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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 2447/87**of 13 August 1987****fixing the import levies on cereals and on wheat or rye flour, groats and meal**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EEC) No 1900/87 ⁽²⁾, and in particular Article 13 (5) thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy ⁽³⁾, as last amended by Regulation (EEC) No 1636/87 ⁽⁴⁾, and in particular Article 3 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas the import levies on cereals, wheat and rye flour, and wheat groats and meal were fixed by Commission Regulation (EEC) No 1944/87 ⁽⁵⁾ and subsequent amending Regulations;

Whereas, if the levy system is to operate normally, levies should be calculated on the following basis:

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central

rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Regulation (EEC) No 1676/85,

- for other currencies, an exchange rate based on the arithmetic mean of the spot market rates of each of these currencies recorded for a given period in relation to the Community currencies referred to in the previous indent, and the aforesaid coefficient;

Whereas these exchange rates being those recorded on 12 August 1987;

Whereas the aforesaid corrective factor affects the entire calculation basis for the levies, including the equivalence coefficients;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 1944/87 to today's offer prices and quotations known to the Commission that the levies at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies to be charged on products listed in Article 1 (a), (b) and (c) of Regulation (EEC) No 2727/75 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 14 August 1987.

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 182, 3. 7. 1987, p. 40.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 153, 13. 6. 1987, p. 1.

⁽⁵⁾ OJ No L 185, 4. 7. 1987, p. 38.

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

Done at Brussels, 13 August 1987.

For the Commission

Frans ANDRIESEN

Vice-President

ANNEX

to the Commission Regulation of 13 August 1987 fixing the import levies on cereals and on wheat or rye flour, groats and meal

(ECU/tonne)

CCT heading No	Description	Levies	
		Portugal	Third country
10.01 B I	Common wheat, and meslin	—	177,07
10.01 B II	Durum wheat	34,54	237,17 ⁽¹⁾ ⁽²⁾
10.02	Rye	24,81	154,77 ⁽²⁾
10.03	Barley	12,27	175,18
10.04	Oats	77,28	126,08
10.05 B	Maize, other than hybrid maize for sowing	5,29	181,57 ⁽²⁾ ⁽³⁾ ⁽⁴⁾
10.07 A	Buckwheat	12,27	111,81
10.07 B	Millet	12,27	104,91 ⁽²⁾
10.07 C II	Grain sorghum, other than hybrid sorghum for sowing	29,71	183,48 ⁽²⁾ ⁽⁵⁾
10.07 D I	Triticale	⁽⁷⁾	⁽⁷⁾
10.07 D II	Canary seed ; other cereals	12,27	24,05 ⁽²⁾
11.01 A	Wheat or meslin flour	—	261,12
11.01 B	Rye flour	47,96	229,90
11.02 A I a)	Durum wheat groats and meal	66,62	381,38
11.02 A I b)	Common wheat groats and meal	—	281,77

⁽¹⁾ Where durum wheat originating in Morocco is transported directly from that country to the Community, the levy is reduced by 0,60 ECU/tonne.

⁽²⁾ In accordance with Council Regulation (EEC) No 486/85 the levies are not applied to imports into the French overseas departments of products originating in the African, Caribbean and Pacific States or in the 'overseas countries and territories'.

⁽³⁾ Where maize originating in the ACP or OCT is imported into the Community the levy is reduced by 1,81 ECU/tonne.

⁽⁴⁾ Where millet and sorghum originating in the ACP or OCT is imported into the Community the levy is reduced by 50 %.

⁽⁵⁾ Where durum wheat and canary seed produced in Turkey are transported directly from that country to the Community, the levy is reduced by 0,60 ECU/tonne.

⁽⁶⁾ The import levy charged on rye produced in Turkey and transported directly from that country to the Community is laid down in Council Regulation (EEC) No 1180/77 and Commission Regulation (EEC) No 2622/71.

⁽⁷⁾ The levy applicable to rye shall be charged on imports of the product falling within subheading 10.07 D I (triticale).

⁽⁸⁾ The levy referred to in Article 1 of Council Regulation (EEC) No 2913/86 shall be fixed on the basis of an invitation to tender in accordance with Commission Regulation (EEC) No 3140/86.

COMMISSION REGULATION (EEC) No 2448/87

of 13 August 1987

fixing the premiums to be added to the import levies on cereals, flour and malt

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 1900/87⁽²⁾, and in particular Article 15 (6) thereof,Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy⁽³⁾, as last amended by Regulation (EEC) No 1636/87⁽⁴⁾, and in particular Article 3 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas the premiums to be added to the levies on cereals and malt were fixed by Commission Regulation (EEC) No 1945/87⁽⁵⁾ and subsequent amending Regulations;

Whereas, if the levy system is to operate normally, levies should be calculated on the following basis:

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Regulation (EEC) No 1676/85,

- for other currencies, an exchange rate based on the arithmetic mean of the spot market rates of each of these currencies recorded for a given period in relation to the Community currencies referred to in the previous indent, and the aforesaid coefficient;

Whereas these exchange rates being those recorded on 12 August 1987;

Whereas, on the basis of today's cif prices and cif forward delivery prices, the premiums at present in force, which are to be added to the levies, should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

1. The premiums referred to in Article 15 of Regulation (EEC) No 2727/75 to be added to the import levies fixed in advance in respect of cereals and malt coming from Portugal shall be zero.
2. The premiums referred to in Article 15 of Regulation (EEC) No 2727/75 to be added to the import levies fixed in advance in respect of cereals and malt coming from third countries shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 14 August 1987.

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

Done at Brussels, 13 August 1987.

For the Commission

Frans ANDRIESEN

Vice-President⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.⁽²⁾ OJ No L 182, 3. 7. 1987, p. 40.⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.⁽⁴⁾ OJ No L 153, 13. 6. 1987, p. 1.⁽⁵⁾ OJ No L 185, 4. 7. 1987, p. 41.

ANNEX

to the Commission Regulation of 13 August 1987 fixing the premiums to be added to the import levies on cereals, flour and malt from third countries

A. Cereals and flour

CCT heading No	Description	(ECU/tonne)			
		Current 8	1st period 9	2nd period 10	3rd period 11
10.01 B I	Common wheat, and meslin	0	0	0	0
10.01 B II	Durum wheat	0	0,32	0,32	0,32
10.02	Rye	0	0	0	0
10.03	Barley	0	0	0	0
10.04	Oats	0	0	0	0
10.05 B	Maize, other than hybrid maize for sowing	0	0	0	0
10.07 A	Buckwheat	0	0	0	0
10.07 B	Millet	0	0	0	0
10.07 C II	Grain sorghum, other than hybrid sorghum for sowing	0	0	0	0
10.07 D	Other cereals	0	0	0	0
11.01 A	Wheat or meslin flour	0	0	0	0

B. Malt

CCT heading No	Description	(ECU/tonne)				
		Current 8	1st period 9	2nd period 10	3rd period 11	4th period 12
11.07 A I a)	Unroasted malt, obtained from wheat, in the form of flour	0	0	0	0	0
11.07 A I b)	Unroasted malt, obtained from wheat, other than in the form of flour	0	0	0	0	0
11.07 A II a)	Unroasted malt, other than that obtained from wheat, in the form of flour	0	0	0	0	0
11.07 A II b)	Unroasted malt, other than that obtained from wheat, other than in the form of flour	0	0	0	0	0
11.07 B	Roasted malt	0	0	0	0	0

COMMISSION REGULATION (EEC) No 2449/87

of 13 August 1987

fixing the minimum levies on the importation of olive oil and levies on the importation of other olive oil sector products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by Regulation (EEC) No 1915/87⁽²⁾, and in particular Article 16 (2) thereof,Having regard to Council Regulation (EEC) No 1514/76 of 24 June 1976 on imports of olive oil originating in Algeria⁽³⁾, as last amended by Regulation (EEC) No 798/87⁽⁴⁾, and in particular Article 5 thereof,Having regard to Council Regulation (EEC) No 1521/76 of 24 June 1976 on imports of olive oil originating in Morocco⁽⁵⁾, as last amended by Regulation (EEC) No 799/87⁽⁶⁾, and in particular Article 5 thereof,Having regard to Council Regulation (EEC) No 1508/76 of 24 June 1976 on imports of olive oil originating in Tunisia⁽⁷⁾, as last amended by Regulation (EEC) No 413/86⁽⁸⁾, and in particular Article 5 thereof,Having regard to Council Regulation (EEC) No 1180/77 of 17 May 1977 on imports into the Community of certain agricultural products originating in Turkey⁽⁹⁾, as last amended by Regulation (EEC) No 800/87⁽¹⁰⁾, and in particular Article 10 (2) thereof,Having regard to Council Regulation (EEC) No 1620/77 of 18 July 1977 laying down detailed rules for the importation of olive oil from Lebanon⁽¹¹⁾;Whereas by Regulation (EEC) No 3131/78⁽¹²⁾ the Commission decided to use the tendering procedure to fix levies on olive oil;Whereas Article 3 of Council Regulation (EEC) No 2751/78 of 23 November 1978 laying down general rules for fixing the import levy on olive oil by tender⁽¹³⁾ specifies that the minimum levy rate shall be fixed for each of the products concerned on the basis of the situation on the world market and the Community market and of the levy rates indicated by tenderers;

Whereas in the collection of the levy, account should be taken of the provisions in the Agreements between the Community and certain third countries; whereas in particular the levy applicable for those countries must be fixed taking as a basis for calculation the levy to be collected on imports from the other third countries;

Whereas application of the rules recalled above to the levy rates indicated by tenderers on 10 and 11 August 1987 leads to the minimum levies being fixed as indicated in Annex I to this Regulation;

Whereas the import levy on olives falling within subheadings 07.01 N II and 07.03 A II of the Common Customs Tariff and on products falling within subheadings 15.17 B I and 23.04 A II of the Common Customs Tariff must be calculated from the minimum levy applicable on the olive oil contained in these products; whereas, however, the levy charged for olive oil may not be less than an amount equal to 8 % of the value of the imported product, such amount to be fixed at a standard rate; whereas application of these provisions leads to the levies being fixed as indicated in Annex II to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The minimum levies on olive oil imports are fixed in Annex I.

Article 2

The levies applicable on imports of other olive oil sector products are fixed in Annex II.

Article 3

This Regulation shall enter into force on 14 August 1987.

⁽¹⁾ OJ No 172, 30. 9. 1966, p. 3025/66.⁽²⁾ OJ No L 183, 3. 7. 1987, p. 7.⁽³⁾ OJ No L 169, 28. 6. 1976, p. 24.⁽⁴⁾ OJ No L 79, 21. 3. 1987, p. 11.⁽⁵⁾ OJ No L 169, 28. 6. 1976, p. 43.⁽⁶⁾ OJ No L 79, 21. 3. 1987, p. 12.⁽⁷⁾ OJ No L 169, 28. 6. 1976, p. 9.⁽⁸⁾ OJ No L 48, 26. 2. 1986, p. 1.⁽⁹⁾ OJ No L 142, 9. 6. 1977, p. 10.⁽¹⁰⁾ OJ No L 79, 21. 3. 1987, p. 13.⁽¹¹⁾ OJ No L 181, 21. 7. 1977, p. 4.⁽¹²⁾ OJ No L 370, 30. 12. 1978, p. 60.⁽¹³⁾ OJ No L 331, 28. 11. 1978, p. 6.

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

Done at Brussels, 13 August 1987.

For the Commission

Frans ANDRIESSEN

Vice-President

ANNEX I

Minimum import levies on olive oil

(ECU/100 kg)	
CCT heading No	Non-member countries
15.07 A I a)	60,00 ⁽¹⁾
15.07 A I b)	60,00 ⁽¹⁾
15.07 A I c)	60,00 ⁽¹⁾
15.07 A II a)	70,00 ⁽²⁾
15.07 A II b)	96,00 ⁽³⁾

⁽¹⁾ For imports of oil falling within this tariff subheading and produced entirely in one of the countries listed below and transported directly from any of those countries to the Community, the levy to be collected is reduced by:

- (a) Lebanon: 0,60 ECU/100 kg;
- (b) Tunisia: 12,69 ECU/100 kg, provided that the operator furnishes proof of having paid the export tax applied by that country; however, the repayment may not exceed the amount of the tax in force;
- (c) Turkey: 22,36 ECU/100 kg, provided that the operator furnishes proof of having paid the export tax applied by that country; however, the repayment may not exceed the amount of the tax in force;
- (d) Algeria and Morocco: 24,78 ECU/100 kg, provided that the operator furnishes proof of having paid the export tax applied by that country; however, the repayment may not exceed the amount of the tax in force.

⁽²⁾ For imports of oil falling within this tariff subheading:

- (a) produced entirely in Algeria, Morocco or Tunisia and transported directly from any of those countries to the Community, the levy to be collected is reduced by 3,86 ECU/100 kg;
- (b) produced entirely in Turkey and transported directly from that country to the Community, the levy to be collected is reduced by 3,09 ECU/100 kg.

⁽³⁾ For imports of oil falling within this tariff subheading:

- (a) produced entirely in Algeria, Morocco or Tunisia and transported directly from any of those countries to the Community, the levy to be collected is reduced by 7,25 ECU/100 kg;
- (b) produced entirely in Turkey and transported directly from that country to the Community, the levy to be collected is reduced by 5,80 ECU/100 kg.

ANNEX II

Import levies on other olive oil sector products

(ECU/100 kg)	
CCT heading No	Non-member countries
07.01 N II	13,20
07.03 A II	13,20
15.17 B I a)	30,00
15.17 B I b)	48,00
23.04 A II	4,80

COMMISSION REGULATION (EEC) No 2450/87

of 12 August 1987

imposing a provisional anti-dumping duty on imports of mercury originating in the Union of Soviet Socialist Republics

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community⁽¹⁾, as amended by Regulation (EEC) No 1761/87⁽²⁾, and in particular Article 11 thereof,

After consultations within the Advisory Committee as provided for by the above Regulation,

Whereas :

A. PROCEDURE

(1) In October 1986 the EEC Liaison Committee for the Non-Ferrous Metal Industries lodged a complaint with the Commission on behalf of Minas de Almadén y Arrayanes SA, Madrid, a firm accounting for 90 % of the Community production of mercury. The complaint included evidence of dumping and consequent material injury which was considered sufficient to justify the initiation of a proceeding. The Commission therefore published a notice in the *Official Journal of the European Communities*⁽³⁾ announcing the initiation of an anti-dumping proceeding concerning imports into the Community of mercury originating in the USSR, put up in flasks of a net capacity of 34,5 kilograms (standard weight) or other, falling within subheading 28.05 D of the Common Customs Tariff, corresponding to NIMEXE codes 28.05-71 and 28.05-79 ; it then commenced investigations. The Commission also published a notice under Article 13 (4) (b) of Council Regulation (EEC) No 2176/84 concerning allegations by the complainant that the importer was or should have been aware that the exporter was dumping and that such dumping would cause injury⁽⁴⁾.

(2) The Commission officially informed the exporter, the importers known to be concerned and the

complainant and gave interested parties the opportunity to make known their views in writing or request a hearing.

- (3) The Community producer, the exporter and five importers made known their views in writing.
- (4) A number of Community buyers of the product submitted comments.
- (5) The Commission gathered and checked all information it considered necessary to make a preliminary assessment of dumping, and carried out inspections at the premises of the following companies :

Community producer

Minas de Almadén y Arrayanes, SA, Madrid, Spain ;

Community importers

- Lambert Metals Ltd, London, United Kingdom,
- Comsup Trading, London, United Kingdom,
- Derby and Co. Ltd, London, United Kingdom ;

Producer in reference country

Placer US Inc., San Francisco, United States ;

Producer/exporter

The Commission also visited the premises of Raznoimport London, representing the Soviet exporter Raznoimport Moscow.

The Commission sought and received detailed written submissions from the complainant Community producer, the exporter and the importers and checked the information thus received where necessary.

- (6) The investigation of dumping and price differences related to the period 1 July 1986 to 28 February 1987.
- (7) This proceeding has no bearing on the investigations being carried out under Council Regulation No 17⁽⁵⁾, concerning possible price agreements between producers in the Community and in third countries.

⁽¹⁾ OJ No L 201, 30. 7. 1984, p. 1.

⁽²⁾ OJ No L 167, 26. 6. 1987, p. 9.

⁽³⁾ OJ No C 53, 28. 2. 1987, p. 5.

⁽⁴⁾ OJ No C 67, 14. 3. 1987, p. 3.

⁽⁵⁾ OJ No 13, 21. 2. 1962, p. 204/62.

B. DUMPING**B. 1. Normal value**

- (1) In determining whether the imports from the USSR, which does not have a market economy, had been dumped, the Commission had to take as its basis the normal value of the product in a market economy country. The complainant suggested using the selling price in the Community of the same product originating in Algeria.
- (2) The Soviet exporter argued that this was unacceptable because the selling price of Algerian mercury was too high, the complainant Community producer having entered into a price agreement with the Algerian producer. Since in addition there was no established world market price for mercury, the exporter contended that the prices published in the *London Metal Bulletin* (LMB), a specialist non-ferrous metals publication, were generally accepted as a good guide to the price of mercury on the free market, and should be taken as a basis for establishing normal value.
- (3) The Commission was unable to accept the exporter's proposal; in the case of exports from a country which does not have a market economy, normal value is to be determined on the basis of the market price or constructed value in a market economy third country. It also had reason to believe the reference prices in the *London Metal Bulletin* did not cover production costs in market economy countries.
- (4) The choice of Algeria was also criticized by one of the importers on the grounds that its production costs were too high, that there was a close relationship with the Community producer, and that the country did not have a true market economy. The importer suggested using the United States of America as a reference country.
- (5) In any case, the Algerian producer failed to respond to the Commission's request for cooperation.
- (6) The Commission therefore selected the United States of America as reference country, in particular because of the similarity of the product and production conditions and the competitive situation on the US market; in addition, all the US producer's sales of mercury are on the domestic market. Accordingly, the Commission concluded that it was appropriate and not unreasonable to calculate the normal value on that basis. It noted, however, that the prices to which mercury was actually sold to users in the United States of America were lower than the production costs as defined in Regulation (EEC) No 2176/84, and therefore decided to base normal value not on domestic selling prices but on constructed value.

B. 2. Export price

- (7) Export prices were taken to be the prices actually paid or payable for exports to the Community.

B. 3. Comparison

- (8) In comparing normal value with export prices, the Commission took account, as circumstances required and where adequate evidence was available, of differences affecting price comparability, such as payment terms, transport costs, insurance and packaging.

All comparisons were made at the ex-works stage and for each transaction in respect of the quantities actually brought into the Community.

B. 4. Dumping margins

- (9) Preliminary examination of these facts indicates that goods were being dumped by the exporter Raznoimport Moscow.

The dumping margin is the difference between the normal value as established and the price of exports to the Community.

The margins differ depending on the date of the transaction and are calculated cif at Community frontier (Rotterdam), excluding customs duties. The weighted average dumping margin is 147 %.

C. INJURY

- (1) According to the information available to the Commission, Community imports of mercury originating in the USSR increased from zero in 1983, 1984, 1985 and the first half of 1986 to 198 tonnes in the second half of 1986 alone, taking the exporting country's share of the Community market over that period from nil to approximately 22 % for the second half of 1986 (or 11 % for the whole of 1986 on an annual basis). To date 198 tonnes have entered the Community, out of a total of 730 tonnes sold to Community importers in the second half of 1986, part of which is still stored in customs warehouses in Rotterdam.
- (2) The Soviet exporter penetrated the Community market within a very short space of time and with a considerable volume of goods, using methods which exerted strong downward pressure on selling prices on the Community market from the second half of 1986.

The Commission examined the prices at which the imports from the USSR were sold in the Community and found that they were on average from 17 % to 54 % lower than the Community industry's prices during the period covered by the investigation, still further below the prices charged by the Community producer before the Soviet product

appeared on the market, and lower than the price the Community producer would have to charge to cover his costs and make a reasonable profit. To examine prices at the same level of trade, the Commission compared the Soviet exporter's prices, including customs duty, invoiced cif Rotterdam to international traders with the Spanish producer's delivered prices invoiced to the user, minus handling, storage and transport costs and the international traders' overheads, administrative and selling costs together with a reasonable profit margin.

- (3) The Community obtains mercury not only from the USSR and Spain, but also from Algeria, China, Turkey and Finland. While the Community industry maintained its market share in 1986 at the cost of heavy financial losses to the producer, the USSR penetration of the market was achieved at the expense of other third country exporters to the Community, whose total market share declined from 40 % in 1985 to 29 % in 1986.
- (4) The Commission also examined whether the dumped imports had affected output, capacity utilization, stocks or employment, and found that Community output had fallen by 9 %, leading to a drop in capacity utilization. The volume of sales had been maintained in 1986, as a consequence of which the level of stocks had fallen. Available employment figures showed a fall of 7 %. However, the Commission does not consider that these comparatively minor fluctuations are significant for a finding of injury.
- (5) In terms of financial results, on the other hand, the Community industry, after trading profitably in previous years, made significant losses in 1986, especially in the second half of the year, largely because of the appearance on the Community market of mercury from the USSR.

In order to penetrate the market and ensure rapid sales, the Soviet exporter operated through international traders, the prices of the transactions generally being fixed not at the time of the conclusion of the sales contract, but on the basis of the indicative prices for spot deals published in the LMB for the month in which delivery was to take place. The LMB indicative prices are based on information supplied by a small number of traders

and reflect only a fraction of spot sales. Owing to the lack of transparency and narrowness of this market, the relatively few spot deals influence the prices of forward contracts, which account for almost 80 % of mercury sales, including those of the Community producer.

The Soviet exporter's sales to international traders of substantial quantities of mercury on the terms described above led to a significant weakening of prices. The trader having contracted with the exporter for the largest amount (515 tonnes), moreover, partly to cover his commercial operations and partly on a speculative basis, published a series of advertisements in the LMB offering the mercury at prices which were increasingly low and in each case below the indicative prices published in that periodical. Given the size of the contract, which had been revealed in an article published in the LMB, this technique tended to depress spot prices which enabled the trader to purchase from the Soviet exporter on favourable terms and led to a general weakening of mercury prices, thus forcing the Community producer and other third country exporters to the Community to follow suit by lowering their own prices.

In the Commission's view the Soviet exporter, so far from being a passive victim of the price fluctuations, exerted a considerable influence on the market price by means of his sales to two international traders of considerable quantities of mercury on the above terms. The fact that the exporter did not control the price or final destination of the product does not detract from his responsibility; the sale through international traders of such substantial quantities of mercury within such a short space of time on the terms described above, on a market where demand is inelastic, was bound to affect prices and encourage speculation.

- (6) From May 1983 to May 1986 (when rumours of the 515 tonne Soviet mercury contract were first heard) there had been a slight downturn in the dollar prices published in the LMB. The Community producer's dollar prices, which on average were regularly above the LMB quotations, remained comparatively stable during that period until the end of 1985, but began to slide in the first half of 1986.

The Community operator managed to operate profitably until the beginning of 1986. Had it not been for the Soviet exports, it can thus be assumed that the trend of his prices in the second half of 1986 would have been similar to the earlier period.

- (7) From June 1986 (the date of the first Soviet contracts) through July 1986 (the first sales of Soviet mercury) to October of that year, prices fell by over 50 %.

The inescapable conclusion is that the Soviet exports led to a general collapse of mercury prices. In order to find a buyer the Community producer was forced to sell at less than cost price. This involved considerable financial loss but allowed him to recover part of his costs. Yet the Soviet exports were still undercutting the Community producer's prices by some 35 % in the second half of 1986.

- (8) Since customer loyalty is not absolute and price is a factor, the Community producer — who unlike the Soviet exporter sells 92 % of his output to users and only 8 % to traders — was forced by the undercutting to alter his terms of sale; whereas previously, 80 % of sales were under long-term contracts, users have moved over to spot purchases, increasing the Community producer's uncertainty about future sales.

- (9) The Commission considered whether injury had been caused by other factors such as the depreciation of the dollar, the underlying downward trend of mercury prices, or imports of mercury from other third countries.

The Commission found that the first two of these factors had contributed, though to a lesser extent than the Soviet exports, to the worsening financial results of the Community producer. However, it has used a method of calculation designed to isolate the injury attributable to dumped imports.

The Community imported some 272 tonnes of mercury from Algeria in 1986, as against 289 tonnes in 1985. As in previous years, some of these imports were by users and some by international traders, in the form of either spot deals, long-term contracts or compensation deals. Prices on these

transactions were in line with market trends; sales were spread over the whole year, and no one transaction on a single contract or sale to a single dealer involved any substantial quantity. Thus Algerian exports cannot have been responsible for the collapse in mercury prices in 1986.

Community imports from other third countries were down in 1986, and the quantities involved were comparatively small: imports from China were down from 106 tonnes in 1985 to 58 tonnes in 1986, imports from Turkey from 63 tonnes in 1985 to 23 tonnes in 1986, and imports from Finland from 70 tonnes in 1985 to 15 tonnes in 1986.

- (10) The sharp rise in imports from the USSR and the prices at which the product was sold in the Community lead the Commission to conclude that the dumped imports of mercury originating in the USSR taken in isolation must be held to be the cause of material injury to the Community industry concerned.

D. COMMUNITY INTEREST

- (1) No comment was forthcoming from users of the product. Since any reasonable increase in the price of mercury has only negligible repercussions on the use of mercury e.g. in the manufacture of chlorine or in the nuclear sector, or on products incorporating mercury, such as batteries or pesticides, consumer interests are sufficiently safeguarded.
- (2) In the light of the particularly severe problems encountered by the Community's only viable producer of mercury, and the economic and social importance of this activity, the Commission concludes that it is in the Community interest to take action, and that in order to prevent further injury being caused while the processing is under way, this should take the form of a provisional anti-dumping duty.

E. RATE OF DUTY

- (1) The duty should be set at a rate lower than the dumping margin provisionally established, but sufficient to eliminate the injury caused, having regard to the extent of the said injury.

- (2) In order to determine the level of duty provisionally required to eliminate the injury to the Community producer, the Commission has taken the following factors into account:

- the average margin by which the Soviet product undercut the Community producer's prices in the Community,
- the price the Community producer could have obtained on the Community market had it not been for the sudden appearance on that market of large quantities of Soviet mercury.

After detailed consideration of these factors the Commission has opted for a specific duty, in view of the nature of the product, its liability to price fluctuation, and the fact that specific duties, already in use in the Community, are easier for the customs authorities to administer. In the light of the above considerations, the Commission has decided to impose a duty of 70 ECU per flask of a net capacity of 34,5 kilograms (standard weight) or 2,03 ECU per kilogram net of mercury originating in the USSR.

- (3) A time limit should be set within which interested parties may put forward their views or request a hearing.

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of mercury falling within subheading 28.05 D

of the Common Customs Tariff, corresponding to NIMEXE codes 28.05-71 and 28.05-79, originating in the USSR.

2. The duty shall be 70 ECU per flask of mercury of a net capacity of 34,5 kilograms (standard weight), or 2,03 ECU per kilogram net of mercury.

3. The provisions in force with regard to customs duties shall apply.

4. Release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to payment of a security equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 2176/84, interested parties may make known their views in writing and apply to be heard by the Commission within one month of the entry into force of this Regulation.

Article 3

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

Subject to Articles 11, 12 and 14 of Regulation (EEC) No 2176/84, it shall apply for four months, unless the Council adopts definitive measures before the expiry of that period.

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

Done at Brussels, 12 August 1987.

For the Commission

Manuel MARÍN

Vice-President

COMMISSION REGULATION (EEC) No 2451/87**of 13 August 1987****fixing the amount of the reduction applicable under the special arrangements
for sorghum imports into Spain**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1799/87 of 25 June 1987 on special arrangements for imports of maize and sorghum into Spain from 1987 to 1990 ⁽¹⁾, and in particular Article 3 thereof,

Whereas Commission Regulation (EEC) No 2059/87 of 13 July 1987 setting implementing rules for the special arrangements for maize and sorghum imports into Spain during the period 1987 to 1990 ⁽²⁾ laid down the framework of detailed rules to ensure that the purposes of the said Regulation are respected;

Whereas the amount of the reduction in the import levy on sorghum imported into Spain should be fixed at a level enabling, on the one hand, the import of the quantities provided for under the Agreement between the European Economic Community and the United States of America ⁽³⁾ and, on the other hand, to avoid any disturbance of the que, Spanish cereals market; whereas for this last reason it is drawn up avoid a cumulative reduction on the basis of the different rules;

Whereas the October 1987 threshold price for sorghum is 13,02 ECU per tonne lower than that of September 1987;

whereas there should therefore be different levy reductions depending on the date of import;

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

HAS ADOPTED THIS REGULATION:

Article 1

The import levy reduction on sorghum provided for in Article 3 of Regulation (EEC) No 1799/87 shall be:

- 40 ECU per tonne for imports carried out before 1 October 1987,
- 27 ECU per tonne for imports carried out as from 1 October 1987.

This reduction, however, does not apply in the event of a greater levy reduction in accordance with another rule.

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, 13 August 1987.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 170, 30. 6. 1987, p. 1.

⁽²⁾ OJ No L 193, 14. 7. 1987, p. 6.

⁽³⁾ OJ No L 98, 10. 4. 1987, p. 1.

COMMISSION REGULATION (EEC) No 2452/87

of 13 August 1987

concerning the stopping of fishing for haddock by vessels flying the flag of the Netherlands

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities⁽¹⁾, and in particular Article 11 (3) thereof,Whereas Council Regulation (EEC) No 4034/86 of 22 December 1986 fixing, for certain fish stocks and groups of fish stocks, total allowable catches for 1987 and certain conditions under which they may be fished⁽²⁾, as last amended by Regulation (EEC) No 1880/87⁽³⁾, provides for haddock quotas for 1987;

Whereas, in order to ensure compliance with the provisions, relating to the quantitative limitations on catches of stocks subject to quotas, it is necessary for the Commission to fix the date by which catches made by vessels flying the flag of a Member State are deemed to have exhausted the quota allocated;

Whereas, according to the information communicated to the Commission, catches of haddock in the waters of ICES divisions III a, III b, c and d (EC zone) by vessels flying the flag of the Netherlands or registered in the Netherlands have reached the quota allocated for 1987;

whereas the Netherlands have prohibited fishing for this stock as from 2 July 1987; whereas it is therefore necessary to abide by that date,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of haddock in the waters of ICES divisions III a, III b, c and d (EC zone) by vessels flying the flag of the Netherlands or registered in the Netherlands are deemed to have exhausted the quote allocated to the Netherlands for 1987.

Fishing for haddock in the waters of ICES divisions III a, III b, c and d (EC zone) by vessels fixing the flag of the Netherlands or registered in the Netherlands is prohibited, as well as the retention on board, the transshipment and the landing of such stock captured by the abovementioned vessels after the date of application of this Regulation.

*Article 2*This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

It shall apply with effect from 2 July 1987.

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

Done at Brussels, 13 August 1987.

For the Commission

Manuel MARÍN

Vice-President⁽¹⁾ OJ No L 207, 29. 7. 1987, p. 1.⁽²⁾ OJ No L 376, 31. 12. 1986, p. 39.⁽³⁾ OJ No L 179, 3. 7. 1987, p. 4.

COMMISSION REGULATION (EEC) No 2453/87
of 13 August 1987
fixing the export refunds on milk and milk products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EEC) No 773/87 ⁽²⁾, and in particular Article 17 (4) thereof,

Having regard to the opinion of the Monetary Committee,

Whereas Article 17 of Regulation (EEC) No 804/68 provides that the difference between prices in international trade for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund;

Whereas Council Regulation (EEC) No 876/68 of 28 June 1968 laying down general rules for granting export refunds on milk and milk products and criteria for fixing the amount of such refunds ⁽³⁾, as last amended by Regulation (EEC) No 1344/86 ⁽⁴⁾, provides that when the refunds on the products listed in Article 1 of Regulation (EEC) No 804/68, exported in the natural state, are being fixed account must be taken of:

- the existing situation and the future trend with regard to prices and availabilities of milk and milk products on the Community market and prices for milk and milk products in international trade,
- marketing costs and the most favourable transport charges from Community markets to ports or other points of export in the Community, as well as costs incurred in placing the goods on the market of the country of destination,
- the aims of the common organization of the market in milk and milk products which are to ensure equilibrium and the natural development of prices and trade on this market,
- the need to avoid disturbances on the Community market, and

— the economic aspect of the proposed exports;

Whereas Article 3 (1) of Regulation (EEC) No 876/68 provides that when prices within the Community are being determined account should be taken of the ruling prices which are most favourable for exportation, and that when prices in international trade are being determined particular account should be taken of:

- (a) prices ruling on third country markets;
- (b) the most favourable prices in third countries of destination for third country imports;
- (c) producer prices recorded in exporting third countries, account being taken, where appropriate, of subsidies granted by those countries; and
- (d) free-at-Community-frontier offer prices;

Whereas Article 4 of Regulation (EEC) No 876/68 provides that the world market situation or the specific requirements of certain markets may make it necessary to vary the refund on the products listed in Article 1 of Regulation (EEC) No 804/68 according to destination;

Whereas Article 5 (1) of Regulation (EEC) No 876/68 provides that the list of products on which export refunds are granted and the amount of such refunds should be fixed at least once every four weeks; whereas the amount of the refund may, however, remain at the same level for more than four weeks;

Whereas Article 2 of Commission Regulation (EEC) No 1098/68 of 27 July 1968 on detailed rules for the application of export refunds on milk and milk products ⁽⁵⁾, as last amended by Regulation (EEC) No 3812/85 ⁽⁶⁾, provides that the refund on products falling within subheading 04.02 B is equal to the sum of two components, the first representing the quantity of milk products and the second representing the quantity of added sucrose; whereas, however, the latter component applies only if the added sucrose was produced from beet or cane harvested within the Community;

Whereas for the products falling within subheading 04.02 B II a) or 04.02 B II b) 1 with a fat content not exceeding 9,5 % by weight, the first component referred to above is fixed for 100 kilograms of the whole product; whereas, for the other products falling within subheading 04.02 B, this component is calculated by multiplying the basic amount by the milk product content of the product in question; whereas this basic amount is the refund on one kilogram of milk products contained in the product;

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 78, 20. 3. 1987, p. 1.

⁽³⁾ OJ No L 155, 3. 7. 1968, p. 1.

⁽⁴⁾ OJ No L 119, 8. 5. 1986, p. 36.

⁽⁵⁾ OJ No L 184, 29. 7. 1968, p. 10.

⁽⁶⁾ OJ No L 368, 31. 12. 1985, p. 3.

Whereas the second component is calculated by multiplying the sucrose content of the product by the basic amount of the refund valid on the day of exportation for the products listed in Article 1 (1) (d) of 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 (EEC) No 229/87⁽²⁾;

Whereas, if the refund system is to operate normally, refunds should be calculated on the following basis:

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Council Regulation (EEC) No 1676/85⁽³⁾, as last amended by Regulation (EEC) No 1636/87⁽⁴⁾,
- for other currencies, an exchange rate based on the arithmetic mean of the spot market rates of each of these currencies recorded over a given period in relation to the Community currencies referred to in the previous indent, and the aforesaid coefficient;

Whereas the level of refund for cheeses is calculated for products intended for direct consumption; whereas the cheese rinds and cheese wastes are not products intended for this purpose; whereas, to avoid any confusion in interpretation, it should be specified that there will be no refund for these products which fall within heading No 04.04;

Whereas Commission Regulation (EEC) No 896/84⁽⁵⁾, as amended by Regulation (EEC) No 2881/84⁽⁶⁾, laid down additional provisions concerning the granting of refunds on the change from one milk year to another; whereas those provisions provide for different refunds according to the date of manufacture of the products;

Whereas it follows from applying these detailed rules to the present situation on the market in milk and milk

products, and in particular to prices for these products within the Community and on the world market, that the refund should be as set out in the Annex hereto;

Whereas, pursuant to Article 275 of the Act of Accession of Spain and Portugal, refunds may be granted in the case of exports to Portugal; whereas, in the light of the situation and the level of prices no refund should be fixed in the case of exports to Portugal;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. The export refunds referred to in Article 17 of Regulation (EEC) No 804/68 on products exported in the natural state shall be as set out in the Annex hereto.
2. There shall be no refunds for exports to Zone E for products falling within heading Nos 04.01, 04.02, 04.03 and 23.07 of the Common Customs Tariff.
3. There shall be no refunds for exports to Portugal, including the Azores and Madeira for milk and milk products listed in Article 1 of Regulation (EEC) No 804/68.

Article 2

This Regulation shall enter into force on 14 August 1987.

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

Done at Brussels, 13 August 1987.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 25, 28. 1. 1987, p. 1.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 153, 13. 6. 1987, p. 1.

⁽⁵⁾ OJ No L 91, 1. 4. 1984, p. 71.

⁽⁶⁾ OJ No L 272, 13. 10. 1984, p. 16.

ANNEX

to the Commission Regulation of 13 August 1987 fixing the export refunds on milk and milk products

CCT heading No	Description	Code	Refund (in ECU/100 kg net weight unless otherwise indicated)
04.01	Milk and cream, fresh, not concentrated or sweetened : ex A. Other than whey, of a fat content, by weight, not exceeding 6 % ⁽¹⁾ : I. Yoghourt, kephir, curdled milk, buttermilk and other fermented or acidified milk : a) In immediate packings of a net capacity of two litres or less : (1) Of a fat content, by weight, not exceeding 1,5 % (2) Of a fat content, by weight, exceeding 1,5 % but not exceeding 3 % (3) Of a fat content, by weight, exceeding 3 % b) Other : (1) Of a fat content, by weight, not exceeding 1,5 % (2) Of a fat content, by weight, exceeding 1,5 % but not exceeding 3 % (3) Of a fat content, by weight, exceeding 3 % II. Other : a) In immediate packings of a net capacity of two litres or less and of a fat content, by weight : 1. Not exceeding 4 % : (aa) Of a fat content, by weight, not exceeding 1,5 % (bb) Of a fat content, by weight, exceeding 1,5 % but not exceeding 3 % (cc) Of a fat content, by weight, exceeding 3 % 2. Exceeding 4 % b) Other, of a fat content, by weight : 1. Not exceeding 4 % : (aa) Of a fat content, by weight, not exceeding 1,5 % (bb) Of a fat content, by weight, exceeding 1,5 % but not exceeding 3 % (cc) Of a fat content, by weight, exceeding 3 % 2. Exceeding 4 %	0110 05 0110 15 0110 20 0110 25 0110 35 0110 40 0130 10 0130 22 0130 31 0140 00 0150 10 0150 21 0150 31 0160 00	8,95 12,62 16,07 8,95 12,62 16,07 8,95 12,62 16,07 18,37 8,95 12,62 16,07 18,37

CCT heading No	Description	Code	Refund (in ECU/100 kg net weight unless otherwise indicated)
04.01 (cont'd)	ex B. Other, excluding whey, of a fat content, by weight ('): : ex I. Exceeding 6 % but not exceeding 21 % : (a) Of a fat content, by weight, not exceeding 10 % (b) Of a fat content, by weight, exceeding 10 % but not exceeding 17 % (c) Of a fat content, by weight, exceeding 17 % II. Exceeding 21 % but not exceeding 45 % : (a) Of a fat content, by weight, not exceeding 35 % (b) Of a fat content, by weight, exceeding 35 % but not exceeding 39 % (c) Of a fat content, by weight, exceeding 39 % III. More than 45 % : (a) Of a fat content, by weight, not exceeding 68 % (b) Of a fat content, by weight, exceeding 68 % but not exceeding 80 % (c) Of a fat content, by weight, exceeding 80 %	0200 05 0200 11 0200 21 0300 12 0300 13 0300 20 0400 11 0400 22 0400 30	22,94 34,18 50,23 59,40 91,50 100,67 114,44 167,17 194,68
04.02	Milk and cream, preserved, concentrated or sweetened : A. Not containing added sugar (2) : II. Milk and cream, in powder or granules : a) In immediate packings of a net capacity of 2,5 kilograms or less and of a fat content, by weight : 1. Not exceeding 1,5 % 2. Exceeding 1,5 % but not exceeding 27 % : (aa) Of a fat content, by weight, not exceeding 11 % (bb) Of a fat content, by weight, exceeding 11 % but not exceeding 17 % (cc) Of a fat content, by weight, exceeding 17 % but not exceeding 25 % (dd) Of a fat content, by weight, exceeding 25 % 3. Exceeding 27 % but not exceeding 29 % : (aa) Of a fat content, by weight, not exceeding 28 % (bb) Of a fat content, by weight, exceeding 28 %	0620 00 0720 00 0720 20 0720 30 0720 40 0820 20 0820 30	105,00 105,00 128,62 137,17 149,00 150,36 151,95

CCT heading No	Description	Code	Refund (in ECU/100 kg net weight unless otherwise indicated)
04.02 (cont'd)	4. Exceeding 29 % :		
	(aa) Of a fat content, by weight, not exceeding 41 %	0920 10	154,20
	(bb) Of a fat content, by weight, exceeding 41 % but not exceeding 45 %	0920 30	167,67
	(cc) Of a fat content, by weight, exceeding 45 % but not exceeding 59 %	0920 40	172,34
	(dd) Of a fat content, by weight, exceeding 59 % but not exceeding 69 %	0920 50	188,78
	(ee) Of a fat content, by weight, exceeding 69 % but not exceeding 79 %	0920 60	200,16
	(ff) Of a fat content, by weight, exceeding 79 %	0920 70	211,84
	b) Other, of a fat weight content :		
	1. Not exceeding 1,5 %	1020 00	105,00
	2. Exceeding 1,5 % but not exceeding 27 % :		
	(aa) Of a fat content, by weight, not exceeding 11 %	1120 10	105,00
	(bb) Of a fat content, by weight, exceeding 11 % but not exceeding 17 %	1120 20	128,62
	(cc) Of a fat content, by weight, exceeding 17 % but not exceeding 25 %	1120 30	137,17
	(dd) Of a fat content, by weight, exceeding 25 %	1120 40	149,00
	3. Exceeding 27 % but not exceeding 29 % :		
	(aa) Of a fat content, by weight, not exceeding 28 %	1220 20	150,36
	(bb) Of a fat content, by weight, exceeding 28 %	1220 30	151,95
	4. Exceeding 29 % :		
	(aa) Of a fat content, by weight, not exceeding 41 %	1320 10	154,20
	(bb) Of a fat content, by weight, exceeding 41 % but not exceeding 45 %	1320 30	167,67
	(cc) Of a fat content, by weight, exceeding 45 % but not exceeding 59 %	1320 40	172,34
	(dd) Of a fat content, by weight, exceeding 59 % but not exceeding 69 %	1320 50	188,78
	(ee) Of a fat content, by weight, exceeding 69 % but not exceeding 79 %	1320 60	200,16
	(ff) Of a fat content, by weight, exceeding 79 %	1320 70	211,84

CCT heading No	Description	Code	Refund (in ECU/100 kg net weight unless otherwise indicated)
04.02 (cont'd)	III. Milk and cream, other than in powder or granules : a) In immediate packings of a net content of 2,5 kg or less and of a fat content by weight not exceeding 11 % : 1. Of a fat content, by weight, not exceeding 8,9 % and of a non-fat lactic dry matter content : (aa) Of less than 15 % and of a fat content : (11) Not exceeding 3 %, by weight (22) Exceeding 3 %, by weight (bb) Of 15 % or more and of a fat content : (11) Not exceeding 3 %, by weight (22) Exceeding 3 %, by weight, but not exceeding 7,4 % (33) Exceeding 7,4 % 2. Other, of a non fat lactic dry matter content : (aa) Of less than 15 %, by weight (bb) Of 15 % or more, by weight b) Other, of a fat content, by weight : 1. Not exceeding 45 % and of a non fat lactic dry matter content : (aa) Of less than 15 % and of a fat content : (11) Not exceeding 3 %, by weight (22) Exceeding 3 %, by weight, but not exceeding 8,9 % (33) Exceeding 8,9 %, by weight, but not exceeding 11 % (44) Exceeding 11 %, by weight, but not exceeding 21 % (55) Exceeding 21 %, by weight, but not exceeding 39 % (66) Exceeding 39 % (bb) Of 15 % or more and of a fat content : (11) Not exceeding 3 %, by weight (22) Exceeding 3 %, by weight, but not exceeding 7,4 % (33) Exceeding 7,4 %, by weight, but not exceeding 8,9 % (44) Exceeding 8,9 % 2. Exceeding 45 %	1420 12 1420 22 1420 50 1420 60 1420 70 1520 10 1520 20 1620 70 1630 00 1630 10 1630 20 1630 30 1630 40 1630 50 1630 60 1630 70 1630 80 1720 00	— 16,07 25,68 32,56 40,57 29,59 48,10 — 16,07 29,59 36,47 59,40 100,67 25,68 32,56 40,57 48,10 114,44

CCT heading No	Description	Code	Refund (in ECU/100 kg net weight unless otherwise indicated)
04.02 (cont'd)	B. Containing added sugar : I. Milk and cream, in powder or granules : ex b) Other, excluding whey : 1. In immediate packings of a net capacity of 2,5 kilograms or less and of a fat content, by weight : (aa) Not exceeding 1,5 % (bb) Exceeding 1,5 % but not exceeding 27 % : (11) Of a fat content, by weight, not exceeding 11 % (22) Of a fat content, by weight, exceeding 11 % but not exceeding 17 % (33) Of a fat content, by weight, exceeding 17 % but not exceeding 25 % (44) Of a fat content, by weight, exceeding 25 % (cc) Exceeding 27 % : (11) Of a fat content, by weight, not exceeding 41 % (22) Of a fat content, by weight, exceeding 41 % 2. Other, of a fat content, by weight : (aa) Not exceeding 1,5 % (bb) Exceeding 1,5 % but not exceeding 27 % : (11) Of a fat content, by weight, not exceeding 11 % (22) Of a fat content, by weight, exceeding 11 % but not exceeding 17 % (33) Of a fat content, by weight, exceeding 17 % but not exceeding 25 % (44) Of a fat content, by weight, exceeding 25 % (cc) Exceeding 27 % : (11) Of a fat content, by weight, not exceeding 41 % (22) Of a fat content, by weight, exceeding 41 %	2220 00 2320 10 2320 20 2320 30 2320 40 2420 10 2420 20 2520 00 2620 10 2620 20 2620 30 2620 40 2720 10 2720 20	1,0500 (*) per kg 1,0500 (*) per kg 1,2862 (*) per kg 1,3717 (*) per kg 1,4900 (*) per kg 1,5036 (*) per kg 1,6767 (*) per kg 1,0500 (*) per kg 1,0500 (*) per kg 1,2862 (*) per kg 1,3717 (*) per kg 1,4900 (*) per kg 1,5036 (*) per kg 1,6767 (*) per kg

CCT heading No	Description	Code	Refund (in ECU/100 kg net weight unless otherwise indicated)
04.02 (cont'd)	ex II. Milk and cream, excluding whey other than in powder or granules : ex a) In immediate packings of a net capacity of 2,5 kg or less and of a fat content by weight not exceeding 9,5 % : (1) Of a fat content, by weight, not exceeding 6,9 % and of a non fat lactic dry matter content : (aa) Of less than 15 % and of a fat content : (11) Not exceeding 3 %, by weight (22) Exceeding 3 % by weight (bb) Of 15 % or more (2) Of a fat content, by weight, exceeding 6,9 % and of a non fat lactic dry matter content, by weight, of 15 % or more b) Other, of a fat content, by weight : ex 1. Not exceeding 45 % : (aa) Of a fat content, by weight, not exceeding 6,9 % and of a non fat lactic dry matter content, by weight, of 15 % or more (bb) Of a fat content, by weight, exceeding 6,9 % but not exceeding 21 % and of a non fat lactic dry matter content, by weight, of 15 % or more (cc) Of a fat content by weight, exceeding 9,5 % but not exceeding 21 % and of a non fat lactic dry matter content, by weight, less than 15 % (dd) Of a fat content, by weight, exceeding 21 % but not exceeding 39 % (ee) Of a fat content, by weight, exceeding 39 % 2. Exceeding 45 %	2810 11 2810 12 2810 15 2810 20 2910 70 2910 76 2910 80 2910 85 2910 90 3010 00	— (*) per kg 0,1607 (*) per kg 29,63 (*) 50,07 (*) 29,63 (*) 50,07 (*) 0,3189 (*) per kg 0,5940 (*) per kg 1,0067 (*) per kg 1,1444 (*) per kg
04.03	Butter : ex A. Of a fat content, by weight, not exceeding 85 % : (I) Of a fat content, by weight, of 62 % or more, but less than 78 % (II) Of a fat content, by weight, of 78 % or more but less than 80 %	3110 03 3110 16	159,91 ⁽¹⁰⁾ 201,18 ⁽¹⁰⁾

CCT heading No	Description	Code	Refund (in ECU/100 kg net weight unless otherwise indicated)
04.03 (cont'd)	(III) Of a fat content, by weight, of 80 % or more, but less than 82 %	3110 22	206,34 ⁽¹⁰⁾
	(IV) Of a fat content, by weight, of 82 % or more	3110 32	211,50 ⁽¹⁰⁾
	B. Other, of a fat content, by weight :		
	(I) Not exceeding 99,5 %	3210 10	211,50 ⁽¹⁰⁾
	(II) Exceeding 99,5 %	3210 20	262,75 ⁽¹⁰⁾
04.04	Cheese and curd (*) :		
	ex A. Emmentaler and Gruyère, not grated or powdered :		
	(I) Pieces packed in vacuum or in inert gas, of a net weight of less than 7,5 kg	3800 40	
	For exports to :		
	— Zone E		50,00
	— Canada		—
	— Norway and Finland		—
	— Liechtenstein and Switzerland		—
	— Austria		—
	— Other destinations		162,18
	(II) Other	3800 60	
	For exports to :		
	— Zone E		50,00
	— Canada		—
	— Norway and Finland		—
	— Liechtenstein and Switzerland		—
	— Austria		—
	— Other destinations		162,18
	ex C. Blue-veined cheese, not grated or powdered, other than Roquefort for exports to :	4000 00	
	— Austria		—
	— Zone E		45,00
	— Canada		—
	— Norway and Finland		—
	— Australia		78,65
	— Other destinations		131,51
	D. Processed cheese, not grated or powdered, of a fat content, by weight :		
	I. Not exceeding 36 % and of a fat content, by weight, in the dry matter :		
	ex a) Not exceeding 48 % and of a dry matter content, by weight :		
	(1) Of 27 % or more but less than 33 %	4410 05	
	for exports to :		
	— Austria		—
	— Zone E		8,65
	— Canada		—
	— Norway and Finland		—
	— Switzerland		—
	— Other destinations		25,36

CCT heading No.	Description	Code	Refund (in ECU/100 kg net weight unless otherwise indicated)
04.04 (cont'd)	(2) Of 33 % or more but less than 38 % for exports to :	4410 10	
	— Austria		—
	— Zone E		18,81
	— Canada		—
	— Norway and Finland		—
	— Switzerland		—
	— Other destinations		55,06
	(3) Of 38 % or more but less than 43 % and of a fat content, by weight, in the dry matter :		
	(aa) Less than 20 % for exports to :	4410 20	
	— Austria		—
	— Zone E		18,81
	— Canada		—
	— Norway and Finland		—
	— Switzerland		—
	— Other destinations		55,06
	(bb) Of 20 % or more for exports to :	4410 30	
	— Austria		—
	— Zone E		27,66
	— Canada		—
	— Norway and Finland		—
	— Switzerland		—
	— Other destinations		80,13
	(4) Of 43 % or more and of a fat content, by weight, in the dry matter :		
	(aa) Less than 20 % for exports to :	4410 40	
	— Austria		—
	— Zone E		18,81
	— Canada		—
	— Norway and Finland		—
	— Switzerland		—
	— Other destinations		55,06
	(bb) Of 20 % or more but less than 40 % for exports to :	4410 50	
	— Austria		—
	— Zone E		27,66
	— Canada		—
	— Norway and Finland		—
	— Switzerland		—
	— Other destinations		80,13
	(cc) Of 40 % or more for exports to :	4410 60	
	— Austria		—
	— Zone E		40,23
	— Canada		—
	— Norway and Finland		—
	— Switzerland		—
	— Other destinations		117,74

CCT heading No	Description	Code	Refund (in ECU/100 kg net weight unless otherwise indicated)
04.04 (cont'd)	ex b) Exceeding 48 % and of a dry matter content, by weight : (1) Of 33 % or more but less than 38 % for exports to : — Austria — — Zone E 18,81 — Canada — — Norway and Finland — — Switzerland — — Other destinations 55,06 (2) Of 38 % or more but less than 43 % for exports to : — Austria — — Zone E 27,66 — Canada — — Norway and Finland — — Switzerland — — Other destinations 80,13 (3) Of 43 % or more but less than 46 % for exports to : — Austria — — Zone E 40,23 — Canada — — Norway and Finland — — Switzerland — — Other destinations 117,74 (4) Of 46 % or more and of a fat content, by weight, in the dry matter : (aa) Less than 55 % for exports to : — Austria — — Zone E 40,23 — Canada — — Norway and Finland — — Switzerland — — Other destinations 117,74 (bb) Of 55 % or more for exports to : — Austria — — Zone E 47,74 — Canada — — Norway and Finland — — Switzerland — — Other destinations 139,67 II. Exceeding 36 % for exports to : — Austria — — Zone E 47,74 — Canada — — Norway and Finland — — Switzerland — — Other destinations 139,67	4510 10 4510 20 4510 30 4510 40 4510 50 4610 00	— 18,81 — — — 55,06 — 27,66 — — — 80,13 — 40,23 — — — 117,74 — 40,23 — — — 117,74 — 47,74 — — — 139,67 — 47,74 — — — 139,67

CCT heading No	Description	Code	Refund (in ECU/100 kg net weight unless otherwise indicated)
04.04 (cont'd)	E. Other : I. Not grated or powdered, of a fat content, by weight, not exceeding 40 % and a water content, calculated by weight, of the non-fatty matter : ex a) Not exceeding 47 % : (1) Grana Padano, Parmigiano Reggiano for exports to : — Zone E 150,00 — Canada 100,00 — Norway and Finland — — Switzerland 90,00 — Other destinations 200,06 (2) Fiore Sardo and Pecorino manufactured exclusively from sheep milk for exports to : — Zone E 200,00 — Canada 128,15 — Norway and Finland — — Switzerland 105,03 — Other destinations 227,18 (3) Other (excluding cheeses produced from whey), of a fat content, by weight, in the dry matter of 30 % or more for exports to : — Zone E 80,00 — Canada 60,00 — Norway and Finland — — Switzerland 60,00 — Other destinations 151,60 b) Exceeding 47 % but not exceeding 72 % : ex 1. Cheddar of a fat content, by weight, in the dry matter of 48 % or more for exports to : — Austria — — Zone E 40,00 — Canada — — Norway and Finland — — Australia 133,89 — Switzerland — — Other destinations 177,25 ex 2. Other, of a fat content, by weight, in the dry matter (?): (aa) Less than 5 % and of a content, by weight, in the dry matter of 32 % or more (excluding cheeses produced from whey) for exports to : — Austria — — Zone E 37,69 — Canada — — Norway and Finland 13,50 — Switzerland — — Other destinations 99,96	4710 11 4710 17 4710 22 4850 00 5120 12	

CCT heading No	Description	Code	Refund (in ECU/100 kg net weight unless otherwise indicated)
04.04 (cont'd)	(bb) Of 5 % or more but less than 19 % and of a content, by weight, in the dry matter of 32 % or more (excluding cheeses produced from whey)	5120 16	
	for exports to :		
	— Austria		—
	— Zone E		41,56
	— Canada		—
	— Norway and Finland		20,00
	— Switzerland		—
	— Other destinations		110,21
	(cc) Of 19 % or more but less than 39 % and of a water content, calculated by weight, of the non-fatty matter not exceeding 62 % (excluding cheeses produced from whey)	5120 22	
	for exports to :		
	— Austria		—
	— Zone E		47,24
	— Canada		—
	— Norway and Finland		24,00
	— Switzerland		—
	— Other destinations		125,21
	(dd) Of 39 % or more :	5120 32	
	(11) Asiago, Caciocavallo, Montasio, Provolone, Ragusano :		
	(aaa) Provolone		
	for exports to :		
	— Zone E		145,00
	— Canada		90,00
	— Norway and Finland	5120 36	—
	— Switzerland		42,66
	— Other destinations		163,54
	(bbb) Others		
	for exports to :		
	— Zone E		15,00
	— Canada		—
	— Norway and Finland		—
	— Switzerland		—
	— Other destinations		138,50
	(22) Danbo, Edam, Fontal, Fontina, Fynbo, Gouda, Havarti, Maasdam, Maribo, Samsø, Tilsit	5120 44	
	for exports to :		
	— Austria		—
	— Zone E		15,00
	— Canada		—
	— Norway and Finland		—
	— Australia		115,20
	— Switzerland		—
	— Other destinations		153,00

CCT heading No	Description	Code	Refund (in ECU/100 kg net weight unless otherwise indicated)
04.04 (cont'd)	(33) Butterkäse, Esrom, Italico, Kernhem, Saint-Nectaire, Saint-Paulin, Taleggio for exports to: — Austria — Zone E — Canada — Norway and Finland — Switzerland — Other destinations	5120 54	— 14,00 — — — — 119,71
	(44) Cantal, Cheshire, Wensleydale, Lanca- shire, Double Gloucester, Blarney for exports to: — Austria — Zone E — Canada — Norway and Finland — Australia — Switzerland — Other destinations	5120 58	— 48,00 — — 108,40 — 139,37
	(55) Salted ricotta, of a fat content, by weight, of 30 % or more: (aaa) Manufactured exclusively from sheep's milk for exports to: — Zone E — Canada — Norway and Finland — Other destinations	5120 60	— 21,11 — — 55,88
	(bbb) Other for exports to: — Zone E — Canada — Norway and Finland — Other destinations	5120 65	21,11 — — 55,88
	(66) Feta ⁽³⁾ : (aaa) Manufactured exclusively from sheep's and/or goats' milk for exports to: — Zone E — Austria — Canada — Norway and Finland — Switzerland — Other destinations	5120 80	38,59 15,00 — — — 102,26
	(bbb) Other for exports to: — Zone E — Austria — Canada — Norway and Finland — Switzerland — Other destinations	5120 81	38,59 — — — — 102,26
	(77) Colby, Monterey for exports to: — Austria — Zone E — Canada — Norway and Finland — Australia — Switzerland — Japan — Other destinations	5120 83	— 40,00 — — 108,40 — 150,00 139,37

CCT heading No	Description	Code	Refund (in ECU/100 kg. net weight unless otherwise indicated)
04.04 (cont'd)	(88) Kefalotyri, Kefalograviera, Kasser, Idiazabal, Manchego, Roncal, manufactured exclusively from sheep's and/or goats' milk for exports to: — Zone E — Canada — Norway and Finland — Switzerland — Other destinations	5120 84	145,00 90,00 — 42,66 163,54
	(99) Other (excluding cheeses produced from whey), of a water content, calculated by weight, of the non-fatty matter: (aaa) Exceeding 47 % but not exceeding 52 % for exports to: — Austria — Zone E — Canada — Norway and Finland — Australia — Switzerland — Japan — Other destinations	5120 87	— 48,00 — — 108,40 — 150,00 139,37
	(bbb) Exceeding 52 % but not exceeding 62 % for exports to: — Austria — Zone E — Canada — Norway and Finland — Australia — Switzerland — Other destinations	5120 92	— 15,00 — 27,50 115,20 — 153,00
	ex c) Exceeding 72 % (excluding cheeses produced from whey) (7): 1. In immediate packings of a net capacity not exceeding 500 grams: (aa) Cottage cheese of a fat content, by weight in the dry matter, not exceeding 25 % For exports to: — Austria — Zone E — Canada — Norway and Finland — Switzerland and Liechtenstein — Other destinations	5121 11	— 14,52 — — — 26,95
	(bb) Cream cheese of a water content, calculated by weight, of the non-fatty matter, exceeding 77 % but not exceeding 82 % and of a fat content, by weight in the dry matter:		

CCT heading No	Description	Code	Refund (in ECU/100 kg net weight unless otherwise indicated)
04.04 (cont'd)	(11) Of 60 % or more but less than 69 %	5121 20	
	For exports to :		
	— Austria		—
	— Zone E		25,41
	— Canada		—
	— Norway and Finland		—
	— Switzerland and Liechtenstein		—
	— Other destinations		40,37
	(22) Of 69 % or more	5121 30	
	For exports to :		
	— Austria		—
	— Zone E		31,03
	— Canada		—
	— Norway and Finland		—
	— Switzerland and Liechtenstein		—
	— Other destinations		49,31
	(cc) Other :		
	(11) Feta ⁽³⁾ , with a dry matter content, by weight, of 40 % or more and a fat content by weight, in the dry matter of 50 % or more :		
	(aaa) Manufactured exclusively from sheep's and/or goats' milk	5121 41	
	For exports to :		
	— Zone E		36,08
	— Austria		—
	— Canada		—
	— Norway and Finland		—
	— Switzerland		—
	— Other destinations		95,58
	(bbb) Other	5121 42	
	For exports to :		
	— Zone E		36,08
	— Austria		—
	— Canada		—
	— Norway and Finland		—
	— Switzerland		—
	— Other destinations		95,58
	(22) Other	5121 45	—
	2. Other :		
	(aa) Cottage cheese of a fat content, by weight in the dry matter, not exceeding 25 %	5121 51	
	For exports to :		
	— Austria		—
	— Zone E		14,52
	— Canada		—
	— Norway and Finland		—
	— Switzerland and Liechtenstein		—
	— Other destinations		26,95

CCT heading No	Description	Code	Refund (in ECU/100 kg net weight unless otherwise indicated)
04.04 (cont'd)	(bb) Cream cheese of a water content, calculated by weight of the non-fatty matter, exceeding 77 % but not exceeding 82 % and of a fat content, by weight in the dry matter :		
	(11) Of 60 % or more but less than 69 %	5121 60	
	For exports to :		
	— Austria		—
	— Zone E		25,41
	— Canada		—
	— Norway and Finland		7,50
	— Switzerland and Liechtenstein		—
	— Other destinations		40,37
	(22) Of 69 % or more	5121 70	
	For exports to :		
	— Austria		—
	— Zone E		31,03
	— Canada		—
	— Norway and Finland		—
	— Switzerland and Liechtenstein		—
	— Other destinations		49,31
	(cc) Other :		
	(11) Feta ⁽³⁾ , with a dry matter content, by weight, of 40 % or more and a fat content by weight, in the dry matter of 50 % or more :		
	(aaa) Manufactured exclusively from sheep's and/or goats' milk	5121 81	
	For exports to :		
	— Zone E		36,08
	— Austria		—
	— Canada		—
	— Norway and Finland		—
	— Switzerland		—
	— Other destinations		95,58
	(bbb) Other	5121 82	
	For exports to :		
	— Zone E		36,08
	— Austria		—
	— Canada		—
	— Norway and Finland		—
	— Switzerland		—
	— Other destinations		95,58
	(22) Other	5121 85	
	ex II. Other (excluding cheeses produced from whey) :		
	ex a) Grated or powdered of a fat content, by weight, exceeding 20 %, of a lactose content, by weight, less than 5 % and of a dry matter content, by weight :		
	(1) Of 60 % or more but less than 80 %	5310 05	
	For exports to :		
	— Zone E		45,00
	— Canada		—
	— Norway and Finland		—
	— Other destinations		91,14

CCT heading No	Description	Code	Refund (in ECU/100 kg net weight unless otherwise indicated)
04.04 (cont'd)	(2) Of 80 % or more but less than 85 % For exports to : — Zone E — Canada — Norway and Finland — Other destinations	5310 11	60,00 — — 121,52
	(3) Of 85 % or more but less than 95 % For exports to : — Zone E — Canada — Norway and Finland — Other destinations	5310 22	63,75 — — 129,12
	(4) Of 95 % or more For exports to : — Zone E — Canada — Norway and Finland — Other destinations	5310 31	71,25 — — 144,31
23.07	Sweetened forage ; other preparations of a kind used in animal feeding : ex B. Other, containing starch, glucose or glucose syrup, maltodextrine or maltodextrine syrup falling within subheadings 17.02 B and 21.07 F II, or milk products, excluding special compound feedingstuffs⁽⁹⁾ : I. Containing starch, or glucose or glucose syrup, or maltodextrine or maltodextrine syrup falling within subheadings 17.02 B and 21.07 F II : a) Containing no starch or containing 10 % or less, by weight, of starch : (3) Containing 50 % or more but less than 75 %, by weight, of milk products and a content of milk in powder or granules (excluding whey), by weight, of ⁽⁹⁾ : (aa) Less than 30 % (bb) 30 % or more but less than 40 % (cc) 40 % or more but less than 50 % (dd) 50 % or more but less than 60 % (ee) 60 % or more but less than 70 % (ff) 70 % or more	5700 13 5700 23 5700 33 5700 42 5700 52 5700 62	— 7,50 10,00 12,50 15,00 17,50

CCT heading No	Description	Code	Refund (in ECU/100 kg net weight unless otherwise indicated)
23.07 (cont'd)	(4) Containing 75 % or more, by weight, of milk products and a content of milk in powder or granules (excluding whey), by weight, of ⁽¹⁾: (aa) Less than 30 % (bb) 30 % or more but less than 40 % (cc) 40 % or more but less than 50 % (dd) 50 % or more but less than 60 % (ee) 60 % or more but less than 70 % (ff) 70 % or more but less than 75 % (gg) 75 % or more but less than 80 % (hh) 80 % or more ex II. Containing no starch, glucose or glucose syrup, maltodextrine or maltodextrine syrup falling within subheadings 17.02 B and 21.07 F II, and containing 50 % or more milk products, by weight, and with a milk content in powder or granules (excluding whey), by weight, of ⁽²⁾: (a) 30 % or more but less than 40 % (b) 40 % or more but less than 50 % (c) 50 % or more but less than 60 % (d) 60 % or more but less than 70 % (e) 70 % or more but less than 80 % (f) 80 % or more but less than 88 % (g) 88 % or more	5800 13 5800 23 5800 32 5800 42 5800 52 5800 62 5800 72 5800 82 5900 01 5900 05 5900 12 5900 22 5900 32 5900 42 5900 52	— 7,50 10,00 12,50 15,00 17,50 18,75 20,00 31,50 42,00 52,50 63,00 73,50 84,00 92,40

⁽¹⁾ When the product falling within this subheading is a mixture containing added whey and/or added lactose and/or casein and/or caseinates, no export refund shall be granted.

When completing customs formalities, the applicant shall state on the declaration provided for this purpose, whether or not whey and/or lactose and/or casein and/or caseinates have been added to the product.

⁽²⁾ The weight of the added non-lactic matter and/or added whey and/or added lactose and/or added casein and/or added caseinates, shall not be taken into account for the purpose of calculation of the fat content by weight. When the product falling within this subheading is a mixture containing added whey and/or added lactose and/or added casein and/or added caseinates, the added whey and/or added lactose and/or added casein and/or added caseinates shall not be taken into account in the calculation of the amount of refund.

When completing customs formalities, the applicant shall state on the declaration provided for this purpose, whether or not whey and/or lactose and/or casein and/or caseinates have been added, and where this is the case:

- the actual content by weight of whey and/or lactose and/or casein and/or caseinate added per 100 kg of finished product, and, in particular,
- the lactose content of the added whey.

⁽³⁾ When the product contains casein and/or caseinates that were added before or at the time of processing, no refund shall be granted.

When completing customs formalities, the applicant shall state on the declaration provided for this purpose, whether or not whey and/or lactose and/or casein and/or caseinates have been added.

- (*) The weight of added non-lactic matter and/or added whey and/or added lactose and/or added casein and/or added caseinates shall not be taken into account for the purpose of calculating the fat content, by weight.

The refund per 100 kg of product falling within this subheading shall be equal to the sum of the following components:

- (a) the amount per kilogram shown, multiplied by the weight of the lactic part contained in 100 kg of product; however, where whey and/or lactose and/or casein and/or caseinates have been added to the product, the amount per kilogram shown shall be multiplied by the weight of lactic part excluding the weight of added whey and/or added lactose and/or added casein and/or added caseinates, contained in 100 kg of product;

- (b) a component calculated in accordance with the provisions of Article 2 (3) of Regulation (EEC) No 1098/68.

When completing customs formalities, the applicant shall state on the declaration provided for this purpose, whether or not whey and/or lactose and/or casein and/or caseinates have been added, and where this is the case:

- the actual content by weight of whey and/or lactose and/or casein and/or caseinates added per 100 kg of finished product, and, in particular,
- the lactose content of the added whey.

- (*) The refund on 100 kg of product falling within this subheading is equal to the sum of the following elements:

- (a) the amount per 100 kg shown; however, where whey and/or lactose and/or casein and/or caseinates have been added to the product, the amount per 100 kg shown shall be:

- multiplied by the weight of the lactic part other than the added whey and/or added lactose and/or added casein and/or added caseinates contained in 100 kg of product, and then
- divided by the weight of the lactic part contained in 100 kg of product;

- (b) a component calculated in accordance with the provisions of Article 2 (3) of Regulation (EEC) No 1098/68.

When completing customs formalities, the applicant shall state on the declaration provided for this purpose, whether or not whey and/or lactose and/or casein and/or caseinates have been added, and where this is the case:

- the actual content by weight of whey and/or lactose and/or casein and/or caseinate added per 100 kg of finished product, and, in particular,
- the lactose content of the added whey.

- (*) No refund shall be paid in respect of exported cheese of which the free-at-frontier price, before application of the refund and the monetary compensatory amount, in the exporting Member State, is less than 140 ECU per 100 kilograms. This limitation to 140 ECU per 100 kilograms does not apply to cheeses falling within subheading 04.04 E I ex c) of the Common Customs Tariff.

- (*) In the case of cheeses presented in containers which also contain conserving liquid, in particular brine, the refund is granted on the net weight, the weight of the liquid being deducted.

- (*) When completing customs formalities, the applicant shall state on the declaration provided for this purpose:

- the skimmed-milk powder content, by weight, whether or not whey and/or lactose and/or casein and/or caseinates have been added, and where this is the case:
- the content by weight of the added whey and/or added lactose and/or added casein and/or added caseinates, and
- the lactose content of the added whey per 100 kg of finished product.

- (*) 'Special compound feedingstuffs' are compound feedingstuffs containing skimmed-milk powder and fish meal and/or more than 9 g of iron and/or more than 1,2 g of copper in 100 kg of product.

- (*) On the export of such products under Regulation (EEC) No 765/86:

- the amount of the refund shall be that applying on 16 October 1986 in respect of products for which the export licence with advance fixing of the refund was issued before 1 January 1987;
- no refund is to apply in respect of products for which the export licence was issued on or after 1 January 1987.

N.B.: Zones A, B, C and E are those defined in Regulation (EEC) No 1098/68, as last amended by Regulation (EEC) No 2283/81.

The weight of non-milk fat should be disregarded for the purposes of calculating fat content, by weight.

COMMISSION REGULATION (EEC) No 2454/87

of 13 August 1987

re-establishing the levying of customs duties on other clocks, falling within heading No 91.04, originating in China, to which the preferential tariff arrangements set out in Council Regulation (EEC) No 3924/86 apply

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3924/86 of 16 December 1986 applying generalized tariff preferences for 1987 in respect of certain industrial products originating in developing countries⁽¹⁾, and in particular Article 15 thereof,

Whereas, pursuant to Articles 1 and 12 of Regulation (EEC) No 3924/86, suspension of custom duties shall be accorded to each of the countries or territories listed in Annex III other than those listed in column 4 of Annex I, within the framework of the preferential tariff ceiling fixed in column 9 of Annex I;

Whereas, as provided for in Article 13 of that Regulation, as soon as the individual ceilings in question are reached at Community level, the levying of customs duties on

imports of the products in question originating in each of the countries and territories concerned may at any time be re-established;

Whereas, in the case of other clocks, falling within heading No 91.04, originating in China, the individual ceiling was fixed at 3 000 000 ECU; whereas, on 11 August 1987, imports of these products into the Community originating in China reached the ceiling in question after being charged thereagainst; whereas it is appropriate to re-establish the levying of customs duties in respect of the products in question against China,

HAS ADOPTED THIS REGULATION:

Article 1

As from 17 August 1987, the levying of customs duties, suspended pursuant to Regulation (EEC) No 3924/86, shall be re-established on imports into the Community of the following products originating in China:

Order No	CCT heading No and NIMEXE code	Description
10.1180	91.04 (91.04-all numbers)	Other clocks

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, 13 August 1987.

For the Commission

Manuel MARÍN

Vice-President

⁽¹⁾ OJ No L 373, 31. 12. 1986, p. 1.

COMMISSION REGULATION (EEC) No 2455/87
of 13 August 1987
fixing the import levies on white sugar and raw sugar

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

Having regard to the Act of Accession of Spain and Portugal,

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 (EEC) No 229/87 ⁽²⁾, and in particular Article 16 (8) thereof,

Whereas the import levies on white sugar and raw sugar were fixed by Commission Regulation (EEC) No 2054/87 ⁽³⁾, as last amended by Regulation (EEC) No 2443/87 ⁽⁴⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 2054/87 to the infor-

mation known to the Commission that the levies at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies referred to in Article 16 (1) of Regulation (EEC) No 1785/81 shall be, in respect of white sugar and standard quality raw sugar, as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 14 August 1987.

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

Done at Brussels, 13 August 1987.

For the Commission

Frans ANDRIESEN

Vice-President

- ⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.
⁽²⁾ OJ No L 25, 28. 1. 1987, p. 1.
⁽³⁾ OJ No L 192, 11. 7. 1987, p. 38.
⁽⁴⁾ OJ No L 225, 13. 8. 1987, p. 27.

ANNEX

to the Commission Regulation of 13 August 1987 fixing the import levies on white sugar and raw sugar

(ECU/100 kg)		
CCT heading No	Description	Levy
17.01	Beet sugar and cane sugar, in solid form :	
	A. White sugar : flavoured or coloured sugar	53,25
	B. Raw sugar	45,07 ⁽¹⁾

⁽¹⁾ Applicable to raw sugar with a yield of 92 % ; if the yield is other than 92 %, the levy applicable is calculated in accordance with the provisions of Article 2 of Regulation (EEC) No 837/68.

COMMISSION REGULATION (EEC) No 2456/87

of 13 August 1987

fixing the export refunds on cereals and on wheat or rye flour, groats and meal

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,

Having regard to the Act of Accession of Spain and
Portugal,

Having regard to Council Regulation (EEC) No 2727/75
of 29 October 1975 on the common organization of the
market in cereals⁽¹⁾, as last amended by Regulation (EEC)
No 1900/87⁽²⁾, and in particular the fourth subparagraph
of Article 16⁽²⁾,

Having regard to the opinion of the Monetary Committee,

Whereas Article 16 of Regulation (EEC) No 2727/75
provides that the difference between quotations or prices
on the world market for the products listed in Article 1 of
that Regulation and prices for those products in the
Community may be covered by an export refund;

Whereas Article 2 of Council Regulation (EEC) No
2746/75 of 29 October 1975 laying down general rules for
granting export refunds on cereals and criteria for fixing
the amount of such refunds⁽³⁾, provides that when
refunds are being fixed, account must be taken of the
existing situation and the future trend with regard to
prices and availabilities of cereals on the Community
market on the one hand, and prices for cereals and cereal
products on the world market on the other; whereas the
same Article provides that it is also important to ensure
equilibrium and the natural development of prices and
trade on cereal markets and, furthermore, to take into
account the economic aspect of the proposed exports and
the need to avoid disturbances on the Community
market;

Whereas Article 3 of Regulation (EEC) No 2746/75
defines the specific criteria to be taken into account when
the refund on cereals is being calculated;

Whereas these specific criteria are defined, as far as wheat
and rye flour, groats and meal are concerned, in Article 4
of Regulation (EEC) No 2746/75; whereas furthermore,
when the refund on these products is being calculated,
account must be taken of the quantities of cereals
required for their manufacture; whereas these quantities
were fixed in Commission Regulation No 162/67/EEC⁽⁴⁾,
as amended by Regulation (EEC) No 1607/71⁽⁵⁾;

Whereas the world market situation or the specific
requirements of certain markets may make it necessary to

vary the refund for certain products according to destina-
tion;

Whereas the refund must be fixed once a month;
whereas it may be altered in the intervening period;

Whereas, if the refund system is to operate normally,
refunds should be calculated on the following basis:

- in the case of currencies which are maintained in rela-
tion to each other at any given moment within a band
of 2,25 % a rate of exchange based on their central
rate, multiplied by the corrective factor provided for in
the last paragraph of Article 3 (1) of Council Regula-
tion (EEC) No 1676/85⁽⁶⁾, as last amended by Regula-
tion (EEC) No 1636/87⁽⁷⁾;
- for other currencies, an exchange rate based on the
arithmetic mean of the spot market rates of each of
these currencies recorded over a given period in rela-
tion to the Community currencies referred to in the
previous indent and the aforesaid coefficient;

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

Whereas, pursuant to Article 275 of the Act of Accession
of Spain and Portugal, refunds may be granted in the case
of exports to Portugal; whereas, in the light of the situa-
tion and the level of prices no refund should be fixed in
the case of exports to Portugal;

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

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 (a),
(b) and (c) of Regulation (EEC) No 2727/75, exported in
the natural state, shall be as set out in the Annex hereto.

The refund on export to Portugal has not been fixed.

Article 2

This Regulation shall enter into force on 14 August 1987.

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 182, 3. 7. 1987, p. 40.

⁽³⁾ OJ No L 281, 1. 11. 1975, p. 78.

⁽⁴⁾ OJ No 128, 27. 6. 1967, p. 2574/67.

⁽⁵⁾ OJ No L 168, 27. 7. 1971, p. 16.

⁽⁶⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁷⁾ OJ No L 153, 13. 6. 1987, p. 1.

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

Done at Brussels, 13 August 1987.

For the Commission

Frans ANDRIESEN

Vice-President

ANNEX

to the Commission Regulation of 13 August 1987 fixing the export refunds on cereals and
on wheat or rye flour, groats and meal

CCT heading No	Description	Refund (ECU/tonne)
10.01 B I	Common wheat and meslin for exports to : — Switzerland, Austria, Liechtenstein and the Canary Islands — zone II b) — Poland — South Korea — Israel — Egypt — Brazil — other third countries	93,00 98,00 26,00 30,00 20,00 35,00 40,00 15,00
10.01 B II	Durum wheat	25,00 ⁽⁹⁾
10.02	Rye for exports to : — Switzerland, Austria and Liechtenstein — other third countries	10,00 25,00
10.03	Barley for exports to : — Switzerland, Austria and Liechtenstein — zone II b) — other third countries	93,00 98,00 25,00
10.04	Oats for exports to : — Switzerland, Austria and Liechtenstein — other third countries	85,00 95,00
10.05 B	Maize, other than hybrid maize for sowing for exports to : — Switzerland, Austria and Liechtenstein — Canary Islands — other third countries	0 0 0
10.07 B	Millet	—
10.07 C II	Grain sorghum, other than hybrid sorghum for sowing	—
ex 11.01 A	Wheat flour : — of an ash content of 0 to 520 for exports to : — Zaire — other third countries — of an ash content of 521 to 600 for exports to : — Zaire — other third countries — of an ash content of 601 to 900 — of an ash content of 901 to 1 100 — of an ash content of 1 101 to 1 650 — of an ash content of 1 651 to 1 900	165,00 145,00 165,00 145,00 128,00 119,00 110,00 99,00

(ECU/tonne)		
CCT heading No	Description	Refund
ex 11.01 B	Rye flour :	
	— of an ash content of 0 to 700	145,00
	— of an ash content of 701 to 1 150	145,00
	— of an ash content of 1 151 to 1 600	145,00
	— of an ash content of 1 601 to 2 000	145,00
11.02 A I a)	Durum wheat groats and meal	
	— of an ash content of 0 to 1 300 ⁽¹⁾	278,00 ⁽²⁾
	— of an ash content of 0 to 1 300 ⁽²⁾	263,00 ⁽²⁾
	— of an ash content of 0 to 1 300	235,00 ⁽²⁾
	— of an ash content of more than 1 300	221,00 ⁽²⁾
ex 11.02 A I b)	Common wheat groats and meal :	
	— of an ash content of 0 to 520	145,00

⁽¹⁾ Meal of which less than 10 % by weight is capable of passing through a sieve of 0,250 mm mesh.

⁽²⁾ Meal of which less than 10 % by weight is capable of passing through a sieve of 0,160 mm mesh.

⁽³⁾ With the exception of the quantities referred to in the Commission's Decision of 19 March 1986.

N.B. The zones are those defined in Regulation (EEC) No 1124/77 (OJ No L 134, 28. 5. 1977), as last amended by Regulation (EEC) No 3817/85 (OJ No L 368, 31. 12. 1985).

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 17 December 1986

prohibiting an aid consisting of a subsidy on the sale on animal feed granted by the region of Abruzzi

(Only the Italian text is authentic)

(87/417/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 93 (2) thereof,

Having regard to Council Regulation (EEC) No 1117/78 of 22 May 1978 on the common organization of the market in dried fodder⁽¹⁾, as last amended by Regulation (EEC) No 1985/86⁽²⁾, and in particular Article 9 thereof, and the corresponding provisions of the other Regulations on the common organization of the market in agricultural products,

Having invited the parties concerned⁽³⁾, pursuant to Article 93 of the EEC Treaty, to submit their comments and having regard to those comments,

Whereas :

I

By letter dated 17 June 1985 the Italian Government notified, in accordance with Article 93 (3) of the EEC Treaty, Law No 25 of the region of Abruzzi of 11 April 1985 on the further amendment of Regional Law No 31 of 3 June 1982. Law No 25 amends in particular Article 66 of Regional Law No 31/82 of 3 June 1982, as

amended and supplemented by Regional Laws Nos 7/83 of 25 January 1983 and 66/83 of 15 September 1983.

Article 66 provided — with a view to the implementation of a pilot project to encourage farmers in the region to increase permanently the profitability of their land under fodder — for the grant of degressive aids, subject to a time limit, to stockfarmers in the region for the sale of animal feed manufactured from fodder produced there. The aid granted by the region consisted of :

- subsidies of up to 10 % of the market value of each feed unit produced, and
- subsidies of up to 20 % of the same value for farmers in mountain or less-favoured areas.

In addition, agricultural producers in the region were required to have a minimum participation of 80 % in the assets and management of the undertakings producing animal feed in the region. Those undertakings were required to use exclusively, and in certain conditions as a priority, fodder produced in the region.

In view of its promotional objective, the aid was regarded as being compatible with the common market under Article 92 (3) (c) of the Treaty, for the period 1982 to 1985. The Commission informed the Italian Government to this effect by letter dated 4 November 1982.

Article 1 of Law No 25/85 amended Article 66 of Law No 31/82, as supplemented and amended, by providing that cooperatives could in future use the fodder available in the region without being required to do so exclusively or as a priority. Article 3 of that Law extended the aid arrangements for 1986 and 1987.

⁽¹⁾ OJ No L 142, 30. 5. 1978, p. 1.

⁽²⁾ OJ No L 171, 20. 6. 1986, p. 4.

⁽³⁾ OJ No C 84, 12. 4. 1986, p. 4.

II

After having considered Law No 225/85 the Commission informed the Italian Government, by letter of 19 February 1986, among other things that it was initiating the procedure provided for in Article 93 (2) of the EEC Treaty in respect of the measure concerned.

The Commission notified the Italian Government that the period taken into consideration in 1982 had expired and that an increase in the production of fodder and animal feed has been recorded in the region during the period 1982 to 1985; the measure therefore appeared to have achieved its aim. The Commission considered, moreover, that there was no justification for extending the period for two years since animal feed requirements in the region seemed to be an adequate incentive for encouraging the production of basic fodder products. The Commission pointed out, moreover, that this situation had even led the regional authorities to alter the criteria of Article 66 of Law No 31/82 so that cooperatives receiving the aid were no longer required to buy their raw materials exclusively and as a priority in the region as a means of encouraging the production of fodder there.

In view of the foregoing, the Commission took the view that the continued grant of aid for the purchase of animal feed could no longer qualify for the exemption provided for in Article 92 (3) (c) of the Treaty since the aid was now an operating aid that had no lasting effect on the development of the sector concerned.

The Commission therefore gave notice to the Italian Government, the other Member States and parties concerned other than the Member States to submit their comments, and received comments from them.

III

By letter dated 13 May 1986 the Italian Government replied to the Commission's letter of 19 February 1986, stressing in particular that:

- the aid in question had been granted degressively for three years,
- the region of Abruzzi had endeavoured to keep it a pilot project,
- the measure had been slow in getting under way and, as a result, had only begun to show a return towards the end of 1985, and
- it had therefore been necessary to keep the provisions in force for 1986 and 1987.

IV

1. The Italian authorities have failed to fulfil their obligation under Article 93 (3) of the EEC Treaty, firstly, by neglecting to notify Law No 25/85 at the draft stage and, secondly, by bringing it into force before the

Commission had an opportunity of expressing its view on it.

2. Article 66 of Law No 31/82, as amended and supplemented, provided for aid to be granted by the region during the period 1982 to 1985 for the implementation of a pilot project to encourage farmers to increase permanently the profitability of their land under fodder in Abruzzi. To that end the region provided for the grant of degressive aids, subject to a time limit, for the sale of animal feed by stockfarmers in the region who were members of cooperatives producing animal feed from fodder produced in the region.

On 4 November 1982, the Commission delivered a favourable opinion in respect of the aid, bearing in mind its status as a pilot project subject to a time limit and involving a degressive amount.

The amendments provided for in Law 25/85 of 11 April 1985, consisting of the deletion in Article 66 of the requirement that cooperatives producing animal feed buy their fodder exclusively and, under certain conditions, as a priority in the region, and for the extension of the scheme for 1986 and 1987, are such that the measure can no longer be regarded as a pilot project. The aid has already been granted for four years, from 1982 to 1985, and during that period has led to an increase in the levels of fodder and animal feed production. According to the information provided by the Italian authorities, the quantity of fodder supplied for processing by producers who are members of cooperatives was approximately 119 000 quintals in 1983 and approximately 245 000 quintals in 1986, while animal feed production in 1983 amounted to around 521 000 quintals and in 1986 to approximately 1 million quintals.

Furthermore, the amendment of Article 66 consisting of the deletion of the clause that all fodder purchased must be produced in the region also indicates that the aims of the aid have changed.

3. The measure is therefore an operating aid for stockfarmers in the region, who by virtue of this subsidy can buy animal feed at more advantageous prices than if there were no aid. It therefore distorts competition between stockfarmers in Abruzzi and those in other Member State.

The lowering of production costs made possible by this aid, and the consequent reduction in selling prices, helps create new market outlets, or at least maintain existing ones with the result that stockfarmers in Abruzzi will be encouraged to increase their output; this will enable them, firstly — by virtue of, among other things, economies of scale — to reduce their costs and, secondly, to increase their competitiveness on Italian markets and the markets of the other Member States.

Consequently, the aid — the impact of which is directly linked with the quantities of feed produced and sold to stockfarmers — puts economic operators in Abruzzi in these sectors in a more favourable competitive position on the Italian and Community markets. Livestock producers, should they be unable to sell their entire production on their domestic markets, would channel it towards the markets of the other Member States where they could offer it at a lower price than they could charge without the benefit of the aid. A cut of up to 20 % in the price of animal feed implies, in so far as the price of animal products, in poultry for example, is concerned, a reduction of around 10 to 15 % in production costs. In the poultry sector, feed costs account for around 80 % of farm production costs. An aid that reduces their impact represents, therefore, a considerable economic advantage on a surplus market such as that in animal products.

For these reasons, the aid is liable to affect trade between Member States, with stockfarmers being encouraged to increase their output on account of the drop in their production costs.

4. In a situation where all of this aid was not passed on to stockfarmers in full, the subsidy would also constitute an operating aid for undertakings manufacturing animal feed. The latter, by receiving aid calculated on the basis of the number of fodder units produced and sold, are encouraged to increase their production in order to benefit from the economies of scale. The increase in the quantity of feed produced in Abruzzi reduces by an equal amount imports from other Member States. In 1985 feed imports amounted to around 320 000 tonnes, i.e. around 3,2 % of total Italian feed production. For this reason, here too, the measure distorts competition between producers of animal feed in Abruzzi and those in other Member States, and affects intra-Community trade.

5. The measures in question consequently meet the criteria of Article 92 (1) of the Treaty, which provides that aids that meet the criteria it sets out are incompatible in principle with the common market.

6. The aids in question clearly do not qualify for any of the exemptions from such incompatibility provided for in Article 92 (2). Those provided for in paragraph 3 of that Article specify objectives pursued in the interest of the Community and not only in that of particular sectors of the national economy. The exemptions must be interpreted strictly, especially when any regional of sectoral aid programme is being examined.

The exemptions may be granted in particular only where the Commission can show that the aid is neces-

sary for attaining one of the objectives referred to in those provisions. To grant the benefit of the exemptions to aid which does not involve any such offsetting advantage would amount to authorizing the undermining of trade between Member States and the distortion of competition without any justification in the Community interest, and, at the same time, to unwarranted advantages for some Member States.

In the case under consideration, examination of the aid in question does not disclose the existence of any such offsetting advantage. The Italian Government has been unable to provide, and the Commission to detect, any evidence to show that the aid concerned meets the requirements for the application of one of the exemptions provided for in Article 92 (3) of the Treaty.

It is not a matter of measures to promote the execution of an important project of common European interest within the meaning of Article 92 (3) (b) given that, by virtue of their potential effects on trade, they are contrary to the common interest.

The measure has already been applied for four years, from 1982 to 1985, and has achieved its promotional objective, adopted by the Commission in 1982, by resulting in an increase in the levels of fodder and feed production.

For that reason it seems unjustified to prolong the measure until the end of 1987 since, by ceasing to be a promotional aid, it is now a simple operating aid which can no longer bring about a lasting improvement in the conditions in which the recipient undertakings are operating.

Accordingly, the aid to be regarded as an operating aid for the undertakings concerned represents a type of aid to which the Commission has in principle always been opposed, by virtue of the fact that its grant is not made subject to conditions that would qualify it for one of the exemptions provided for in Article 92 (3) (a) and (c).

The aid in question does not therefore meet the requirements to qualify for one of the exemptions under Article 92 of the Treaty and must be regarded as being incompatible with the common market; the Italian authorities must take the measures necessary to ensure that the aid is not granted, and that Articles 1 and 3 of Regional Law No 25 of 11 April 1985 concerning the aid which is the subject of the complaint are abolished not later than 31 March 1987, a period that should allow the Italian authorities to take the necessary measures.

This Decision is without prejudice to any action the Commission may take to recover the abovementioned aid from the recipients, and in respect of the financing of the common agricultural policy by the European Agricultural Guidance and Guarantee Fund, where it is shown that the aid was granted before the completion of the review procedure provided for in Article 93 (2) of the EEC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

1. The aid consisting of a subsidy of 10 % and 20 % of the value of a fodder unit, provided for in respect of 1986 and 1987 by Article 66 of Law No 31 of the region of Abruzzi of 3 June 1982, which is the framework law for the development of agriculture in Abruzzi for 1982 to 1985, as amended and supplemented by Regional Laws Nos 7/83 of 25 January 1983 and 66/83 of 15 September 1983, as it results from the amendments introduced by Articles 1 and 3 of Regional Law No 25 of 11 April 1985,

is incompatible with the common market by virtue of Article 92 of the EEC Treaty.

2. The aid concerned may not be granted and the relevant provisions of Articles 1 and 3 of Law No 25 of 11 April 1985 must be deleted by 31 March 1987 at the latest.

3. The Italian Government shall inform the Commission, within two months from the date of notification of this Decision, of the measures it has taken to comply therewith.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 17 December 1986.

For the Commission

Frans ANDRIESEN

Vice-President

COMMISSION DECISION

of 4 February 1987

concerning aid to a Belgian steel pipe and tube manufacturer

(Only the French and Dutch texts are authentic)

(87/418/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the first subparagraph of Article 93 (2) thereof,

Having given the parties concerned notice to submit their comments, in accordance with that provision, and having regard to those comments,

Whereas :

I

On 19 July 1984 the Belgian Government notified the Commission, in accordance with Article 93 (3) of the EEC Treaty, of its intention to provide further funding to a state-owned steel pipe and tube manufacturer in the Liège area by subscribing to a Bfrs 1,8 billion capital increase and a Bfrs 2,2 billion issue of conditional participating convertible bonds. The Commission had already authorized a package of aid for the firm in 1982.

The Commission later learnt (and the Belgian Government confirmed this by letter dated 29 July 1985) that, apart from the aid notified on 19 July 1984, the Government had previously given the firm further assistance without authorization by the Commission, and thus in contravention of Article 93 (3) of the Treaty.

The unauthorized aid and that notified on 19 July 1984 came to a total of Bfrs 9 085 million, to which must be added Bfrs 1 212 million of regional aid granted under the Economic Expansion Laws.

A preliminary scrutiny of the case showed that the firm was still making heavy losses in spite of a modernization programme and the aid it had already received. The firm's prospects for future recovery were also considered doubtful by the Commission, as the management was relying for an improvement in its financial position on a diversification into tubes at the top end of the quality range and to more profitable markets than those previously served by the firm. This strategy was thought unlikely to succeed, as the overcapacity in the industry would make it difficult for any firm to capture a new market share.

For these reasons, and because the aid was likely to cause major distortions of competition on a sensitive market, the Commission decided to open the procedure laid down in Article 93 (2) of the Treaty in order to hear the views of all concerned.

By letter of 5 July 1985 it gave the Belgian Government notice of the opening of the procedure and called for its observations. Comments were also invited from other Member States by letters dated 12 July 1985 and from other interested parties by a notice in the *Official Journal of the European Communities* on 16 July 1985⁽¹⁾.

In spite of the pending Article 93 (2) procedure, the Belgian Government went ahead with payment of the aid it had notified on 19 July 1984.

By letter of 6 June 1986, the Belgian Government notified its proposal to grant further aid to the company in the form of the conversion of Bfrs 3 010 million of guaranteed loans into capital.

On 1 August 1986 the Commission extended the Article 93 (2) procedure to this further aid and called on the Belgian Government to submit its observations. Comments were also invited from the other Member States by letter dated 10 November 1986 and from interested parties by a notice in the *Official Journal of the European Communities* on 19 November 1986⁽²⁾.

In spite of the procedure pending, the Belgian Government went ahead with conversion of Bfrs 2 510 million of debts into capital.

Thus, all the aid covered by the procedures, except for the proposed conversion of Bfrs 500 million of debts into capital, has already been provided in disregard of Article 93 (3) of the Treaty.

II

In its observations sent by letters of 29 July 1985 and 5 September 1986, in reply to the opening and extension of the procedure, the Belgian Government argued, in the first place, that the funding it had provided to the firm was not likely to distort competition.

Mainly because of cost overruns on the investment programme begun in 1982, the funding the Government had provided with the Commission's approval up to 1982 and the later unauthorized payments had not even been enough to restore the firm's financial position.

⁽¹⁾ OJ NO C 178, 16. 7. 1985, p. 2.

⁽²⁾ OJ No C 293, 19. 11. 1986, p. 3.

The new funding notified in 1984 was required to pay for the remainder of the investment programme and to meet the firm's needs for working capital consequent upon the expansion of its sales that had taken place in the last few years.

Hence, the provision of funding by the State (which held over 99 % of the company's shares) should be regarded, the Belgian Government maintained, not as aid but as an investment of capital by a shareholder, which would not affect competition.

Moreover, the firm's sales on the Community market (25 898 tonnes or only 8,6 % of its output in 1984, as against 36 166 tonnes in 1979) were on too small a scale to affect trade between Member States.

The Belgian Government also stressed the importance of the firm's survival for the Liège area, already hard hit by the decline of the steel industry. Finally, it repeated the forecasts of the firm that it would break even in 1985 and would return to profit from 1986. The forecasts assumed that the supply contracts the firm had secured in 1980 with its main customer, the Soviet Union, which gave it a large, though now somewhat reduced, captive market would continue and that the firm would be able to penetrate more profitable markets elsewhere.

The three other Member States and four associations of steel pipe and tube producers that also made representations to the Commission under the procedure expressed strong fears that to penetrate new markets, which were already severely depressed by overcapacity, the firm would have to embark on a destabilizing price-cutting policy. Such a policy, made possible by massive subsidies, would seriously distort competition between Community producers. These fears had been strengthened by recent developments — import restrictions in the USA, the installation of new capacity in the USSR and other Eastern bloc countries and in some developing countries — which had made the market even more sensitive and put Community producers in a vulnerable position. Finally, the respondents pointed to the efforts other Member States had made to reduce excess capacity in the sector, whereas the Belgian firm, although highly dependent on exports, had actually increased its capacity in recent years.

III

Except for Bfrs 500 million of the debt conversion, to which the Article 93 (2) procedure was extended on 1

August 1986, the government funding with which this Decision is concerned was provided by the Belgian Government unlawfully in breach of its obligations under Article 93 (3) of the Treaty. All the funding, moreover, involved aid falling within Article 92 (1), which is ineligible for any of the exceptions provided for in Article 92 (2) and 3 of the Treaty for the following reasons.

IV

The Court of Justice has established⁽¹⁾ — and the Commission has issued a notice to this effect to the Member States⁽²⁾ — that provisions of new capital to firms by governments are in the nature of aid falling within Article 92 (1) of the Treaty where a private investor in a market economy would not have provided the financing in similar circumstances. This will be the case, for example, where the financial position of the company, and in particular the structure and volume of its debt, is such that no normal return (through dividends or capital gains) can be expected on the capital invested within a reasonable period. It will also be the case where a subscription of capital by the government in a company under mixed public and private ownership takes its holding significantly above that it had under the original distribution.

On the other hand, a government's provision of capital will not be aid where a private investor in a market economy would have provided the financing in similar circumstances. In particular, in the case of a company in public ownership an injection of capital into the company for new investment and expenditure directly related thereto will not normally be aid where there is no structural overcapacity in the industry in the common market and the company is financially sound. The same will apply to a firm under mixed ownership where the government's subscription of funds is in proportion to its existing holding and is matched by subscriptions by private shareholders.

In the present case, the firm to which the Belgian Government has provided new capital is in an industry suffering from substantial structural overcapacity. This is clearly demonstrated by the statistics: the figures the Belgian Government itself has supplied show that in the major western countries (USA, Japan and the EEC) an estimated 35 to 40 % of installed capacity is surplus to

⁽¹⁾ Judgment in Case 323/82, *Intermills v Commission*, (1984) ECR 3809.

⁽²⁾ Bull. EC 9/1984, point 3.5.1.

requirements. Moreover, the demand for seamless tubular goods from the oil industry, which is already at a low level, is likely in the next few years to decline further as drilling activity slows in response to the depressed conditions on the oil market. In these circumstances, and in view of the further factors discussed below, it is doubtful that the financial position of the company, which has been making heavy losses for several years, will improve. Finally, the company's previous private shareholders have withdrawn in two stages (in 1980 and 1982), leaving the Government to bear all the risk of keeping it in business alone.

Consequently, the Belgian Government's funding of the firm cannot be regarded as a subscription of capital on normal commercial terms, but as aid on a substantial scale falling within Article 92 of the Treaty.

V

For several years, world demand for steel pipes and tubes has been weak and the market fiercely competitive. The situation is worse for seamless pipes and tubes than for welded (world production of seamless tubes, which was some 26,7 million tonnes in 1981, has since declined by about 20 %) and is particularly bad for pipes and tubes for the oil industry, which account for about 85 % of the business of the firm in question: the prices for oil industry tubular goods fell by nearly 50 % between 1982 and 1984 and continued falling in 1985.

The firm itself forecasts that 'this weakness of demand will continue for a few years yet owing to the fall in demand for oil and the enormous tube stocks built up in 1981', and that consequently 'up to 1990 producers will probably not be able to operate at rates averaging much above 60 %.'

Community seamless pipe and tube producers manufacture a high proportion of their output for export outside the EEC. In 1984, the EEC's apparent consumption of pipes and tubes was only about half the 4,3 million tonnes produced. Nevertheless, other markets within the Community are important enough for the industry — about a quarter of Member States' exports of pipes and tubes go to other EEC countries — to mean that any support given to one of the Community producers will directly affect intra-Community trade. Article 92 of the Treaty prohibits aid which directly affects trade between Member States. The substantial overcapacity in the industry throughout the world and the resulting price

instability on the world market, the import restrictions imposed by the USA, the largest market, and the new capacity being installed in developing and Eastern bloc countries are putting Community producers in a vulnerable position and are causing them to fall back on the Community market. Consequently, any support given to one of the producers (even if, at the time the support was given, the producer was exporting almost all its output outside the EEC) is bound to affect the competitive position of the others. Indeed, in the present conditions on the seamless tube market, it is possible that government support of a producer that exports to third countries will cause other Community producers to go out of business or to have to curtail their activities.

It is concluded that the aid to the producer, which exports about 90 % of its output outside the Community but which produces 17 % of the total Community production of seamless pipes and tubes between 127 and 416 millimetres in diameter, which are its core business, is highly likely to affect trade between Member States within the meaning of Article 92 (1) of the Treaty. Furthermore, for the reasons set out below, the aid is ineligible for any of the exceptions provided for in Article 92.

VI

Article 92 (1) of the Treaty provides that aid having certain features is in principle incompatible with the common market.

The exceptions provided for in Article 92 (2) are inapplicable to the present aid because of its nature and objectives.

The discretionary exceptions provided for in Article 92 (3) are available in certain specified circumstances where the aid serves the wider Community interest rather than simply the national interests of the Member State concerned. To maintain a properly functioning common market and observe the principle enshrined in Article 3 (f) of the Treaty, the exceptions provided for in Article 92 (3) must be construed strictly when the Commission examines any aid scheme or individual award of aid.

Article 92 (3) (a) allows exceptions for aid that promotes the economic development of areas where the standard of living is abnormally low or where is serious underemployment. It is true that the Liège area has been hard hit by redundancies, particularly due to the restructuring of the steel industry.

However, on previous occasions⁽¹⁾ the Commission has established after a thorough study of economic and social conditions in the Belgian regions that none of the regions suffers from an abnormally low standard of living or serious underemployment. The Belgian Government did not challenge this finding at the time, nor has it presented any new evidence since capable of modifying the assessment.

Article 92 (3) (c) allows exceptions for aid that facilitates the development of certain economic activities or certain economic areas where such aid does not adversely affect trading conditions to an extent contrary to the common interest. As far as the exception for aid for regional development is concerned, the Commission notes that the aid granted under the Economic Expansion Law of 30 December 1970 did not exceed the ceiling for regional aid laid down in Decision 82/740/EEC. This aid was thus granted lawfully. However, the exception for aid for the development of economic activities which does not affect trading conditions is inapplicable to the remainder of the aid. For many years the firm has been in serious financial difficulty, which the Belgian Government has already made attempts to overcome. In 1982 the Commission authorized it to grant the firm a first aid package for an ambitious investment programme to build a 150 000-tonne capacity rolling mill, doubling the firm's capacity for seamless tubes.

The confident predictions then made by the Belgian Government, on which the Commission based its decision, have not been fulfilled. The Commission was assured that the major expansion of output would secure the firm's future under a long-term supply contract with the Soviet Union. This has not been achieved, and the firm is now in fact trying to withdraw from the Soviet market, which is thought to be insufficiently profitable. These unfulfilled expectations have also meant that the financial recovery forecast by the Belgian Government in 1982 has failed to materialize, and the firm has consequently been unable to generate from its own resources the increase in working capital needed to sustain its sharply increased turnover following the conclusion of the supply contracts with the Soviet Union (up from Bfrs 5,75 billion in 1981 to Bfrs 13,04 billion in 1984).

In 1984 the firm made a loss after depreciation and interest charges (amounting to 6,9 % and 8,4 % of turnover, respectively) of over 14 % of turnover. An even bigger loss was expected for 1985. Even with a financial restructuring (to which the present aid, if it were authorized, would contribute) to reduce interest charges to a 'normal'

level of 4 % of turnover, the firm would still make a loss. As the internal cost-saving measures planned by the firm (increases in productivity and workforce reductions) will not stem these losses, the management looks to improvements in commercial performance to do so. This strategy relies heavily on reducing dependence on the Soviet market and capturing shares of other markets now more profitable. It is assumed that the firm will not find it necessary to cut prices to capture shares of other markets. If it did have to cut prices, however, this would quickly wipe out the gains expected from the diversification. The strategy involves an expansion of sales outside the EEC, the Soviet Union and the USA from 32 000 tonnes in 1984 to between 120 000 and 220 000 by 1989, on a total market expected to remain virtually static at around 3 million tonnes. Thus, an increase in the firm's capacity, which in 1982 was presented as intended to supply a captive market, and which for this reason, on the basis of the figures furnished by the Belgian Government, the Commission considered could legitimately be financed by aid, is now to be diverted from its original purpose and used to increase the excess supply on the markets still open to EEC exporters. The Commission cannot allow further aid under these circumstances, and would not have allowed the initial aid package in 1982 had it then had the same economic facts before it as it has today.

The current conditions on the world market for seamless steel pipes and tubes (excess capacity running at around 35 to 40 % and part of the output previously sold on the largest export market, the USA, now being switched to the markets still open) mean that it will be difficult to succeed in a commercial policy of expanding market share without cutting prices. Given that the aid is unlikely to bring about the firm's lasting recovery, it cannot be said to be conducive to the economic development of the region concerned. By giving a particular producer on a depressed market a competitive advantage over its rivals and allowing it to expand its market share through a destabilizing price policy, the aid will adversely affect trading conditions to an extent contrary to the common interest. Consequently, the aid is ineligible for the exceptions provided for in Article 92 (3) (c), and this conclusion is not upset by the fact that without the aid the firm would have gone out of business.

As for the exceptions provided for in subparagraph (b) of Article 92 (3), it is clear that the aid is not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the Belgian economy.

It is concluded that the aid in question would give the firm a position on the market that it would not have attained solely on merit, by its own efficiency and performance, and that the aid would not contribute to development sufficiently to compensate for the resulting distortion of trade involving Community firms.

⁽¹⁾ Decision 82/740/EEC of 22 July 1982 on the designation of development areas pursuant to Article 11 of the Belgian Law of 30 December 1970 (OJ No L 312, 9. 11. 1982, p. 18.) amended by Decision 85/544/EEC of 31 July 1985 (OJ No L 341, 19. 12. 1985, p. 19).

Consequently, the aid does not meet the conditions required for application of any of the exceptions provided for in Article 92 (2) and (3) of the Treaty.

All but Bfrs 500 million of the aid has already been provided unlawfully by the Belgian Government, in breach of its obligations under Article 93 (3) of the Treaty, and must therefore be recovered.

This applies *a fortiori* as none of the aid, either the Bfrs 9 085 million or the Bfrs 3 010 million debt conversion, fulfils the substantive conditions of Article 92 (2) and (3),

HAS ADOPTED THIS DECISION:

Article 1

The Belgian Government unlawfully paid Bfrs 9 085 million of aid, referred to in its letters of 19 July 1984 and 29 July 1985, to a Belgian steel pipe and tube manufacturer in contravention of Article 93 (3) of the treaty. The aid cannot be considered compatible with the common market under Article 92 (2) or (3) of the Treaty.

The further Bfrs 3 010 million of aid to the same company, referred to in the Belgian Government's letter of 6 June 1986, can likewise not be considered compa-

tible with the common market, by virtue of Article 92 of the Treaty. The Belgian Government unlawfully provided Bfrs 2 510 million of this aid to the company in contravention of Article 93 (3) of the Treaty.

Belgium is hereby required to recover the aid referred to in this Article which it provided unlawfully.

Article 2

Belgium shall inform the Commission, within two months from the date of notification of this Decision, of the measures it has taken to comply therewith.

Article 3

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 4 February 1987.

For the Commission

Peter SUTHERLAND

Member of the Commission

COMMISSION DECISION

of 11 February 1987

on a Regional Law providing for special measures for sea fishing in Sicily
introduced by the Italian Government

(Only the Italian text is authentic)

(87/419/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the first subparagraph of Article 93 (2) thereof,

Having regard to Council Regulation (EEC) No 3796/81 of 29 December 1981 on the common organization of the market in fishery products ⁽¹⁾, as amended by the Act of Accession of Spain and Portugal, and in particular Article 28 thereof,

Having regard to Council Directive 83/515/EEC of 4 October 1983 concerning certain measures to adjust capacity in the fisheries sector ⁽²⁾, as amended by Directive 85/590/EEC ⁽³⁾, and in particular Article 12 thereof,

Having given notice, in accordance with the provisions of the first subparagraph of Article 93 (2) of the EEC Treaty, to the parties concerned to submit their comments ⁽⁴⁾, and having regard thereto,

Whereas :

I

Background and description

Procedure

By letter from its Permanent Representation to the European Communities of 3 June 1983, the Italian Government notified the Commission, pursuant to Article 93 (3) of the EEC Treaty, of a draft Sicilian Regional Law providing for special measures for sea fishing.

That draft provided for a subsidy per grt to Sicilian fishermen for 1983.

By letters of 6 April, 13 July and 6 August 1984, the Italian Government notified the Commission, pursuant to Article 93 (3) of the EEC Treaty, of a draft Sicilian Regional Law on aid in the cooperation, trade, craft industry and fisheries sectors. Among the aid measures provided for by that draft Law is the extension of the special measures for sea fishing in the form of an aid per gross register tonne for 1984.

⁽¹⁾ OJ No L 379, 31. 12. 1981, p. 1.

⁽²⁾ OJ No L 290, 22. 10. 1983, p. 5.

⁽³⁾ OJ No L 372, 31. 12. 1985, p. 49.

⁽⁴⁾ OJ No C 241, 10. 9. 1983, p. 4; OJ No C 331, 11. 12. 1984, p. 2; OJ No C 315, 6. 12. 1985, p. 3.

By letters of 8 January, 30 April and 2 August 1985, the Italian Government notified the Commission, pursuant to Article 93 (3) of the EEC Treaty, of a further draft Law providing for special measures in the sea fisheries sector. This new draft Law amends the former Law by replacing the aid per grt by aid for the temporary laying-up of vessels, based on Directive 83/515/EEC.

Aid per gross register tonne to Sicilian fishermen

This is direct aid related to the total number of grt of the vessel. The subsidy is limited to Lit 400 000 per grt for vessels of no more than 70 grt, to Lit 380 000 per grt for vessels of between 71 and 150 grt, and to Lit 370 000 per grt for vessels of more than 150 grt. To obtain the whole subsidy, one must have at least 26 days or 156 hours of fishing during a two-month period. Below that figure, the subsidy is reduced proportionately. No condition has been laid down regarding the utilization of such aid. The sum set aside for the purpose in 1983 was Lit 25 000 million.

The Italian Government has justified the grant of this aid by the serious crisis in the sector in question. It states that despite the introduction of structural measures in Sicily ⁽⁵⁾, special measures are necessary to safeguard employment in the fisheries sector. Furthermore, Commission Decision 83/246/EEC ⁽⁶⁾, outlawing the aid for fuel, forced the Italian Government to contemplate another type of aid meeting directly the needs of fishermen in difficulty.

Provision was made for the refinancing of that aid for 1984 under the same conditions as before.

Aid for the temporary laying-up of vessels

This scheme, introduced for three years, provides for the grant of a laying-up premium in respect of the days when the vessel is laid up, calculated on the basis of 12 % of the market value of the vessel provided that the vessels are engaged in fishing for a period of at least 120 days per year, that the period during which they are laid up is at least equal to 45 days, which may be consecutive or not, combined with a technical laying-up period of 52 days in 1985, 82 days in 1986 and 115 days from 1987. The value of the vessels is calculated on the basis of an estimate of

⁽⁵⁾ Law No 5 of 13 March 1975, and Law No 1 of 4 January 1980.

⁽⁶⁾ OJ No L 137, 26. 5. 1983, p. 28.

the new cost of the vessel, by type of vessel, to which depreciation coefficients are applied. The sum set aside for that aid is Lit 25 000 million per year, including the payment to crew members of a daily allowance of Lit 25 000 in respect of the days when their vessel is laid up.

The Italian Government justified this new measure by the need to meet the Commission's objections as to incompatibility of the existing Law with the Treaty and to adjust the financial aids of the Sicilian Region to bring them into line with Community regulations. Furthermore, that change would enable the Italian authorities to adjust the fleet's capacities to the catch possibilities with an eye to the implementation of a 'biological recovery' policy.

The aids thus described fall within the scope of Articles 92, 93 and 94 of the Treaty pursuant to the provisions of Article 28 of Regulation (EEC) No 3796/81 and Article 12 of Directive 83/515/EEC.

Examination by the Commission

Aid per gross register tonne

Following an initial examination, the Commission took the view that the aid per grt to Sicilian fishermen in 1983 is operating aid without any real reciprocal contribution on the part of the recipients and without any structural effect on their economic situation. Such aid has a significant direct effect on competition and trade between the Member States. It is therefore deemed incompatible with the common market. The Commission consequently decided to initiate the examination procedure provided for in Article 93 (2) of the EEC Treaty in respect of that aid per grt, and by letter of 2 August 1983 it gave notice to the Italian government to submit its comments.

Since the Italian Government made provision for the refinancing of that aid for 1984 without any change in the rules governing its grant, the Commission decided to extend to the refinancing of such aid the Article 93 (2) procedure initiated in respect of that aid for 1983. By letter of 8 October 1984, it gave notice to the Italian Government to submit its comments.

Aid for the temporary laying-up of vessels

Following an initial examination, the Commission took the view that the aid for the temporary laying-up of vessels could not qualify for any of the exemptions provided for in Article 92 (3) of the Treaty. The conditions under which that aid is granted are in fact different and less restrictive than those provided for by the Community Directive. Thus the calculation of the supplementary laying-up period does not ensure an additional effort compared to the average number of periods laid up in previous years, since it is based on a number of days

fixed on a flat-rate basis per year. Moreover, the acceptance of the real value instead of the purchase value or the insured value of the vessel as the basis for calculating the laying-up premium appears to be allowed only on the basis of the special characteristics of the sea fisheries sector in Sicily as compared with the rest of the Community. The depreciation coefficients proposed by the Italian Government are not in line with the real situation recorded on the market for vessels in Sicily and their utilization entails an artificial increase in laying-up premiums. Thus the granting of such aid in Sicily would be to the detriment of other Community fishermen who comply, on the granting of such aid, with the provisions of Directive 83/515/EEC. Accordingly, the Commission has decided to initiate the procedure laid down in Article 93 (2) of the EEC Treaty in respect of that aid, and by letter of 20 September 1985 it gave notice to the Italian Government to submit its comments.

Comments of the parties concerned

Several Member States forwarded their comments to the Commission. These Member States share the Commission's opinion.

II

Comments from the Italian Government

Aid per gross register tonne

The Italian Government did not provide comments regarding the grounds for this aid. By letter of 25 January 1985, in reply to a letter of notice from the Commission of 8 October 1984, the Italian Government stated that the problem of the aid per grt would be settled under a new draft Law on aid for the temporary laying-up of vessels, notified to the Commission in early January 1985.

Aid for the temporary laying-up of vessels

In its replies of 20 January and 3 April 1986, the Italian Government firstly indicated the trend in financial measures in fisheries in Sicily. From 1975 to 1980 the objective was to improve the fishing fleet and installations in order to enable stocks to be exploited rationally. Those objectives should be achieved by the measures provided for in Regional Laws Nos 5 of 13 March 1975 and 1 of 4 January 1980. From 1980 to 1984 the difficulties affecting the Sicilian fleet compelled the Government, pending a rationalization of fisheries due to the results of the measures provided for by the abovementioned Laws, to introduce special measures such as the aid for fuel (second half of 1980 to 1982) and the aid per grt (1983/1984). Lastly, from 1985 the regional authorities in Sicily have intended to resolve the problems stemming from the outlawing by the Commission of those special measures,

by implementing an aid scheme on Directive 83/515/EEC, but which also takes account of the specific socio-structural problems in fisheries in Sicily. Such a measure reverses the old logic which involved encouraging fishing by applying a policy of aid measures, and endeavours to reduce the fishing effort by encouraging biological recovery and consequently restocking.

As regards the aid scheme itself, the Italian Government pointed out that:

- the calculation of the period laid up on the basis of the number of days laid up in addition to a technical period fixed on a flat-rate basis was chosen to deal with major management and monitoring difficulties, in particular the impossibility of recording actual time laid up in previous years; consequently, technical periods are fixed on a flat-rate basis at 115 days from 1987, in accordance with the Directive, but with lower figures for 1985 and 1986, in view of the difference in the socio-structural problems affecting Sicilian fisheries,
- the market value of the vessels was defined on a flat-rate basis, as the purchase cost or insured value (which the Directive lays down as the sole basis for calculation) would not encourage the fishermen to lay up their vessels, in view of the age of most of the vessels, the high rate of inflation, and the lack of insurance or their under-estimation. The depreciation coefficients proposed by the Sicilian authorities cannot be reduced without affecting the incentive for the parties concerned to accept laying-up, the objective sought by the Community; however, the Sicilian authorities were willing to alter those coefficients from 1987 for vessels less than 18 metres long in order to arrive at a residual value of 45 % instead of 60 % for the oldest vessels.

III

Legal appraisal

Aid per gross register tonne

The aid in the form of direct subsidies per grt of the vessels is a direct aid to the liquid assets of the recipients; it therefore has an immediate effect on the latter's production costs and gives them a clear advantage over other Community fishermen. The aid is not subject to any condition on the part of the recipients, and it is not linked to any restructuring plan which would enable the difficulties at the root of their problems to be overcome.

The reference to the new draft Law providing for the introduction of an aid scheme for the temporary laying-up of vessels and thereby amending the aid in question does not affect the fact that the latter aid is direct aid to liquid assets nor its impact on competition and trade between Member States.

Aid for the temporary laying-up of vessels

Articles 3 and 4 of Directive 83/515/EEC provide, under certain conditions, for a daily laying-up premium for fishing vessels. The premium is granted for periods laid up of at least 45 days in addition to the average recorded or assessed on a flat-rate basis by type of vessel, of the days laid up in the last three calendar years prior to the first application for the premium. It is calculated on the basis of no more than 12 % of the purchase value or the insured value for an average annual period of fishing of 250 days. The vessels concerned must have a length between perpendiculars of at least 18 metres and must have been commissioned after 1 January 1958. The application of the Directive is optional and the Member States that adopt it under the conditions laid down may apply for reimbursement by the Community of 50 % of eligible expenditure.

The guidelines for the examination of State aid in the fisheries sector⁽¹⁾ state that national aid for the temporary laying-up of fishing vessels not referred to in the measures provided for in Directive 83/515/EEC, which limits intervention to vessels of a length between perpendiculars of 18 metres or more, is compatible with the common market provided that the conditions for the granting of such aid are similar to, or at least as stringent as, those provided for in the said Directive and that the rate of the laying-up premium is calculated in accordance with the criteria provided for in the said Directive.

The aid from the Sicilian Region for the temporary laying-up of vessels, which is based on the provisions of Directive 83/515/EEC, cannot be considered as an application of that Directive in view of the provisions governing its grant.

The conditions for granting the Sicilian aid are similar to those in the Community Directive but less stringent. While the minimum normal number of days laid up fixed in advance increases each year, that number reaches the minimum flat-rate of 115 days fixed by the Directive only in the third year of application.

In view of the special situation of the Sicilian fleet and the impossibility of checking the period laid up actually observed in previous years or of assessing a period laid up on a flat rate by type of vessel and in view of the increasing effort which Sicilian fishermen must make over the years to obtain the aid in question, the conditions relating to the number of days laid up could possibly be accepted if the other conditions for the granting of the premium were also justified.

The real value of the vessels could be used instead of the purchase value or the insured value for calculating the amount of the laying-up premium if using the latter two values gave insignificant premiums, and consequently the objections sought by the aid measure in question were not achieved, and if the value used reflected the real situation on the market for vessels in the country concerned.

⁽¹⁾ OJ No C 268, 19. 10. 1985, p. 3.

The substantial rate of inflation in Italy and the age of the Sicilian fleet mean that the purchase value is unsuitable for calculating the laying-up premium. Practice in insuring small and medium-sized vessels in Italy does not allow that value to be used for calculating the premium either.

The value proposed by the regional authorities in Sicily is based on an estimate of the construction cost per grt by category of vessel (five groups between less than 15 grt and more than 150 grt), to which depreciation coefficients (three groups) apply, with a residual value of the vessels of 60 % of the new value, after 10 years.

According to information available to the Commission, costs per grt when new, as applied by the Sicilian authorities, do reflect the real situation recorded on the market in Italy and more particularly in Sicily. However, the depreciation coefficients have no real relationship with reality on the Italian market. The use of depreciation coefficients in the Sicilian scheme would lead to an increase in daily laying-up premiums over and above the level which is justified by economic realities of fisheries in Sicily as compared with the rest of the Community. A sample calculation shows that, for the vessels more than 10 years old, and using the coefficients proposed by Sicily, the premiums would be between 14 % and 166 % higher than acceptable premiums according to type and age.

Although the aid in question is based on Directive 83/515/EEC, it does not meet the requirements laid down in the latter nor the conditions laid down on the subject in the rules governing national aid in fisheries. Accordingly, the aid in question constitutes support for the liquidity position of the recipients, which has an immediate impact on competition, particularly because fishermen in the other Member States who are encouraged to discontinue fishing on a temporary basis under Directive 83/515/EEC or under a supplementary national aid scheme do not have access to the same advantages as Sicilian fishermen.

The consolidation of the competitive situation resulting from the aid provided for in the Regional Law introducing special measures for sea fishing in Sicily has negative effects on that of producers in the other Member States.

Intra-Community trade in fishery products intended for human consumption is considerable and represents approximately 30 % of the total quantities landed for human consumption in the Community as a whole. Furthermore, approximately 50 % of the Italian market for fishery products comes from its own landings, approximately 15 % from imports from the other Member States, and approximately 35 % from imports from third countries.

Lastly, Italy exports approximately 14 % of its production, of which approximately 50 % to other Member States (1984 figures). Moreover, the Sicilian Region is not

isolated as regards fisheries and has commercial links for fishery products with the rest of Italy and with foreign countries.

IV

As support measures financed from State funds consolidating the competitive position of Sicilian producers as compared with those of other Member States, the aid per gross register tonne and the aid for the temporary laying up of fishing vessels are subject to the provisions of Article 92 (1) of the EEC Treaty, which lays down the principle of the incompatibility with the common market of aid meeting the criteria laid down.

The exemptions provided for in Article 92 (3) of the Treaty, which are the only ones concerned in this case, relate to objectives pursued in the interest of the Community and not only in that of individual sectors of a national economy. Those exemptions must be interpreted strictly when any regional or sectoral aid programme or any individual case of application of general aid schemes is being examined. They may be granted only where the Commission can establish that the aid is necessary to achieve one of the objectives laid down in those provisions.

Granting such exemptions for aid not entailing a reciprocal contribution would be tantamount to allowing trade between Member States to be affected and permitting distortions of competition which the Community interest does not warrant.

The existence of such a reciprocal contribution could not be detected in this case and the Italian Government could not give, nor the Commission find, any justification to the effect that the aid in question meets the conditions required for the application of one of the exemptions provided for in Article 92 (3) of the Treaty.

It is not aid to promote or facilitate the development of certain regions, and consequently Article 92 (3) (a) and (c) of the Treaty does not apply as regards the regional aspect.

Nor does the aid constitute important projects of common European interest or measures to remedy a serious disturbance in the Italian economy, and consequently Article 92 (3) (b) of the Treaty does not apply.

As regards the exemption in favour of aid to facilitate the development of certain activities, the aid in question, which is intended to reduce certain operating costs, cannot have an economic development effect within the meaning of Article 92 (3) (c). Furthermore, the scale of intra-Community trade in fishery products does not enable the conditions of such trade to be considered as not being adversely affected to an extent contrary to the common interest.

Aid for owners of fishing vessels on the sole basis of the total number of grt of the vessels constitutes, in so far as it is aid to reduce the cost of certain capital goods, operating aid without any lasting effect on the economic situation of the recipients. Aid in the form of payment of a daily laying-up premium for vessels, in accordance with the rules laid down by the Sicilian regional authorities, must also be deemed aid to reduce the cost of certain capital goods and consequently constitutes operating aid without any lasting effect on the economic situation of the recipients.

In its Communication to the Council of 25 May 1978 on its policy on sectoral aid schemes, the Commission stated that temporary aids designed to remedy the social consequences of a crisis situation had to be linked to restructuring objectives in the sector concerned and made subject to action by the recipients to facilitate their adaptation. Similarly, in its Guidelines for the examination of State aid in the fisheries sector, it reiterated that operating aid to undertakings is in principle incompatible with the common market unless it is directly linked to a restructuring plan deemed compatible with the common market. That is not the case for the aids in question.

It follows from the above that the aid does not comply with the conditions laid down for the application of one of the exemptions provided for in Article 92 (2) or (3) of the EEC Treaty.

Although such illegal aid has probably been granted, this Decision is without prejudice to the conclusions which the Commission may draw, if necessary, regarding the recovery of the sums involved, in accordance with its letter to the Member States of 3 November 1983 on the

recovery of aid illegally granted, and in particular in respect of aid which may have been granted after the entry into force of this Decision (1).

HAS ADOPTED THIS DECISION:

Article 1

The aid per gross register tonne and the aid for the temporary laying-up of fishing vessels provided for in Sicilian Regional Laws Nos 40, of 30 May 1983, 95, of 16 November 1984, and 9, of 3 January 1985, providing for special measures for sea fishing introduced by the Italian Government in 1983, 1984 and 1985, are incompatible with the common market within the meaning of Article 92 of the EEC Treaty. The aid must consequently be abolished and may no longer be granted.

Article 2

Italy shall inform the Commission within one month from the date of notification of this Decision of the steps which it has taken to comply herewith.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 11 February 1987.

For the Commission

António CARDOSO E CUNHA

Member of the Commission

(1) OJ No C 318, 24. 11. 1983, p. 3.

CORRIGENDA

Corrigendum to Commission Regulation (EEC) No 2078/87 of 15 July 1987 amending Regulation (EEC) No 1956/87 as regards the coefficients to be applied to certain monetary compensatory amounts fixed in advance in the cereals sector

(Official Journal of the European Communities No L 195 of 16 July 1987)

Page 6, Annex, footnote (d), third subparagraph :

for: 'However, for products falling within subheadings 11.07 A II a), 11.07 A II b) and 11.07 B exported during August and September 1986 under the arrangements provided for in the final subparagraph of Article 16 (4) of Regulation (EEC) No 2727/75, the coefficients provided for in this Regulation shall not apply;,'

read: 'However, for products falling within subheadings 11.07 A II a), 11.07 A II b) and 11.07 B exported during July, August and September 1987 under the arrangements provided for in the final subparagraph of Article 16 (4) of Regulation (EEC) No 2727/75, the coefficients provided for in this Regulation shall not apply;,'
