not affect this conclusion.
- (46) The allowances for diamond firms paid under the annulled scheme and to be paid under the proposed scheme must, in so far as Belgium does not comply with the conditions of the *de minimis* Regulation, be regarded as operating aid. Since none of the exemptions provided for in Article 87(2) and (3) of the Treaty is applicable, the aid is incompatible with the common market.
- (47) The unlawful aid must be recovered from the beneficiaries,

HAS ADOPTED THIS DECISION:

Article 1

The aid scheme which Belgium has implemented for diamond firms, in so far as it does not comply with the conditions set out in the Commission Regulation on *de minimis* aid, and the aid scheme which Belgium intends to implement for diamond firms are incompatible with the common market.

Article 2

Belgium shall take all necessary measures to recover from the beneficiaries the aid referred to in Article 1 and unlawfully made available to them.

Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of the Decision. The aid to be recovered shall include interest from the date on which it was at the disposal of the beneficiaries until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aid.

Article 3

Belgium shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

⁽²³⁾ OJ L 83, 27.3.1999, p. 1.

Article 4

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 9 April 2002.

For the Commission

Mario MONTI

Member of the Commission

CORRIGENDA**Corrigendum to Commission Regulation (EC) No 1557/2000 of 17 July 2000 amending Regulation (EC) No 800/1999 laying down common detailed rules for the application of the system of export refunds on agricultural products**

(Official Journal of the European Communities L 179 of 18 July 2000)

On page 6, in Article 1(3):

for: '4. The provisions of Article 5 shall not apply to deliveries covered by this Article. However, the Member States may take appropriate action to allow checks on the products.'

read: '4. The provisions of Article 5(7) shall not apply to deliveries covered by this Article. However, the Member States may take appropriate action to allow checks on the products.'

Corrigendum to Commission Decision 2001/171/EC of 19 February 2001 establishing the conditions for a derogation for glass packaging in relation to the heavy metal concentration levels established in Directive 94/62/EC on packaging and packaging waste

(Official Journal of the European Communities L 62 of 2 March 2001)

On page 20, Article 5:

for: 'Where the average heavy metals concentration levels ..., the manufacturer or this authorised representative ...',

read: 'Where the average heavy metals concentration levels ..., the manufacturer or his authorised representative ...'.
