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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 2060/90

of 16 July 1990

on transitional measures concerning trade with the German Democratic Republic in the agriculture and fisheries sector

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 28, 43 and 113 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽¹⁾,

Whereas the Federal Republic of Germany and the German Democratic Republic have concluded a treaty ('Staatsvertrag') for the immediate establishment of a monetary union and the progressive integration of the German Democratic Republic into the economic and social system of the Federal Republic of Germany and into the legal system of the Community in advance of the formal union of the two States;

Whereas the ('Staatsvertrag') states that the German Democratic Republic shall align its policies on the laws and objectives of the European Communities;

Whereas Article 15 of the 'Staatsvertrag' provides for the German Democratic Republic to suspend the collection of levies and the grant of refunds on trade with the Community in the agriculture sector provided that the Community does likewise;

Whereas, in view of the scheme introduced or to be introduced by the German Democratic Republic, the Community should adopt specific rules for agricultural products, whether or not processed;

Whereas it appears appropriate, in order to enable the Community's external arrangements to be adapted rapidly to developments in the German Democratic Republic, to confer upon the Commission the relevant implementing powers in accordance with the Management Committee procedure;

Whereas, as regards trade between the German Democratic Republic, on the one hand, and Spain and Portugal,

on the other, this Regulation shall apply with due regard to the relevant provisions of the Act of Accession,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation shall apply to the agricultural products listed in Annex II to the EEC Treaty and to goods resulting from the processing of agricultural products as referred to in Regulation (EEC) No 3033/80⁽²⁾, as last amended by Regulation (EEC) No 1436/90⁽³⁾.

Article 2

In so far as the Commission establishes, under the procedure laid down in Article 5, that the conditions of Article 3 are met, the collection of levies and the application of other charges, quantitative restrictions and measures having equivalent effect under the common arrangements for products and goods referred to in Article 1 shall be suspended, taking into account the relevant provisions of the Act of Accession of Spain and Portugal, in Community trade with the German Democratic Republic.

However, the Kingdom of Spain and the Portuguese Republic may maintain, with regard to the German Democratic Republic, the quantitative restrictions which relate to the products listed in Annex I to Council Regulation (EEC) No 288/82 of 5 February 1982 on common rules for imports⁽⁴⁾, as last amended by Regulation (EEC) No 3365/89⁽⁵⁾.

Article 3

1. The Commission is hereby empowered, under the procedure laid down in Article 5, to take the implementing measures with regard to Article 2:

⁽²⁾ OJ No L 323, 29. 11. 1980, p. 1.

⁽³⁾ OJ No L 138, 31. 5. 1990, p. 9.

⁽⁴⁾ OJ No L 35, 9. 2. 1982, p. 1.

⁽⁵⁾ OJ No L 325, 10. 11. 1989, p. 1.

⁽¹⁾ Opinion delivered on 13 July 1990 (not yet published in the Official Journal).

- (a) to the extent that the German Democratic Republic :
- establishes mechanisms similar to those of the common agricultural and fisheries policies or of the common trading system, and
 - takes, or is on the point of taking, measures guaranteeing free access for Community goods ;
- (b) having due regard to the effect of the mechanisms in question on the production and marketing of the products referred to in Article 1.

2. The first indent of paragraph 1 (a) shall be without prejudice to the German Democratic Republic's obligations under agreements with third countries, on condition that it takes measures with regard to products or goods from third countries to ensure that Community provisions concerning such countries are not circumvented.

Article 4

1. Notwithstanding Article 5, the measures suspended under Article 2 may be reintroduced by the Commission, either on its own initiative or at the request of a Member State, to the extent necessary to avoid disturbances likely to jeopardize achievement of the objectives of Article 39 of the EEC Treaty.

2. If the German Democratic Republic is led to take protective measures in order to avoid the free access of Community products or goods covered by this Regulation giving rise to serious difficulties in a sector of its economic activities, this will not prevent the application of Article 2, provided that such measures are applied in a uniform way to one or more categories of Community products or goods.

Article 5

The provisions for implementing this Regulation shall be adopted in accordance with the procedure laid down by Article 26 of Regulation (EEC) No 2727/75 ⁽⁶⁾, as last amended by Regulation (EEC) No 1340/90 ⁽⁷⁾, or the corresponding Articles of the other Regulations on the common organization of the agriculture and fisheries markets.

Article 6

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

The suspensory measures may become applicable with effect from 1 July 1990.

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

Done at Brussels, 16 July 1990.

For the Council

The President

G. DE MICHELIS

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 134, 28. 5. 1990, p. 1.

COMMISSION REGULATION (EEC) No 2061/90

of 19 July 1990

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 1340/90⁽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 1801/90⁽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 18 July 1990;

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 1801/90 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 20 July 1990.

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

Done at Brussels, 19 July 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.⁽²⁾ OJ No L 134, 28. 5. 1990, 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 167, 30. 6. 1990, p. 8.

ANNEX

to the Commission Regulation of 19 July 1990 fixing the import levies on cereals and on wheat or rye flour, groats and meal

(ECU/tonne)

CN code	Levies	
	Portugal	Third country
0709 90 60	36,66	139,33 ⁽²⁾ ⁽³⁾
0712 90 19	36,66	139,33 ⁽²⁾ ⁽³⁾
1001 10 10	11,90	163,16 ⁽¹⁾ ⁽⁵⁾
1001 10 90	11,90	163,16 ⁽¹⁾ ⁽⁵⁾
1001 90 91	20,22	146,22
1001 90 99	20,22	146,22
1002 00 00	45,72	119,30 ⁽⁶⁾
1003 00 10	36,95	125,00
1003 00 90	36,95	125,00
1004 00 10	28,59	106,60
1004 00 90	28,59	106,60
1005 10 90	36,66	139,33 ⁽²⁾ ⁽³⁾
1005 90 00	36,66	139,33 ⁽²⁾ ⁽³⁾
1007 00 90	53,63	144,00 ⁽⁴⁾
1008 10 00	36,95	37,87
1008 20 00	36,95	94,74 ⁽⁴⁾
1008 30 00	36,95	0,00 ⁽⁷⁾
1008 90 10	(7)	(7)
1008 90 90	36,95	0,00
1101 00 00	41,31	217,71
1102 10 00	77,01	180,16
1103 11 10	31,45	265,90
1103 11 90	44,61	235,12

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

⁽²⁾ In accordance with Regulation (EEC) No 715/90 the levies are not applied to products imported directly into the French overseas departments, 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 ECU 1,81/tonne.

⁽⁴⁾ Where millet and sorghum originating in the ACP or OCT is imported into the Community the levy is applied in accordance with Regulation (EEC) No 715/90.

⁽⁵⁾ Where durum wheat and canary seed produced in Turkey are transported directly from that country to the Community, the levy is reduced by ECU 0,60/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 (OJ No L 142, 9. 6. 1977, p. 10) and Commission Regulation (EEC) No 2622/71 (OJ No L 271, 10. 12. 1971, p. 22).

⁽⁷⁾ The levy applicable to rye shall be charged on imports of the product falling within CN code 1008 90 10 (triticale).

COMMISSION REGULATION (EEC) No 2062/90

of 19 July 1990

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 1340/90⁽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 1802/90⁽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 18 July 1990;

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 20 July 1990.

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

Done at Brussels, 19 July 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 134, 28. 5. 1990, 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 167, 30. 6. 1990, p. 11.

ANNEX

to the Commission Regulation of 19 July 1990 fixing the premiums to be added to the import levies on cereals, flour and malt

A. Cereals and flour

CN code	(ECU/tonne)			
	Current 7	1st period 8	2nd period 9	3rd period 10
0709 90 60	0	0	0	0
0712 90 19	0	0	0	0
1001 10 10	0	0	0	7,04
1001 10 90	0	0	0	7,04
1001 90 91	0	0	0	0
1001 90 99	0	0	0	0
1002 00 00	0	0	0	0
1003 00 10	0	0	0	0
1003 00 90	0	0	0	0
1004 00 10	0	0,70	0,70	0,70
1004 00 90	0	0,70	0,70	0,70
1005 10 90	0	0	0	0
1005 90 00	0	0	0	0
1007 00 90	0	0	0	0
1008 10 00	0	0	0	0
1008 20 00	0	0	0	0
1008 30 00	0	0	0	0
1008 90 90	0	0	0	0
1101 00 00	0	0	0	0

B. Malt

CN code	(ECU/tonne)				
	Current 7	1st period 8	2nd period 9	3rd period 10	4th period 11
1107 10 11	0	0	0	0	0
1107 10 19	0	0	0	0	0
1107 10 91	0	0	0	0	0
1107 10 99	0	0	0	0	0
1107 20 00	0	0	0	0	0

COMMISSION REGULATION (EEC) No 2063/90

of 19 July 1990

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 2902/89⁽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 4014/88⁽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 4015/88⁽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 4016/88⁽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⁾, as amended by the Act of Accession of Greece, 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 16 and 17 July 1990 leads to the minimum levies being fixed as indicated in Annex I to this Regulation;

Whereas the import levy on olives falling within CN codes 0709 90 39 and 0711 20 90 and on products falling within CN codes 1522 00 31, 1522 00 39 and 2306 90 19 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 20 July 1990.

⁽¹³⁾ OJ No L 331, 28. 11. 1978, p. 6.

⁽¹⁾ OJ No 172, 30. 9. 1966, p. 3025/66.

⁽²⁾ OJ No L 280, 29. 9. 1989, p. 2.

⁽³⁾ OJ No L 169, 28. 6. 1976, p. 24.

⁽⁴⁾ OJ No L 358, 27. 12. 1988, p. 1.

⁽⁵⁾ OJ No L 169, 28. 6. 1976, p. 43.

⁽⁶⁾ OJ No L 358, 27. 12. 1988, p. 2.

⁽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 358, 27. 12. 1988, p. 3.

⁽¹¹⁾ OJ No L 181, 21. 7. 1977, p. 4.

⁽¹²⁾ OJ No L 370, 30. 12. 1978, p. 60.

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

Done at Brussels, 19 July 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX I

Minimum import levies on olive oil

(ECU/100 kg)	
CN code	Non-member countries
1509 10 10	77,00 ⁽¹⁾
1509 10 90	77,00 ⁽¹⁾
1509 90 00	89,00 ⁽²⁾
1510 00 10	77,00 ⁽¹⁾
1510 00 90	122,00 ⁽³⁾

⁽¹⁾ For imports of oil falling within this CN code 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 : ECU 0,60 per 100 kg ;
- (b) Tunisia : ECU 12,69 per 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 : ECU 22,36 per 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 : ECU 24,78 per 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 CN code :

- (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 ECU 3,86 per 100 kg ;
- (b) produced entirely in Turkey and transported directly from that country to the Community, the levy to be collected is reduced by ECU 3,09 per 100 kg.

⁽³⁾ For imports of oil falling within this CN code :

- (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 ECU 7,25 per 100 kg ;
- (b) produced entirely in Turkey and transported directly from that country to the Community, the levy to be collected is reduced by ECU 5,80 per 100 kg.

ANNEX II

Import levies on other olive oil sector products

(ECU/100 kg)	
CN code	Non-member countries
0709 90 39	16,94
0711 20 90	16,94
1522 00 31	38,50
1522 00 39	61,60
2306 90 19	6,16

COMMISSION REGULATION (EEC) No 2064/90

of 17 July 1990

imposing a provisional anti-dumping duty on imports of linear tungsten halogen lamps originating in Japan

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

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

Whereas :

A. PROCEDURE

- (1) In March 1989, the Commission received a complaint lodged by the Liaison Group for the Mechanical Electrical and Electronic Engineering Industries (Orgalime) on behalf of producers whose collective output constituted substantially all Community production of linear tungsten halogen lamps. The complaint contained evidence of dumping of this product originating in Japan and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

The Commission accordingly announced, by a notice published in the *Official Journal of the European Communities*⁽²⁾, the initiation of an anti-dumping proceeding concerning imports into the Community of linear tungsten halogen lamps (hereafter referred to as LTH lamps), falling within CN code ex 8539 21 91, originating in Japan and commenced an investigation.

- (2) The Commission officially advised the exporters and importers known to be concerned, the representatives of the exporting country and the complainants and gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

Some exporters and some importers and all Community producers represented by the complainant made their views known in writing. Submis-

sions were also made by the 'Syndicat des Industries de l'éclairage électrique et de la régulation de trafic' in France, the 'Associazione nazionale industrie elettrotecniche ed elettroniche' in Italy and the European Lighting Council in Belgium.

- (3) The investigation of dumping covered the period from 1 July 1988 until 30 June 1989 (the investigation period).
- (4) The Commission sought and verified all the information it deemed to be necessary for the purpose of a preliminary determination and carried out investigations at the premises of the following :

(a) Community producers :

- Osram GEC Ltd, Wembley, United Kingdom
- Osram GmbH, Munich, Federal Republic of Germany, and its sales subsidiaries in Germany, France and Italy
- Philips lighting BV, Eindhoven, Netherlands, and its sales subsidiaries in France, the Netherlands and Italy
- Thorn Lighting Ltd, Enfield, United Kingdom

(b) Japanese producers/exporters :

- Iwasaki Electric Co. Ltd, Tokyo
- Phoenix Electric Co. Ltd, Kasai-City
- Sigma Corporation, Himeji City

(c) Japanese exporters

- Fuji Electric Lam Industrial Co. Ltd, Tokyo
- Miyakawa Corporation, Tokyo

- (5) The Commission requested and received detailed written and oral submissions from the Community producers represented by the complainant, the exporters named and a number of importers, and verified the information provided to the extent considered necessary.
- (6) Toshiba Lighting and Technology Corporation decided not to reply to the Commission's questionnaire.
- (7) Ushio Inc. claimed that it had not exported LTH lamps for illumination to the Community at any time.

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No C 183, 20. 7. 1989, p. 9.

- (8) Matsushita Electronics Corporation and Hitachi Ltd claimed that they had not exported the product concerned to the Community during the reference period.
- (9) Nagata Co. Ltd replied to the Commission's questionnaire but did not agree to an investigation by the Commission at its premises. Consequently, no account has been taken of this company's reply.

B. PRODUCT UNDER CONSIDERATION

(a) Definition of product

- (10) The products concerned by the proceeding are linear tungsten halogen lamps exceeding 100 watts, of 100 watts or more, double ended with R7s caps, of a kind used for illumination, falling within CN code ex 8539 21 91. The principal elements are the linear quartz tube, the tungsten filament, the gas and the two caps.

(b) Like product

- (11) LTH lamps are produced in the Community in different models according to their wattage. Since however all these models have the same basic application and perform the same basic function, i.e. indoor or outdoor floodlighting, regardless of their size and power and are, to a considerable degree, interchangeable, the whole range of models has to be considered as forming one single category of products. It was found that the Japanese exporters/producers offer the same range of models, and their basic technical and physical characteristics are identical.

The fact that the models sold in Japan have different voltages or that the Japanese models sold in Japan or exported to the Community have components, for example the filament, which differ somewhat from the models produced and sold by the Community producers concerned does not alter the similarity of the technology applied in production and of the identical nature of the basic physical and technical characteristics.

The Commission considered therefore that the LTH lamps with R7s caps produced and sold by the Community manufacturers which form one single category of product, constitute a product alike in almost all respects to the product imported from Japan in the meaning of Article 2 (12) of Regulation (EEC) No 2423/88.

- (12) Some exporters claimed that there were two distinct markets in the Community, based on the quality of the products: a 'high class' end-user

market on the one hand, to which the Community manufacturers sell most of their output and on the other hand a low priced mass market in which the Japanese exporters are active.

The Commission's investigation revealed, however, that there were no significant quality differences between LHT lamps produced in the Community and those sold in Japan or imported in the Community significant enough to make these products different from each other. In addition, it was found that both Japanese and Community manufacturers sold similar products on the same Community market. The Japanese sold mostly to distributors while the Community industry sold more to dealers. They both also sold to 'fitting manufacturers'. It cannot be inferred from the mere fact that there are different kinds of customers that therefore the products and the markets are different.

(c) Scope of the investigation

- (13) Some exporters argued that in the complaint no allegations of dumping or injury had been made concerning LTH lamps below 200 watts or above 500 watts. It should be pointed out that both the complaint and the notice of initiation referred explicitly to all types of LTH lamps of 100 watts and over. Moreover, the evidence contained in the complaint concerning dumping related to the range between 200 and 500 watts because it was considered to represent the greatest proportion of the whole range of lamps covered by the complaint. In addition, the supporting evidence related to material injury or threat of injury covering the whole range of LTH lamps for 100 watts and over. For the reasons outlined above the Commission is of the opinion that the scope of the investigation should not be restricted to lamps between 200 and 500 watts.

C. DUMPING

(a) Normal value

(i) Domestic prices

- (14) All producers/exporters investigated reported limited domestic sales of LTH lamps. To determine whether domestic sales may be considered sufficiently representative as a basis for normal value the Commission has established in previous cases that domestic sales of comparable models should be at least 5 % in volume of the quantities exported to the Community. This practice has been developed to ensure legal certainty in cases where domestic sales are small in comparison to export sales.

- (15) It was found that during the investigation period only one company had sold two of its models on the domestic market in volumes exceeding 5 % of quantities exported to the Community. This company, however, argued that the number of units sold on the domestic market should be adjusted downwards by deducting the quantities relating to a number of 'negative transactions', the effect of which being a reduction in the number of units sold domestically to a level just below 5 % of the exported quantities. Under the name 'negative transactions', the company concerned included several cases in which sales made in the ordinary course of trade were cancelled or postponed for a variety of reasons. Errors, return of goods because of bad quality, cancellation of sales orders, transfer of sales from one period to another were mentioned. In the great majority of these cases, however, the sales concerned had been made unconditionally and were only subsequently subject of a claim. Therefore, the Commission considered that the alleged 'negative transactions' were not of such a nature as to make the sales concerned unreliable and that they reflected normal conditions of supply and demand in Japan. Accordingly, it was considered that domestic sales of the two models concerned represented more than 5 % of the volume of these models exported to the Community and that, therefore, they were sold in sufficient numbers for a viable market for the two models of LTH lamps in question to exist in Japan. They constitute therefore an appropriate basis for the determination of normal value.
- (16) It has been alleged that the quantities sold in Japan of the two models mentioned above were very small in relation to the total quantities exported to the Community and that the demand in Japan for LTH lamps is limited and irregular. Certain exporters contested also the representativity of the prices charged for the two models in question.
- (17) The Commission is of the opinion that it is necessary to compare domestic sales with exports to the Community on a model by model basis rather than on the basis of all sales, especially because the particularities of the product require a different normal value to be calculated for each model. The fact that the demand in Japan for LTH lamps may be limited and irregular is not a sufficient reason to consider the sales made and the prices charged on the Japanese market as unrepresentative if it is shown that, for at least some models, the above-mentioned 5 % threshold was reached. Finally, the Commission notes that the price levels at which these sales were made in Japan have been confirmed by price lists and actual prices of other Japanese producers which did not export to the Community whose domestic sales considerably exceeded the domestic sales of the company in question. The Commission consequently concluded that the results of the application of the 5 % threshold were fully in line with the actual domestic price situation during the investigation period and that the domestic prices of the two models formed a justifiable basis of comparison with the export prices to the Community.
- (18) Since the domestic sales of two models exceeded 5 % of the quantities exported to the Community, the Commission consequently established, for the sole producer/exporter concerned, normal value of the two models concerned on the basis of the weighted average domestic price of all sales of these models to independent customers.
- (19) It was established that two other producer/exporters did not have domestic sales of any model of LTH lamps reaching 5 % of the quantities exported to the Community. For the two models referred to in recital 18 which were also sold for export to the Community by these two remaining producers/exporters, normal value was established in accordance with Article 2 (3) (a) of Regulation (EEC) No 2423/88, i. e. on the basis of the price actually paid in ordinary course of trade for the like product introduced for consumption in Japan. These prices are those described in recital (18).
- (ii) *Constructed normal value*
- (aa) *For own brand sales*
- (20) Where models comparable to those sold for export were not sold or were not sold in sufficient quantities (i. e. less than 5 % of quantity exported) during the reference period, the commission determined normal value on the basis of constructed value. The constructed values were calculated by taking all costs, both fixed and variable, in the country of origin, of materials and manufacture plus selling, administrative and other general expenses (SG&A) and a reasonable margin for profit. The amounts used in the constructed values for SG&A and profit were, for the producer/exporter which sold representative quantities of two models in Japan, the weighted averages of the expenses incurred and profit realized by this producer/exporter by its domestic sales of these two models, and for the other producer/exporter which did not have domestic sales of any models, by reference to the weighted average of the expenses incurred and profit realized by the producer/exporter selling the product concerned on its domestic market.

(21) One exporter claimed that its domestic sales were mostly to dealers, while its export sales were to distributors. The exporter claimed that an allowance should be made to take account of the difference in the level of trade between domestic and export sales. However, since it was not demonstrated that the functions of the distributors were distinct from those of the dealers, and that these differences were clearly reflected in the quantities sold, in the pricing policy and also in the pattern of prices found on the domestic market, the Commission did not agree with the argument in question.

(22) One producer/exporter which did not have sufficient domestic sales of LTH lamps proposed that the normal value be constructed on the basis of the SG & A expenses and profit made on its sales in Japan of a different type of halogen lamp called the JD lamp. The company argued that JD lamps should be considered like products to the LTH lamps covered by the investigation. In view of the existence of sales on the Japanese market of LTH lamps the Commission is of the opinion that the JD lamp which has different characteristics to the exported LTH lamp is not a like product for the purposes of the application of Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88. That Article explains clearly the method to be applied in cases where a producer/exporter does not have any or insufficient domestic sales of the like product on its domestic sales. The constructed value to be calculated in such a case should include, in addition to costs of materials and manufacture, SG & A expenses and a margin for profit. The question raised here is which expenses and profit should be used for this purpose. In this particular case, the abovementioned Article is very clear since it refers to the expenses incurred and profit realized on the sale of the like products by other producers or exporters in the country of origin. Since one of the producers/exporters concerned had sufficient domestic sales of two of its models, the Commission followed the requirements of the Regulation strictly by including in the constructed value of the models not sold in sufficient quantities on the domestic market the expenses incurred and profit realised by another producer on its domestic sales of LTH lamps.

(23) The other producer/exporter which also had insufficient sales of LTH lamps on the domestic market proposed that the SG & A and profit made on its export sales of LTH lamps should be used to calculate constructed value. This method was not accepted since, according to the provisions of Article 2 (3) (b) (ii) of Regulation (EEC) No

2423/88, the constructed value should include SG & A and profit realized on profitable sales of like products sold on the domestic market and not, as proposed by the company, the SG & A and profits relating to export sales. This producer/exporter, in the absence of any sufficient domestic sales, is in fact in the same situation as the exporter/producer mentioned under recital (22). The constructed value has therefore been established in exactly the same manner for these two producers/exporters.

(bb) For sales to OEM customers

(24) All Japanese producer/exporters claimed that they made no sales to original equipment manufacturers (OEMs) on their domestic market whereas their exports to the Community were mainly to OEM customers. They requested a different normal value to be used for these sales. The Commission, for the purpose of its preliminary findings, accepted that these customers had functions similar to producers which were distinct from those of other categories of unrelated purchasers and that these different functions were reflected, for the market concerned, in the quantities sold and in the pattern of prices. It was considered that a reasonable estimate should be made of the differences which could exist between own brand and OEM prices if sales of the latter had taken place on the Japanese market. Accordingly, when constructing normal values for comparison with the OEM export prices, the Commission provisionally applied a profit rate which corresponded to 50 % of that realized on the exporter's domestic brand sales or, if the exporter had no such sales, 50 % of the average profit made by the sole producer/exporter concerned.

(b) Export price

(25) All producer/exporters exported to the Community either directly to independent customers or through a trading company in Japan. Export prices were therefore determined on the basis of the prices actually paid or payable for the LTH lamps sold for export to the Community to independent Community customers or Japanese trading companies.

E. COMPARISON

(26) For the purpose of a fair comparison between normal value and export prices, due allowance in the form of adjustments was made in accordance with Article 2 (9) and (10) of Regulation (EEC) No

2423/88, to both the export price and the normal value for the differences affecting price comparability.

- (27) As regards differences in physical characteristics, claims for allowances were granted for differences between domestic and export models. Adjustments were made where the effect on market values of such differences could be adequately demonstrated.
- (28) As regards salesmen's salaries, several producer/exporters had claimed costs for salesmen for whom it could not be demonstrated that they were wholly engaged in direct selling activities. An allowance was therefore granted in each case to the extent that satisfactory supporting evidence was submitted.
- (29) Allowances were also claimed for transportation, handling and storage in Japan. It was, however, established that these costs were not all directly related to the sales under consideration. The allowances claimed were consequently reduced to the directly related portion of each expense.

F. DUMPING MARGIN

- (30) Normal values were compared with the export prices on a transaction by transaction basis. The preliminary examination of the facts shows the existence of dumping in respect of LTH lamps originating in Japan for all the exporters investigated, the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export to the Community.

- (31) The margins of dumping vary according to the exporter and the weighted average margins expressed as a percentage of the cif prices were as follows :

Iwasaki Electric Co. Ltd	146,9 %
Phoenix Electric Co. Ltd	97,3 %
Sigma Corporation	123,1 %

- (32) For the exporters which neither replied to the Commission's questionnaire nor otherwise made themselves known, dumping was determined on the basis of the facts available in accordance with the provisions of Article 7 (7) (b) of Regulation (EEC) No 2423/88. The Commission considered that the results of its investigation provided the most appropriate basis for determination of the margin of dumping and that it would create an opportunity for circumvention of the duty that the dumping margin for these exporters was any lower than the highest dumping margin of 146,9 % determined with regard to an exporter who had cooperated in the investigation. For these reasons,

it is considered appropriate to use this latter dumping margin for this group of exporters.

G. INJURY

(a) The Community market for LTH lamps

- (33) The Commission based its calculation of the Community consumption on the results of its investigation which revealed accurate sales figures of Community producers and of the cooperating Japanese exporters. In the absence of separate official statistics for LTH lamps, it was considered reasonable that the figure thus calculated be increased by an estimated 10 % to take account of imports from countries other than Japan and from the Japanese producer/exporters which did not reply to the Commission's questionnaire. On this basis the consumption of LTH lamps in the Community increased from 5 400 000 units in 1985 to 22 200 000 units during the investigation period, i.e. an increase of more than 300 %.

(b) Volume and market share of dumped imports

- (34) Between 1985 and the investigation period imports of LTH lamps from Japan increased from 1 800 000 units to 13 464 000 units, i.e. an increase of more than 640 %. In terms of market share the Japanese exporters' share of the Community market increased from 33 % in 1985 to more than 60 % during the investigation period.

(c) Volume and market share of the Community producers

- (35) The Community producers' sales in the Community increased from 3 086 000 units in 1985 to 6 536 000 units during the investigation period. Although this represents an increase of more than 110 %, the percentage should be compared with the spectacular increase of Japanese imports indicated above and with the growth of the consumption in the Community. The Community producers' share of the EEC market decreased from 56 % in 1985 to 29 % during the investigation period.

(d) Prices

- (36) The Commission investigated the development of prices charged by all Community producers concerned and came to the conclusion that there was a 21 % price level erosion between 1985 and the investigation period.
- (37) As regards the price development of Japanese lamps, it was found that the Japanese export prices, which were already significantly below the

Community industry's prices in 1985, decreased, despite this difference, by a further 17,6 % from 1985 to the end of the investigation period.

- (38) In addition, the Commission investigated to what extent the prices practised by the Japanese exporters undercut the prices of Community producers during the investigation period. Some exporters claimed that for the purpose of such price comparison an allowance should be made to take account of the lower cost of production of the Japanese producers, which would justify, in their opinion, lower prices. The Commission could not accept this claim since the existence of price undercutting depends on a difference between the prices charged on the Community market, as provided for in Article 4 (2) (b) of Regulation (EEC) No 2423/88, and not on the costs involved. However, the Commission provisionally agreed to make an adjustment to take account of the fact that the Community producers sold mostly to dealers while the Japanese exporters sold mostly to fitting manufacturers and distributors. The Commission provisionally established this adjustment on the basis of the information available concerning dealers' margins in this business sector.

- (39) On this basis, the price undercutting by the Japanese exporters varied, according to the exporter concerned, between 26,6 % and 31,9 %. On a weighted average basis the price undercutting amounted to 30,57 %.

(e) Other relevant economic factors

(i) Production, production capacity, utilization and stocks

- (40) The Commission found that the production of the Community industry increased by 72 % from 5 086 000 units in 1985 to 8 739 000 units during the investigation period, while the increase in production capacity and in utilization of production capacity was about 53 % and 8 % respectively during the same period. Stocks held by the EEC industry went from 928 000 units in 1985 to 2 215 000 units in June 1989.
- (41) The increase in production, capacity and capacity utilization should be compared with the development of consumption in the Community which increased by more than 300 %. Although some of the manufacturers concerned, despite low and further decreasing prices on the market, made investments in new production capacity to meet the growing demand, they were clearly unable to follow the expansion of the market and lost considerable market share (see recital (35)).

(42) (ii) Profitability

Three of the Community producers concerned continuously made losses since 1985, and from 1987 onwards they were all operating at a loss. Although for some producers the losses decreased slightly during the reference period, the Commission is of the opinion that the continuous losses made since 1985 which amounted to 16 % on average during the investigation period, have seriously affected the viability of the industry concerned.

(iii) Employment

- (43) The number of people employed by the Community industry increased by 30 % from 1985 to June 1989. This increase in number of employees is small in relation to the growth of the Community market. In addition the total employment of the LTH lamp industry is seriously at stake in view of the continuous losses suffered.

(f) Conclusions

- (44) To determine whether the Community industry concerned suffered material injury the Commission took account of the following factors:
- imports from Japan increased at an extremely rapid rate, i.e. by more than 640 % between 1985 and the investigation period,
 - while the production and sales of the Community industry increased between 1985 and mid 1989, this development did not follow the considerable increase in consumption which took place during the same period. In fact, the growth of the Community market by more than 300 % contrasts with the decrease of the Community producers' market share from 57 % to 29 %. At the same time, stocks held by the Community producers increased considerably,
 - the Community producers' selling prices suffered from significant depression since 1985 leading to sales at prices below cost of production and continuous financial losses. Significant prices undercutting was also established during the investigation period,
 - the effect of the abovementioned decrease of market share in a growing market is reflected in the absence of any meaningful economies of scale.
- (45) The abovementioned loss in market share, price depression and continuous financial losses over several years led the Commission to the conclusion that for the purpose of its preliminary findings, the Community's industry suffered material injury within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88.

H. CAUSATION

(a) Effect of dumped imports

- (46) In its examination of the extent to which the material injury suffered by the Community LTH lamp industry was caused by the effects of the dumping described above, the Commission found that the loss of market share by the Community industry coincided perfectly in time and in percentage with the increase in market share held by the Japanese exporters. With only a few relatively unimportant other suppliers present on the market during the investigation period considered, the Japanese exporters obtained almost exactly the market share which the Community industry lost, i.e. about 28 %.
- (47) The lowering of export prices, which were already significantly below the prices of the Community industry since 1985, exerted a continuous downward pressure on prices of LTH lamps in the Community. This led the Community industry to decrease its price to levels below its cost of production. This development did not prevent the Community industry from losing important market share, causing an increase of its production costs, depriving it of the possibility to realize economies of scale and thus leading to considerable financial losses. The Commission therefore considers that the considerable material injury suffered by the Community industry is directly linked to the sales made by the Japanese exporters in the Community at dumped prices.

(b) Effect of other factors

- (48) The Japanese producer/exporters and some importers alleged that other third countries, especially the People's Republic of China, had exerted considerable price pressure during the investigation period through price quotations below the prices of Japanese imports. The exporters concerned produced only one single quotation from a Chinese exporter which fell within the investigation period. The prices indicated in this quotation were not lower than the prices charged by the Japanese exporters. While no information is available as to whether this offer gave rise to an actual sale, it is in any event not sufficient to conclude that there would have been price depression on this basis. When asked to comment on this allegation of price depression by the Chinese exporters, the Community industry indicated that, to the best of its knowledge, no sizeable sales of Chinese LTH lamps had been made. The Commission consequently did not consider the Chinese exports to be a factor having affected the Community industry until the end of the investigation period.

- (49) Some exporters argued that injury was not caused through the effect of dumping but by the higher productivity of the Japanese exporters and claimed that full account should be taken of the Japanese productive advantage of these exporters. They also alleged that there were differences in the manufacturing technology between the LTH lamps produced in the Community and produced in Japan. It was also submitted that the Community industry would not produce in sufficient quantities allowing to reach optimal costs, unlike the Japanese producers who benefitted from economies of scale. They further claimed to purchase raw materials at significantly lower prices in view of the larger quantities purchased. Moreover, the labour cost would be significantly lower than in the Community because of an alleged higher degree of automation.

- (50) The Commission disagrees with this opinion. Costs advantages of an exporter are relevant in an anti-dumping proceeding only in so far as they are reflected without any discrimination in export as well as in domestic prices. This was not the fact in the present case. In addition, the alleged lower manufacturing cost of Japanese exporters was affected by economies of scale, which resulted from the vast quantities exported to the Community. These exports were found to have been sold at dumped prices during the investigation period. The cost advantages of the Japanese exporters are therefore influenced by the established dumping practices.

- (51) The investigation revealed no factors other than dumped imports which caused material injury to the Community industry. All these elements led the Commission to determine that the effects of dumped imports of LTH lamps originating in Japan, taken in isolation, have to be considered as causing material injury to the Community industry.

I. COMMUNITY INTEREST

(a) General considerations

- (52) The purpose of the imposition of anti-dumping duties is to eliminate dumping practices which cause injury to an industry in the Community and to re-establish a situation of fair competition on the Community market. This is undoubtedly in the general interest of the Community.
- (53) The imposition of anti-dumping duties may have an upward effect on the export prices from Japan, but only to the extent deemed necessary to eliminate the injurious effects of dumping. Since the demand for LTH lamps in the Community largely exceeds the existing production capacity of the Community industry considerable space is left for

imports from third countries. The re-establishment of fair market conditions will therefore not have the consequence of excluding foreign competition on this market.

- (54) The Commission also examined the effect of the imposition of anti-dumping duties on the imports of LTH lamps from Japan on the specific interests of the Community industry and other interested parties including consumers.

(b) Interests of the Community industry

- (55) The Commission is of the opinion that the continued viability of the industry is at risk in view of the considerable loss of market share and profitability unless measures are taken to protect this industry from dumped imports which have been the cause of the material injury suffered. The closure of plants in this industry would lead to the loss of several hundred jobs.
- (56) It should also be borne in mind that LTH lamps are part of a whole range of lighting products. The investigation showed that the huge volumes exported at dumped prices allowed the Japanese exporters to obtain, in a short time, a leading position in the halogen lamp market segment. This position could be used to penetrate other segments of the lighting industry, rendering it more vulnerable in other sectors, thus extending the injury already established for LTH lamps with further inevitable negative effects on the financial results and on the employment in the lighting industry as a whole.
- (57) Once fair competition is established the Community industry would be in a position to regain market share in the Community and thus benefit from the same economies of scale as the Japanese exporters and consequently become more competitive. As long as the return on investment remains negative it is unlikely that the European industry would increase its marketing efforts or make the new investments required to reduce their manufacturing cost unless measures are taken to ensure protection against these unfair commercial practices. The Commission consequently considered it necessary and in the interest of the Community to preserve the viability of the Community industry of LTH lamps.

(c) Interests of other parties

- (58) The Commission received no submissions from end-users nor from fittings makers in the Community. However, some exporters argued that anti-dumping measures would lead to significant price increases for the consumer and would increase costs and affect competitiveness of the fittings makers

in the Community which incorporate LTH lamps in the fixtures they produce.

- (59) The Japanese exporters acquired 60 % of the Community market in a relatively short period by practising dumping. Unless measures are taken this trend is likely to continue and will almost certainly cause the Community industry to disappear. While low prices may be in the consumer's interest, it cannot in the longer term be to his advantage to see the supply of LTH lamps to the Community market restricted to virtually one single source of supply which would consequently reduce competition and thus probably lead in the medium and long term to higher prices. On the other hand, if fair competition is ensured, the possibility of a general price decrease exists.
- (60) Concerning the interests of the fittings manufacturers in the Community, while no evidence was received from the exporters to substantiate the suggestion that the cost of the LTH lamps would represent a significant part of the cost of the fitting in which the lamp is incorporated, the Commission considers that the fittings makers as consumers of LTH lamps are equally served by the elimination of unfair practices.

(d) Other considerations

- (61) Some exporters also argued that it would not be in the Community's interest to take action against Japanese imports since Chinese imports were likely to replace the Japanese imports. They claimed that the measures would consequently not benefit the Community producers, may even threaten to injure them and would discriminate against Japanese exporters.
- (62) As explained in recital (47), the Commission received no evidence that Chinese imports had arrived in the Community in any significant quantities before the end of the investigation period. The evidence submitted by the exporters for the period subsequent to the investigation period consisted of one invoice and two quotations for LTH lamps originating in China which showed prices below those of Japanese imports. The Commission considered that this allegation was not supported by sufficient substantiating evidence and does not affect the necessity of taking measures in order to protect not only the Community industry but also the producer/exporter from any third country if they are not selling on the Community market at dumped prices.

Should it be demonstrated at a later stage that Chinese exports to the Community were effectively made at dumped prices and caused material injury to the Community industry, the Commission would have to consider whether it was necessary to

envisage measures. At the present stage, the uncertainty of such a development does not make it necessary for the Commission to act.

(e) Conclusion

- (63) Having considered the various arguments of the exporters, the Commission considers that it is in the Community's general interest to eliminate the injurious effects of the dumped imports and that the benefits of such protection clearly outweigh any short term effects, particularly on price.

J. DUTY

- (64) In order to eliminate the injury suffered by the Community industry, in particular the need to return as soon as possible to a profitable situation in order to guarantee their survival, it is considered necessary that the measures taken allow the industry concerned to obtain a minimal profit and the economies of scale it has been deprived of through the effects of imports at dumped prices.
- (65) Consequently, it is essential that the provisional duties to be imposed should cover the difference between Japanese LTH lamps prices and the minimum price required for the Community industry to cover its costs and to make a reasonable profit.
- (66) In the circumstances of the industry concerned and for the purpose of provisional determination, the Commission considers that an adequate annual return, based on the normal profit rate of this industry and the need of investments allowing a balanced long term development, should be 10 % on turnover before tax. On this basis and taking account of the considerations of price comparability as set out in recital (38), the Commission established a minimum price with which the weighted average import prices of each Japanese exporter was compared.
- (67) To determine the level of the duty the price differences thus established have been expressed as a percentage of the weighted average cif value. The result of this calculation leads to the following provisional anti-dumping duties to be imposed for each exporter in order to eliminate the injury suffered:

— Iwasaki :	71,7 %
— Phoenix :	84,2 %
— Sigma :	85,4 %

- (68) Since the dumping margins found for all the exporters concerned exceed the injury level the above duties will be imposed in accordance with Article 13 (3) of Regulation (EEC) No 2423/88.
- (69) For those companies which neither replied to the Commission questionnaire nor otherwise made themselves known, the Commission considered it

appropriate to impose the highest duty calculated, i.e. 85,4 %. Indeed, it would constitute a bonus for non-cooperation to hold that the duties for these producer/exporters were any lower than the highest anti-dumping duty determined.

- (70) A period should be fixed within which the parties concerned may make their views known and request a hearing. Furthermore, it should be stated that all findings made for the purpose of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty which the Commission may propose.

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty of 85,4 % of the net free at Community frontier price before duty is hereby imposed on imports of linear tungsten halogen lamps corresponding to CN code ex 8539 21 91 (Taric code: 8539 21 91 91) originating in Japan (Taric additional code: 8462).
2. The rate of the duty for the products manufactured by the following companies shall be:
 - Iwasaki Electric Co. Ltd: 71,7 % (Taric additional code: 8640)
 - Phoenix Electric Co. Ltd: 84,2 % (Taric additional code: 8641)
3. The duty specified in paragraphs 1 and 2 shall apply only to linear tungsten halogen lamps exceeding 100 volts, of 100 watts or more, double ended with R7s caps of a kind used for illumination.
4. The provisions in force concerning customs duties shall apply.
5. The release for free circulation in the Community of the products referred to in paragraphs 1 and 3 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 7 (4) (b) of Regulation (EEC) No 2423/88, the parties concerned may make known their views in writing and apply to be heard orally by the Commission within one month of the date of 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 13 of Regulation (EEC) No 2423/88, Article 1 of this Regulation shall apply for a period of 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, 17 July 1990.

For the Commission

Frans ANDRIESSEN

Vice-President

COMMISSION REGULATION (EEC) No 2065/90

of 19 July 1990

providing for the grant of compensation to producers' organizations in respect of tuna delivered to the canning industry during the period 1 July to 30 September 1989

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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 Regulation (EEC) No 1495/89⁽²⁾, and in particular Article 17a (10) thereof,

Whereas the compensation referred to in Article 17a of Regulation (EEC) No 3796/81 is granted, under certain conditions, to Community tuna producers' organizations in respect of quantities of tuna delivered to the canning industry, during the calendar quarter for which prices were recorded, where the average quarterly price recorded on the Community market and the free-at-frontier price are both lower than 93 % of the Community producer price for the product in question;

Whereas examination of the situation on the Community market has shown that for some species and presentations of the product in question, for the period 1 July to 30 September 1989, both the average quarterly market price and the free-at-frontier price referred to in Article 17a of Regulation (EEC) No 3796/81 were lower than 93 % of the Community producer price in force as laid down in Council Regulation (EEC) No 3862/88 of 9 December 1988 fixing the Community producer price for tuna intended for the industrial manufacture of products falling within CN code 1604⁽³⁾;

Whereas the quantities eligible for compensation, within the meaning of Article 17a (2) of Regulation (EEC) No 3796/81, may not under any circumstances exceed, for the quarter concerned, the limits laid down in paragraph 4 of that Article;

Whereas, in the case of albacore weighing more than 10 kilograms and skipjack, none of these limits is exceeded and, consequently, there is no need to determine the maximum quantities in respect of which the allowance may be granted;

Whereas, on the other hand, during the quarter concerned the quantities of albacore weighing not more than 10 kilograms, sold and delivered to canning industries established in Community customs territory were

higher than 110 % of the quantities sold and delivered during the same quarter of the fishing years 1984 to 1986; whereas these quantities exceed the limits set in the third indent of Article 17a (4) of Regulation (EEC) No 3796/81, the total quantities of these products should therefore be limited to those eligible for compensation and the quantities granted to each producers' organization concerned should be determined in accordance with their respective output during the same quarter of the 1984 to 1986 fishing years;

Whereas, in accordance with Commission Regulation (EEC) No 2381/89 of 2 August 1989 laying down detailed rules for granting compensation for tuna for the canning industry⁽⁴⁾, the granting of compensation for the products in question should be decided for the period from 1 July to 30 September 1989;

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

HAS ADOPTED THIS REGULATION:

Article 1

The compensation referred to in Article 17a of Regulation (EEC) No 3796/81 shall be granted for the period 1 July to 30 September 1989, in respect of the products listed and within the limits set out below:

(ECU/tonne)	
Products	Maximum amount of allowance within the meaning of the first and second indents of Article 17a (3) of Regulation (EEC) No 3796/81
Albacore tuna, whole, weighing more than 10 kilograms	137
Albacore tuna, whole, weighing not more than 10 kilograms	127
Skipjack or stripe-bellied tuna, whole	89

⁽¹⁾ OJ No L 379, 31. 12. 1981, p. 1.

⁽²⁾ OJ No L 148, 1. 6. 1989, p. 1.

⁽³⁾ OJ No L 345, 14. 12. 1988, p. 6.

⁽⁴⁾ OJ No L 225, 3. 8. 1989, p. 33.

Article 2

1. The total quantities of albacore weighing not more than 10 kilograms that may be eligible for the allowance are hereby limited to 3 313 tonnes.
2. These quantities shall be allocated among the producers' organizations concerned in accordance with the Annex hereto.

Article 3

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, 19 July 1990.

For the Commission

Manuel MARÍN

Vice-President

ANNEX

Allocation among the producers' organizations of albacore weighing not more than 10 kilograms that may be eligible for compensation and calculation of the maximum amount thereof in accordance with Article 17a (6) of Regulation (EEC) No 3796/81

(tonnes)

Producers' organization	Quantities that may be eligible for the allowance			Total quantities
	100 % Article 17a (6), first indent	95 % Article 17a (6), second indent	90 % Article 17a (6), third indent	
Organización de Productores Asociados de Grandes Congeladores (Opagac)	1 711	74	—	1 785
Organización de Productores de Túnidos Congelados (Optuc)	744	74	283	1 101
Organisation de Producteurs de thon congelé (Orthongel)	427	—	—	427
Total quantities (tonnes)	2 882	148	283	3 313

COMMISSION REGULATION (EEC) No 2066/90

of 19 July 1990

on the consequences of the non-fixing of a rate of refund on certain agricultural products exported to the German Democratic Republic in the form of goods not covered by Annex II to the Treaty

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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 3879/90 ⁽²⁾, and in particular Article 17 (4) thereof, and the corresponding provisions of certain other Regulations establishing a common organization of the markets in agricultural products,

Whereas, in accordance with Commission Regulation (EEC) No 1630/90 of 18 June 1990 fixing the rates of the refunds applicable to eggs and egg yolks exported in the form of goods not covered by Annex II to the Treaty ⁽³⁾, it was decided not to fix any refund on products exported to the German Democratic Republic; whereas this differentiation regarding the refund should not be taken into account for the application of certain agricultural Regulations;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committees concerned,

HAS ADOPTED THIS REGULATION:

Article 1

The non-fixing of a rate of refund for certain agricultural products exported to the German Democratic Republic in the form of goods not covered by Annex II to the Treaty shall not be taken into account for the application of Article 16 of Commission Regulation (EEC) No 3665/87 ⁽⁴⁾ or the application of Articles 4 (7) and 5 (3) of Council Regulation (EEC) No 565/80 ⁽⁵⁾.

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 to exports in respect of which the export declaration was accepted on or after 19 June 1990.

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

Done at Brussels, 19 July 1990.

For the Commission

Martin BANGEMANN

Vice-President

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 378, 27. 12. 1989, p. 1.

⁽³⁾ OJ No L 153, 19. 6. 1990, p. 5.

⁽⁴⁾ OJ No L 351, 14. 12. 1987, p. 1.

⁽⁵⁾ OJ No L 62, 7. 3. 1980, p. 5.

COMMISSION REGULATION (EEC) No 2067/90

of 19 July 1990

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 1340/90 ⁽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 destination;

Whereas, in view of the present circumstance in the German Democratic Republic and their effects on the market situation, no refund should be fixed for products to be exported to that destination;

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 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 ⁽⁶⁾, as last amended by Regulation (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 relation 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, 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 Cereals,

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 134, 28. 5. 1990, p. 1.

⁽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.

HAS ADOPTED THIS REGULATION:

The refund on export to Portugal and the German Democratic Republic has not been fixed.

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.

Article 2

This Regulation shall enter into force on 20 July 1990.

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

Done at Brussels, 19 July 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX

to the Commission Regulation of 19 July 1990 fixing the export refunds on cereals and on wheat or rye flour, groats and meal

(ECU/tonne)

Product code	Destination (1)	Amount of refund
0709 90 60 000	—	—
0712 90 19 000	—	—
1001 10 10 000	—	—
1001 10 90 000	01	0
1001 90 91 000	—	—
1001 90 99 000	04	30,00
	05	30,00
	06	23,00
	07	25,00
	02	20,00
1002 00 00 000	03	30,00
	05	30,00
	02	20,00
1003 00 10 000	—	—
1003 00 90 000	04	30,00
	02	20,00
1004 00 10 000	—	—
1004 00 90 000	—	—
1005 10 90 000	—	—
1005 90 00 000	03	70,00
	02	0
1007 00 90 000	—	—
1008 20 00 000	—	—
1101 00 00 110	01	105,00
1101 00 00 120	01	105,00
1101 00 00 130	01	93,00
1101 00 00 150	01	86,00
1101 00 00 170	01	81,00
1101 00 00 180	01	73,00
1101 00 00 190	—	—
1101 00 00 900	—	—
1102 10 00 100	01	105,00
1102 10 00 200	01	105,00
1102 10 00 300	01	105,00
1102 10 00 500	01	105,00
1102 10 00 900	—	—
1103 11 10 100	01	184,00
1103 11 10 200	01	174,00
1103 11 10 500	01	156,00
1103 11 10 900	01	147,00
1103 11 90 100	01	105,00
1103 11 90 900	—	—

(¹) The destinations are identified as follows :

- 01 All third countries,
- 02 Other third countries,
- 03 Switzerland, Austria and Liechtenstein,
- 04 Switzerland, Austria, Liechtenstein, Ceuta and Melilla,
- 05 Zone II (b),
- 06 Morocco,
- 07 Algeria.

NB: The zones are those defined in Commission Regulation (EEC) No 1124/77 (OJ No L 134, 28. 5. 1977, p. 53), as last amended by Regulation (EEC) No 3049/89 (OJ No L 292, 11. 10. 1989, p. 10).

COMMISSION REGULATION (EEC) No 2068/90

of 19 July 1990

**abolishing the corrective amount on the import of fresh lemons into the
Community of Ten from Spain (except the Canary Islands)**

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 3709/89
of 4 December 1989 laying down general rules for imple-
menting the Act of Accession of Spain and Portugal as
regards the compensatory mechanism for imports of fruit
and vegetables from Spain ⁽¹⁾, and in particular Article 4
(2) thereof,

Whereas Article 152 of the Act of Accession introduces
from 1 January 1990 a compensatory mechanism for
imports into the Community as constituted on 31
December 1985, hereinafter called 'the Community of
Ten', of fruit and vegetables from Spain (except the
Canary Islands) for which a reference price is fixed with
regard to third countries;

Whereas Council Regulation (EEC) No 3709/89 lays
down general rules for applying the said compensatory
mechanism and Commission Regulation (EEC) No
3815/89 ⁽²⁾ lays down detailed rules for applying the said
compensatory mechanism;

Whereas Commission Regulation (EEC) No 1901/90 ⁽³⁾,
as amended by Regulation (EEC) No 1969/90 ⁽⁴⁾, intro-
duces a corrective amount on imports of fresh lemons
into the Community of Ten from Spain (except the
Canary Islands);

Whereas Article 3 (4) of Regulation (EEC) No 3709/89
lays down the conditions under which a corrective
amount introduced pursuant to Article 3 (1) of the said
Regulation is to be abolished; adjusted; whereas the said
conditions require abolition of the corrective amount on
imports of fresh lemons into the Community of Ten from
Spain (except the Canary Islands),

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1901/90 is hereby repealed.

Article 2

This Regulation shall enter into force on 20 July 1990.

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

Done at Brussels, 19 July 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 363, 13. 12. 1989, p. 3.

⁽²⁾ OJ No L 371, 20. 12. 1989, p. 28.

⁽³⁾ OJ No L 172, 5. 7. 1990, p. 29.

⁽⁴⁾ OJ No L 178, 11. 7. 1990, p. 15.

COMMISSION REGULATION (EEC) No 2069/90
of 19 July 1990
fixing the amount of the subsidy on oil seeds

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 2902/89⁽²⁾, and in particular Article 27 (4) thereof,

Having regard to Council Regulation (EEC) No 1678/85 of 11 June 1985 fixing the conversion rates to be applied in agriculture⁽³⁾, as last amended by Regulation (EEC) No 1999/90⁽⁴⁾,

Having regard to Council Regulation (EEC) No 1569/72 of 20 July 1972 laying down special measures for colza, rape and sunflower seed⁽⁵⁾, as last amended by Regulation (EEC) No 2216/88⁽⁶⁾, and in particular Article 2 (3) thereof,

Having regard to the opinion of the Monetary Committee,

Whereas the amount of the subsidy referred to in Article 27 of Regulation No 136/66/EEC was fixed by Commission Regulation (EEC) No 1823/90⁽⁷⁾, as last amended by Regulation (EEC) n. 2004/90⁽⁸⁾;

Whereas the abatement of the subsidy which arises, where appropriate, from the system of maximum guaranteed quantities for the 1990/91 marketing year, has not yet been fixed; whereas the amount of the subsidy for the 1990/91 marketing year has been calculated provisionally

on the basis of the abatement for the 1989/90 marketing year;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 1823/90 to the information known to the Commission that the amount of the subsidy at present in force should be altered to the amount set out in the Annexes hereto,

HAS ADOPTED THIS REGULATION:

Article 1

1. The amount of the subsidy and the exchange rate referred to in Article 33 (2) and (3) of Commission Regulation (EEC) No 2681/83⁽⁹⁾ are as set out in the Annexes hereto.
2. The amount of the compensatory aid referred to in Article 14 of Council Regulation (EEC) No 475/86⁽¹⁰⁾ is as set out in Annex III for sunflower seed harvested in Spain.
3. The amount of the special subsidy provided for by Council Regulation (EEC) No 1920/87⁽¹¹⁾ for sunflower seed harvested and processed in Portugal is as set out in Annex III.
4. However, the amount of the subsidy in the case of advance fixing for the 1990/91 marketing year for colza, rape and sunflower will be confirmed or replaced as from 20 July 1990 to take into account the application of the system of maximum guaranteed quantities for this marketing year.

Article 2

This Regulation shall enter into force on 20 July 1990.

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

Done at Brussels, 19 July 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No 172, 30. 9. 1966, p. 3025/66.

⁽²⁾ OJ No L 280, 29. 9. 1989, p. 2.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 11.

⁽⁴⁾ OJ No L 163, 29. 6. 1990, p. 9.

⁽⁵⁾ OJ No L 167, 25. 7. 1972, p. 9.

⁽⁶⁾ OJ No L 197, 26. 7. 1988, p. 10.

⁽⁷⁾ OJ No L 167, 30. 6. 1990, p. 63.

⁽⁸⁾ OJ No L 180, 13. 7. 1990, p. 15.

⁽⁹⁾ OJ No L 266, 28. 9. 1983, p. 1.

⁽¹⁰⁾ OJ No L 53, 1. 3. 1986, p. 47.

⁽¹¹⁾ OJ No L 183, 3. 7. 1987, p. 18.

ANNEX I

Aids to colza and rape seed other than 'double zero'

(amounts per 100 kg)

	Current 7 (1)	1st period 8 (1)	2nd period 9 (1)	3rd period 10 (1)	4th period 11 (1)	5th period 12 (1)
1. Gross aids (ECU):						
— Spain	1,750	1,750	1,750	1,750	1,750	1,750
— Portugal	0,000	0,000	0,000	0,000	0,000	0,000
— Other Member States	26,411	26,310	26,388	26,651	25,338	25,616
2. Final aids:						
(a) Seed harvested and processed in:						
— Federal Republic of Germany (DM)	61,83	61,60	61,78	62,40	59,32	60,11
— Netherlands (Fl)	69,67	69,40	69,61	70,31	66,85	67,74
— BLEU (Bfrs/Lfrs)	1 275,31	1 270,43	1 274,20	1 286,90	1 223,49	1 237,81
— France (FF)	207,37	206,58	207,19	209,26	198,95	201,13
— Denmark (Dkr)	235,85	234,95	235,65	238,00	226,27	228,75
— Ireland (£ Irl)	23,081	22,992	23,060	23,290	22,143	22,386
— United Kingdom (£)	20,430	20,350	20,388	20,567	19,515	19,637
— Italy (Lit)	46 263	46 086	46 223	46 684	44 384	44 871
— Greece (Dr)	5 595,98	5 565,09	5 556,19	5 591,37	5 278,16	5 242,27
(b) Seed harvested in Spain and processed:						
— in Spain (Pta)	267,57	267,57	267,57	267,57	267,57	267,57
— in another Member State (Pta)	3 906,80	3 892,22	3 899,55	3 931,79	3 742,99	3 767,35
(c) Seed harvested in Portugal and processed:						
— in Portugal (Esc)	0,00	0,00	0,00	0,00	0,00	0,00
— in another Member State (Esc)	5 761,12	5 740,28	5 756,16	5 800,63	5 528,53	5 548,50

(1) Subject to the abatement resulting from the system of maximum guaranteed quantities for the 1990/91 marketing year.

ANNEX II

Aids to colza and rape seed 'double zero'

(amounts per 100 kg)

	Current 7 (1)	1st period 8 (1)	2nd period 9 (1)	3rd period 10 (1)	4th period 11 (1)	5th period 12 (1)
1. Gross aids (ECU):						
— Spain	4,250	4,250	4,250	4,250	4,250	4,250
— Portugal	2,500	2,500	2,500	2,500	2,500	2,500
— Other Member States	28,911	28,810	28,888	29,151	27,838	28,116
2. Final aids:						
(a) Seed harvested and processed in:						
— Federal Republic of Germany (DM)	67,68	67,45	67,63	68,25	65,18	65,96
— Netherlands (Fl)	76,26	76,00	76,20	76,91	73,45	74,33
— BLEU (Bfrs/Lfrs)	1 396,02	1 391,15	1 394,91	1 407,61	1 344,21	1 358,53
— France (FF)	227,00	226,21	226,82	228,89	218,58	220,76
— Denmark (Dkr)	258,18	257,28	257,97	260,32	248,60	251,08
— Ireland (£ Irl)	25,265	25,177	25,245	25,475	24,328	24,571
— United Kingdom (£)	22,379	22,298	22,337	22,516	21,464	21,586
— Italy (Lit)	50 643	50 466	50 602	51 063	48 763	49 250
— Greece (Dr)	6 139,34	6 108,44	6 099,55	6 134,73	5 821,52	5 785,62
(b) Seed harvested in Spain and processed:						
— in Spain (Pta)	649,81	649,81	649,81	649,81	649,81	649,81
— in another Member State (Pta)	4 289,04	4 274,46	4 281,79	4 314,03	4 125,23	4 149,59
(c) Seed harvested in Portugal and processed:						
— in Portugal (Esc)	517,26	517,26	517,26	517,26	517,26	517,26
— in another Member State (Esc)	6 278,37	6 257,54	6 273,41	6 317,89	6 045,78	6 065,76

(1) Subject to the abatement resulting from the system of maximum guaranteed quantities for the 1990/91 marketing year.

ANNEX III

Aids to sunflower seed

(amounts per 100 kg)

	Current 7	1st period 8 (1)	2nd period 9 (1)	3rd period 10 (1)	4th period 11 (1)
1. Gross aids (ECU):					
— Spain	6,890	8,600	8,600	8,600	8,600
— Portugal	0,000	0,000	0,000	0,000	0,000
— Other Member States	38,189	33,482	33,529	33,842	34,173
2. Final aids:					
(a) Seed harvested and processed in (2):					
— Federal Republic of Germany (DM)	90,40	78,39	78,50	79,23	80,01
— Netherlands (Fl)	100,74	88,32	88,44	89,29	90,16
— BLEU (Bfrs/Lfrs)	1 844,03	1 616,74	1 619,01	1 634,13	1 650,11
— France (FF)	292,21	262,89	263,26	265,72	268,32
— Denmark (Dkr)	341,03	299,00	299,42	302,21	305,17
— Ireland (£ Irl)	32,523	29,260	29,301	29,575	29,864
— United Kingdom (£)	25,877	25,906	25,915	26,127	26,386
— Italy (Lit)	64 329	58 649	58 732	59 280	59 860
— Greece (Dr)	6 896,49	7 090,85	7 068,90	7 109,98	7 182,69
(b) Seed harvested in Spain and processed:					
— in Spain (Pta)	1 053,45	1 314,91	1 314,91	1 314,91	1 314,91
— in another Member State (Pta)	4 912,17	4 489,44	4 491,30	4 529,29	4 579,56
(c) Seed harvested in Portugal and processed:					
— in Portugal (Esc)	0,00	0,00	0,00	0,00	0,00
— in Spain (Esc)	8 461,03	7 852,35	7 862,01	7 916,04	7 986,07
— in another Member State (Esc)	8 276,11	7 680,73	7 690,17	7 743,02	7 811,52
3. Compensatory aids:					
— in Spain (Pta)	4 888,01	4 465,28	4 467,14	4 505,13	4 555,40
4. Special aid:					
— in Portugal (Esc)	8 276,11	7 680,73	7 690,17	7 743,02	7 811,52

(1) Subject to the abatement resulting from the system of maximum guaranteed quantities for the 1990/91 marketing year.

(2) For seed harvested in the Community as constituted at 31 December 1985 and processed in Spain, the amounts shown in 2 (a) to be multiplied by 1,0223450.

ANNEX IV

Exchange rate of the ecu to be used for converting final aids into the currency of the processing country when the latter is a country other than the country of production

(value of ECU 1)

	Current 7	1st period 8	2nd period 9	3rd period 10	4th period 11	5th period 12
DM	2,070880	2,067130	2,063700	2,060220	2,060220	2,051050
Fl	2,331330	2,326630	2,322750	2,318700	2,318700	2,308210
Bfrs/Lfrs	42,603000	42,562500	42,518300	42,480000	42,480000	42,328400
FF	6,939070	6,936820	6,935290	6,934380	6,934380	6,930320
Dkr	7,874060	7,874100	7,873140	7,871950	7,871950	7,861880
£Irl	0,771267	0,771279	0,771840	0,772138	0,772138	0,774909
£	0,695552	0,698240	0,700816	0,703234	0,703234	0,709870
Lit	1 514,86	1 516,07	1 517,10	1 518,02	1 518,02	1 521,08
Dr	202,35100	203,98000	206,15800	208,32000	208,32000	215,40200
Esc	181,52400	181,89100	182,44800	183,22500	183,22500	185,84700
Pta	126,70100	127,25500	127,61300	128,03500	128,03500	129,17900

COMMISSION REGULATION (EEC) No 2070/90

of 19 July 1990

altering the import levies on products processed from cereals and rice

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 1340/90⁽²⁾, and in particular Article 14 (4) thereof,

Having regard to Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice⁽³⁾, as last amended by Regulation (EEC) No 1806/89⁽⁴⁾, and in particular Article 12 (4) 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⁽⁵⁾, as last amended by Regulation (EEC) No 1636/87⁽⁶⁾, and in particular Article 3 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas the import levies on products processed from cereals and rice were fixed by Commission Regulation (EEC) No 1733/90⁽⁷⁾, as last amended by Regulation (EEC) No 2026/90⁽⁸⁾;

Whereas Council Regulation (EEC) No 1906/87⁽⁹⁾ amended Council Regulation (EEC) No 2744/75⁽¹⁰⁾ as regards products falling within CN codes 2302 10, 2302 20, 2302 30 and 2302 40;

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 over 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 18 July 1990;

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

Whereas the levy on the basic product as last fixed differs from the average levy by more than ECU 3,02 per tonne of basic product; whereas, pursuant to Article 1 of Commission Regulation (EEC) No 1579/74⁽¹¹⁾, as last amended by Regulation (EEC) No 1740/78⁽¹²⁾, the levies at present in force must therefore 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 processed from cereals and rice covered by Regulation (EEC) No 2744/75 as fixed in the Annex to amended Regulation (EEC) No 1733/90 are hereby altered to the amounts set out in the Annex.

Article 2

This Regulation shall enter into force on 20 July 1990.

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 134, 28. 5. 1990, p. 1.

⁽³⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽⁴⁾ OJ No L 177, 24. 6. 1989, p. 1.

⁽⁵⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁶⁾ OJ No L 153, 13. 6. 1987, p. 1.

⁽⁷⁾ OJ No L 161, 27. 6. 1990, p. 5.

⁽⁸⁾ OJ No L 184, 17. 7. 1990, p. 13.

⁽⁹⁾ OJ No L 182, 3. 7. 1987, p. 49.

⁽¹⁰⁾ OJ No L 281, 1. 11. 1975, p. 65.

⁽¹¹⁾ OJ No L 168, 25. 6. 1974, p. 7.

⁽¹²⁾ OJ No L 202, 26. 7. 1978, p. 8.

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

Done at Brussels, 19 July 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX

to the Commission Regulation of 19 July 1990 altering the import levies on products processed from cereals and rice

(ECU/tonne)

CN code	Import levies		
	Portugal	ACP or OCT	Third countries (other than ACP or OCT)
0714 10 10 ⁽¹⁾	40,43	120,30	126,95
0714 10 91	37,41	123,93 ⁽²⁾ ⁽⁷⁾	123,93
0714 10 99	40,43	122,12	126,95
0714 90 11	37,41	123,93 ⁽²⁾ ⁽⁷⁾	123,93
0714 90 19	40,43	122,12 ⁽²⁾	126,95
1102 90 10	73,38	223,07	229,11
1103 19 30	73,38	223,07	229,11
1103 29 20	73,38	223,07	229,11
1104 11 10	41,18	126,41	129,43
1104 11 90	80,86	247,86	253,90
1104 21 10	62,88	198,29	201,31
1104 21 30	62,88	198,29	201,31
1104 21 50	99,57	309,83	315,87
1104 21 90	41,18	126,41	129,43
1106 20 10	40,43	120,30	126,95
1107 10 91	77,47	220,60	231,48
1107 10 99	60,64	164,83	175,71
1107 20 00	68,87	192,09	202,97
2302 10 10	19,35	57,02	63,02
2302 10 90	34,61	122,19	128,19
2302 20 10	19,35	57,02	63,02
2302 20 90	34,61	122,19	128,19
2302 30 10	19,35	57,02	63,02
2302 30 90	34,61	122,19	128,19
2302 40 10	19,35	57,02	63,02
2302 40 90	34,61	122,19	128,19

⁽¹⁾ 6 % *ad valorem*, subject to certain conditions.

⁽²⁾ In accordance with Regulation (EEC) No 715/90 the levy shall not be charged on the following products originating in the African, Caribbean and Pacific States and in the overseas countries and territories:

- products falling within CN code ex 0714 10 91,
- products falling within CN code 0714 90 11 and arrow-root falling within CN code 0714 90 19,
- flours and meal of arrow-root falling within CN code 1106 20,
- arrow-root starch falling within CN code 1108 19 90.

⁽⁷⁾ In accordance with Regulation (EEC) No 715/90 the levies are not applied to products imported directly into the French overseas departments originating in the African, Caribbean and Pacific States or in the overseas countries and territories.

COMMISSION REGULATION (EEC) No 2071/90
of 19 July 1990
altering 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 3879/89⁽²⁾, and in particular Article 17 (5) thereof,

Whereas the export refunds on milk and milk products were fixed by Commission Regulation (EEC) No 1782/90⁽³⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 1782/90 to the information known to the Commission that the export refunds for the products listed in the Annex hereto should be altered to the amounts set out therein,

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, as fixed in the Annex to Regulation (EEC) No 1782/90 amended are hereby altered, in respect of the products set out in the Annex hereto, to the amounts set out therein.

2. There shall be no refunds for exports to Zone E for products falling within CN codes 0401, 0402, 0403, 0404, 0405 and 2309.

3. There shall be no refunds for exports to Portugal, including the Azores and Madeira, nor for German Democratic Republic, for milk and milk products listed in Article 1 of Regulation (EEC) No 804/68.

Article 2

This Regulation shall enter into force on 20 July 1990.

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

Done at Brussels, 19 July 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 378, 27. 12. 1989, p. 1.

⁽³⁾ OJ No L 163, 29. 6. 1990, p. 29.

ANNEX

to the Commission Regulation of 19 July 1990 altering the export refunds on milk and milk products

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0401 10 10 000		4,55
0401 10 90 000		4,55
0401 20 11 100		4,55
0401 20 11 500		7,63
0401 20 19 100		4,55
0401 20 19 500		7,63
0401 20 91 100		10,51
0401 20 91 500		12,44
0401 20 99 100		10,51
0401 20 99 500		12,44
0401 30 11 100		16,29
0401 30 11 400		25,72
0401 30 11 700		39,20
0401 30 19 100		16,29
0401 30 19 400		25,72
0401 30 19 700		39,20
0401 30 31 100		46,90
0401 30 31 400		73,85
0401 30 31 700		81,55
0401 30 39 100		46,90
0401 30 39 400		73,85
0401 30 39 700		81,55
0401 30 91 100		93,10
0401 30 91 400		137,37
0401 30 91 700		160,47
0401 30 99 100		93,10
0401 30 99 400		137,37
0401 30 99 700		160,47
0402 10 11 000		70,00
0402 10 19 000		70,00
0402 10 91 000		0,7000
0402 10 99 000		0,7000
0402 21 11 200		70,00
0402 21 11 300		99,72
0402 21 11 500		106,00
0402 21 11 900		115,00
0402 21 17 000		70,00
0402 21 19 300		99,72
0402 21 19 500		106,00
0402 21 19 900		115,00
0402 21 91 100		115,96
0402 21 91 200		116,87
0402 21 91 300		118,53
0402 21 91 400		128,15
0402 21 91 500		131,43
0402 21 91 600		143,96
0402 21 91 700		151,51
0402 21 91 900		159,88
0402 21 99 100		115,96

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0402 21 99 200		116,87
0402 21 99 300		118,53
0402 21 99 400		128,15
0402 21 99 500		131,43
0402 21 99 600		143,96
0402 21 99 700		151,51
0402 21 99 900		159,88
0402 29 15 200		0,7000
0402 29 15 300		0,9972
0402 29 15 500		1,0600
0402 29 15 900		1,1500
0402 29 19 200		0,7000
0402 29 19 300		0,9972
0402 29 19 500		1,0600
0402 29 19 900		1,1500
0402 29 91 100		1,1596
0402 29 91 500		1,2815
0402 29 99 100		1,1596
0402 29 99 500		1,2815
0402 91 11 110		4,55
0402 91 11 120		10,51
0402 91 11 310		17,83
0402 91 11 350		22,30
0402 91 11 370		27,65
0402 91 19 110		4,55
0402 91 19 120		10,51
0402 91 19 310		17,83
0402 91 19 350		22,30
0402 91 19 370		27,65
0402 91 31 100		21,87
0402 91 31 300		32,67
0402 91 39 100		21,87
0402 91 39 300		32,67
0402 91 51 000		25,72
0402 91 59 000		25,72
0402 91 91 000		93,10
0402 91 99 000		93,10
0402 99 11 110		0,0455
0402 99 11 130		0,1051
0402 99 11 150		0,1796
0402 99 11 310		20,57
0402 99 11 330		25,13
0402 99 11 350		34,08
0402 99 19 110		0,0455
0402 99 19 130		0,1051
0402 99 19 150		0,1796
0402 99 19 310		20,57
0402 99 19 330		25,13
0402 99 19 350		34,08
0402 99 31 110		0,2380
0402 99 31 150		35,55
0402 99 31 300		0,4690
0402 99 31 500		0,8155
0402 99 39 110		0,2380
0402 99 39 150		35,55
0402 99 39 300		0,4690

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0402 99 39 500		0,8155
0402 99 91 000		0,9310
0402 99 99 000		0,9310
0403 10 11 100		4,55
0403 10 11 300		7,63
0403 10 13 000		10,51
0403 10 19 000		16,29
0403 10 31 100		0,0455
0403 10 31 300		0,0763
0403 10 33 000		0,1051
0403 10 39 000		0,1629
0403 90 11 000		70,00
0403 90 13 000		70,00
0403 90 19 000		115,96
0403 90 31 000		0,7000
0403 90 33 000		0,7000
0403 90 39 000		1,1596
0403 90 51 100		4,55
0403 90 51 300		7,63
0403 90 53 000		10,51
0403 90 59 110		16,29
0403 90 59 140		25,72
0403 90 59 170		39,20
0403 90 59 310		46,90
0403 90 59 340		73,85
0403 90 59 370		81,55
0403 90 59 510		93,10
0403 90 59 540		137,37
0403 90 59 570		160,47
0403 90 61 100		0,0455
0403 90 61 300		0,0763
0403 90 63 000		0,1051
0403 90 69 000		0,1629
0404 90 11 100		70,00
0404 90 11 910		4,55
0404 90 11 950		17,83
0404 90 13 120		70,00
0404 90 13 130		99,72
0404 90 13 140		106,00
0404 90 13 150		115,00
0404 90 13 911		4,55
0404 90 13 913		10,51
0404 90 13 915		16,29
0404 90 13 917		25,72
0404 90 13 919		39,20
0404 90 13 931		17,83
0404 90 13 933		22,30
0404 90 13 935		27,65
0404 90 13 937		32,67
0404 90 13 939		34,19
0404 90 19 110		115,96
0404 90 19 115		116,87
0404 90 19 120		118,53
0404 90 19 130		128,15
0404 90 19 135		131,43

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0404 90 19 150		143,96
0404 90 19 160		151,51
0404 90 19 180		159,88
0404 90 19 900		—
0404 90 31 100		70,00
0404 90 31 910		4,55
0404 90 31 950		17,83
0404 90 33 120		70,00
0404 90 33 130		99,72
0404 90 33 140		106,00
0404 90 33 150		115,00
0404 90 33 911		4,55
0404 90 33 913		10,51
0404 90 33 915		16,29
0404 90 33 917		25,72
0404 90 33 919		39,20
0404 90 33 931		17,83
0404 90 33 933		22,30
0404 90 33 935		27,65
0404 90 33 937		32,67
0404 90 33 939		34,19
0404 90 39 110		115,96
0404 90 39 115		116,87
0404 90 39 120		118,53
0404 90 39 130		128,15
0404 90 39 150		131,43
0404 90 39 900		—
0404 90 51 100		0,7000
0404 90 51 910		0,0455
0404 90 51 950		20,57
0404 90 53 110		0,7000
0404 90 53 130		0,9972
0404 90 53 150		1,0600
0404 90 53 170		1,1500
0404 90 53 911		0,0455
0404 90 53 913		0,1051
0404 90 53 915		0,1629
0404 90 53 917		0,2572
0404 90 53 919		0,3920
0404 90 53 931		20,57
0404 90 53 933		25,13
0404 90 53 935		34,08
0404 90 53 937		35,55
0404 90 53 939		—
0404 90 59 130		1,1596
0404 90 59 150		1,2815
0404 90 59 930		0,5652
0404 90 59 950		0,8155
0404 90 59 990		0,9310
0404 90 91 100		0,7000
0404 90 91 910		0,0455
0404 90 91 950		20,57
0404 90 93 110		0,7000
0404 90 93 130		0,9972
0404 90 93 150		1,0600

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0404 90 93 170		1,1500
0404 90 93 911		0,0455
0404 90 93 913		0,1051
0404 90 93 915		0,1629
0404 90 93 917		0,2572
0404 90 93 919		0,3920
0404 90 93 931		20,57
0404 90 93 933		25,13
0404 90 93 935		34,08
0404 90 93 937		35,55
0404 90 93 939		—
0404 90 99 130		1,1596
0404 90 99 150		1,2815
0404 90 99 930		0,5652
0404 90 99 950		0,8155
0404 90 99 990		0,9310
0405 00 10 100		—
0405 00 10 200		132,32
0405 00 10 300		166,46
0405 00 10 500		170,73
0405 00 10 700		175,00
0405 00 90 100		175,00
0405 00 90 900		220,00
0406 10 10 000		—
0406 10 90 000		—
0406 20 90 100		—
0406 20 90 913	028	—
	032	—
	400	87,74
	404	—
	...	84,94
0406 20 90 915	028	—
	032	—
	400	116,99
	404	—
	...	113,25
0406 20 90 917	028	—
	032	—
	400	124,30
	404	—
	...	120,33
0406 20 90 919	028	—
	032	—
	400	138,92
	404	—
	...	134,49
0406 20 90 990		—
0406 30 10 100		—
0406 30 10 150	028	—
	032	—
	036	—
	038	—
	400	20,03
	404	—
	...	22,83

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0406 30 10 200	028	—
	032	—
	036	—
	038	—
	400	43,52
	404	—
	...	48,68
0406 30 10 250	028	—
	032	—
	036	—
	038	—
	400	43,52
	404	—
	...	48,68
0406 30 10 300	028	—
	032	—
	036	—
	038	—
	400	63,88
	404	—
	...	71,42
0406 30 10 350	028	—
	032	—
	036	—
	038	—
	400	43,52
	404	—
	...	48,68
0406 30 10 400	028	—
	032	—
	036	—
	038	—
	400	63,88
	404	—
	...	71,42
0406 30 10 450	028	—
	032	—
	036	—
	038	—
	400	93,03
	404	—
	...	103,95
0406 30 10 500		—
0406 30 10 550	028	—
	032	—
	036	—
	038	—
	400	43,52
	404	20,00
	...	48,68

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0406 30 10 600	028	—
	032	—
	036	—
	038	—
	400	63,88
	404	28,00
	...	71,42
0406 30 10 650	028	—
	032	—
	036	—
	038	—
	400	93,03
	404	—
	...	103,95
0406 30 10 700	028	—
	032	—
	036	—
	038	—
	400	93,03
	404	—
	...	103,95
0406 30 10 750	028	—
	032	—
	036	—
	038	—
	400	113,54
	404	—
	...	126,87
0406 30 10 800	028	—
	032	—
	036	—
	038	—
	400	113,54
	404	—
	...	126,87
0406 30 10 900		—
0406 30 31 100		—
0406 30 31 300	028	—
	032	—
	036	—
	038	—
	400	20,03
	404	—
	...	22,83
0406 30 31 500	028	—
	032	—
	036	—
	038	—
	400	43,52
	404	—
	...	48,68

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0406 30 31 710	028	—
	032	—
	036	—
	038	—
	400	43,52
	404	—
	...	48,68
0406 30 31 730	028	—
	032	—
	036	—
	038	—
	400	63,88
	404	—
	...	71,42
0406 30 31 910	028	—
	032	—
	036	—
	038	—
	400	43,52
	404	—
	...	48,68
0406 30 31 930	028	—
	032	—
	036	—
	038	—
	400	63,88
	404	—
	...	71,42
0406 30 31 950	028	—
	032	—
	036	—
	038	—
	400	93,03
	404	—
	...	103,95
0406 30 39 100		—
0406 30 39 300	028	—
	032	—
	036	—
	038	—
	400	43,52
	404	20,00
	...	48,68
0406 30 39 500	028	—
	032	—
	036	—
	038	—
	400	63,88
	404	28,00
	...	71,42

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0406 30 39 700	028	—
	032	—
	036	—
	038	—
	400	93,03
	404	—
	...	103,95
0406 30 39 930	028	—
	032	—
	036	—
	038	—
	400	93,03
	404	—
	...	103,95
0406 30 39 950	028	—
	032	—
	036	—
	038	—
	400	113,54
	404	—
	...	126,87
0406 30 90 000	028	—
	032	—
	036	—
	038	—
	400	113,54
	404	—
	...	126,87
0406 40 00 100	—	—
0406 40 00 900	028	—
	032	—
	038	—
	400	120,00
	404	—
	...	126,51
0406 90 13 000	028	—
	032	—
	036	—
	038	—
	400	113,00
	404	—
	...	159,34
0406 90 15 100	028	—
	032	—
	036	—
	038	—
	400	113,00
	404	—
0406 90 15 900	...	159,34
	—	—

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0406 90 17 100	028	—
	032	—
	036	—
	038	—
	400	113,00
	404	—
	...	159,34
0406 90 17 900		—
0406 90 21 100		—
0406 90 21 900	028	—
	032	—
	036	—
	038	—
	400	130,00
	404	—
	732	139,68
	...	151,68
0406 90 23 100		—
0406 90 23 900	028	—
	032	—
	036	—
	038	—
	400	65,00
	404	—
	...	135,35
0406 90 25 100		—
0406 90 25 900	028	—
	032	—
	036	—
	038	—
	400	65,00
	404	—
	...	135,35
0406 90 27 100		—
0406 90 27 900	028	—
	032	—
	036	—
	038	—
	400	56,14
	404	—
	...	114,71
0406 90 31 111		—
0406 90 31 119	028	—
	032	—
	036	—
	038	15,00
	400	62,48
	404	16,00
	...	89,96

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0406 90 31 151	028	—
	032	—
	036	—
	038	—
	400	58,40
	404	14,96
	...	83,83
0406 90 31 159		—
0406 90 31 900		—
0406 90 33 111		—
0406 90 33 119	028	—
	032	—
	036	—
	038	15,00
	400	62,48
	404	16,00
	...	89,96
0406 90 33 151	028	—
	032	—
	036	—
	038	—
	400	58,40
	404	14,96
	...	83,83
0406 90 33 159		—
0406 90 33 911		—
0406 90 33 919	028	—
	032	—
	036	—
	038	15,00
	400	62,48
	404	16,00
	...	89,96
0406 90 33 951	028	—
	032	—
	036	—
	038	—
	400	58,40
	404	14,96
	...	83,83
0406 90 33 959		—
0406 90 35 110		—
0406 90 35 190	028	—
	032	—
	036	42,66
	400	160,00
	404	90,00
	...	158,54

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0406 90 35 910		—
0406 90 35 990	028	—
	032	—
	036	—
	038	—
	400	130,00
	404	—
	...	130,00
0406 90 61 000	028	—
	032	—
	036	90,00
	400	190,00
	404	140,00
	...	185,00
0406 90 63 100	028	—
	032	—
	036	105,03
	400	220,00
	404	160,00
	...	212,12
0406 90 63 900	028	—
	032	—
	036	70,00
	400	150,00
	404	80,00
	...	165,00
0406 90 69 100		—
0406 90 69 910	028	—
	032	—
	036	70,00
	400	150,00
	404	80,00
	...	165,00
0406 90 69 990		—
0406 90 71 100		—
0406 90 71 930	028	13,50
	032	13,50
	036	—
	038	—
	400	87,23
	404	—
	...	89,49

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0406 90 71 950	028	20,00
	032	20,00
	036	—
	038	—
	400	96,18
	404	—
	...	98,13
0406 90 71 970	028	24,00
	032	24,00
	036	—
	038	—
	400	109,31
	404	—
	...	110,79
0406 90 71 991	028	—
	032	—
	036	—
	038	—
	400	130,00
	404	—
	...	130,00
0406 90 71 995	028	27,50
	032	27,50
	036	—
	038	—
	400	65,00
	404	—
	...	135,35
0406 90 71 999		—
0406 90 73 100		—
0406 90 73 900	028	—
	032	—
	036	42,66
	400	160,00
	404	120,00
	...	151,00
0406 90 75 100		—
0406 90 75 900	028	—
	032	—
	036	—
	400	65,00
	404	—
	...	125,96
0406 90 77 100	028	24,00
	032	24,00
	036	—
	038	—
	400	58,77
	404	—
	...	110,79

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0406 90 77 300	028	—
	032	—
	036	—
	038	—
	400	65,00
	404	—
	...	135,35
0406 90 77 500	028	—
	032	—
	036	—
	038	—
	400	75,00
	404	—
	...	135,35
0406 90 79 100		—
0406 90 79 900	028	—
	032	—
	036	—
	038	—
	400	56,14
	404	—
	...	114,71
0406 90 81 100		—
0406 90 81 900	028	—
	032	—
	036	—
	038	—
	400	130,00
	404	—
	...	130,00
0406 90 83 100		—
0406 90 83 910		—
0406 90 83 950	028	—
	032	—
	400	39,03
	404	—
	...	47,97
0406 90 83 990	028	—
	032	—
	400	39,03
	404	—
	...	47,97
0406 90 85 100		—
0406 90 85 910	028	—
	032	—
	036	42,67
	400	160,00
	404	90,00
	...	158,54

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0406 90 85 991	028	—
	032	—
	036	—
	038	—
	400	130,00
	404	—
	...	130,00
0406 90 85 995	028	27,50
	032	27,50
	036	—
	038	—
	400	65,00
	404	—
	...	135,35
0406 90 85 999		—
0406 90 89 100	028	13,50
	032	13,50
	036	—
	038	—
	400	87,23
	404	—
	...	89,49
0406 90 89 200	028	20,00
	032	20,00
	036	—
	038	—
	400	96,18
	404	—
	...	98,13
0406 90 89 300	028	24,00
	032	24,00
	036	—
	038	—
	400	109,31
	404	—
	...	110,79
0406 90 89 910		—
0406 90 89 951	028	—
	032	—
	036	42,66
	400	160,00
	404	90,00
	...	151,00
0406 90 89 959	028	—
	032	—
	036	—
	038	—
	400	130,00
	404	—
	...	130,00

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0406 90 89 971	028	27,50
	032	27,50
	036	—
	038	—
	400	74,00
	404	—
	...	135,35
0406 90 89 972	028	—
	032	—
	400	39,03
	404	—
	...	47,97
0406 90 89 979	028	27,50
	032	27,50
	036	—
	038	—
	400	74,00
	404	—
	...	135,35
0406 90 89 990		—
0406 90 91 100		—
0406 90 91 300	028	—
	032	—
	036	—
	038	—
	400	21,46
	404	—
	...	21,06
0406 90 91 510	028	—
	032	—
	036	—
	038	—
	400	37,62
	404	—
	...	35,97
0406 90 91 550	028	—
	032	—
	036	—
	038	—
	400	45,81
	404	—
	...	43,62
0406 90 91 900		—
0406 90 93 000		—
0406 90 97 000		—
0406 90 99 000		—
2309 10 15 010		—
2309 10 15 100		—
2309 10 15 200		21,00
2309 10 15 300		28,00
2309 10 15 400		35,00
2309 10 15 500		42,00
2309 10 15 700		49,00

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
2309 10 15 900		—
2309 10 19 010		—
2309 10 19 100		—
2309 10 19 200		21,00
2309 10 19 300		28,00
2309 10 19 400		35,00
2309 10 19 500		42,00
2309 10 19 600		49,00
2309 10 19 700		52,50
2309 10 19 800		56,00
2309 10 19 900		—
2309 10 70 010		—
2309 10 70 100		21,00
2309 10 70 200		28,00
2309 10 70 300		35,00
2309 10 70 500		42,00
2309 10 70 600		49,00
2309 10 70 700		56,00
2309 10 70 800		61,60
2309 10 70 900		—
2309 90 35 010		—
2309 90 35 100		—
2309 90 35 200		21,00
2309 90 35 300		28,00
2309 90 35 400		35,00
2309 90 35 500		42,00
2309 90 35 700		49,00
2309 90 35 900		—
2309 90 39 010		—
2309 90 39 100		—
2309 90 39 200		21,00
2309 90 39 300		28,00
2309 90 39 400		35,00
2309 90 39 500		42,00
2309 90 39 600		49,00
2309 90 39 700		52,50
2309 90 39 800		56,00
2309 90 39 900		—
2309 90 70 010		—
2309 90 70 100		21,00
2309 90 70 200		28,00
2309 90 70 300		35,00
2309 90 70 500		42,00
2309 90 70 600		49,00
2309 90 70 700		56,00
2309 90 70 800		61,60
2309 90 70 900		—

(*) The code numbers for the destinations are those set out in the Annex to Commission Regulation (EEC) No 420/90 (OJ No L 44, 20. 2. 1990, p. 15).

For destinations other than those indicated for each 'product code', the amount of the refund applying is indicated by "".

Where no destination is indicated, the amount of the refund is applicable for exports to any destination other than those referred to in Article 1 (2) and (3).

NB: The product codes and the footnotes are defined in amended Commission Regulation (EEC) No 3846/87 (OJ No L 366, 24. 12. 1987, p. 1).

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 21 February 1990

amending German aid schemes for the motor vehicle industry

(Only the German text is authentic)

(90/381/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 notice in accordance with the abovementioned Article to interested parties to submit their comments,

Whereas :

I

By letter dated 31 December 1988, the Commission informed the Member States of its decision of 22 December 1988 to implement, on the basis of Article 93 (1) of the EEC Treaty, a Community framework on State aid to the motor vehicle industry⁽¹⁾. The questions of necessity and scope, the rules of notification, assessment guidelines and standard forms of notification and reporting were explained in this letter. The framework, which requires prior notification of all State aid measures granted within the scope of approved aid schemes to motor vehicle manufacturers where the project cost exceeds ECU 12 million, entered into force on 1 January 1989 and is valid for two years.

The Commission's objective was in particular to secure the modification of all existing aid schemes applicable in the motor vehicle sector and to make it compulsory to

give prior notification of individual awards in accordance with the criteria laid down in the framework, especially the criterion concerning project costs exceeding ECU 12 million.

By note dated 25 January 1989 the German Government requested an extension of the reply deadline to the end of February and a further extension to 15 March 1989 by note dated 28 February 1989.

By note dated 3 March 1989 to the Secretariat General and by letter dated 10 March 1989 from the Minister for the Economy to Sir Leon Brittan, the German Government formally informed the Commission of its decision not to apply the Community framework and communicated the reasons that led to this refusal. The German Government's refusal was based for the most part on the view that the framework pursues sectoral industrial policy objectives which it does not share, and which would endanger the effectiveness of regional aids by interfering with their continuity and predictability. In the German Government's view, German aid schemes are neutral in terms of sectoral impact and do not appreciably distort intra-Community trade.

By letter of 4 April 1989, the Commission informed the German Government that it did not consider that the arguments put forward were sufficient to justify non-application of the framework in Germany. In its letter, the Commission commented on the arguments of the German authorities and invited them to reconsider their position. If they failed to do so, it would be forced to initiate the Article 93 (2) procedure in respect of all aid schemes in operation in Germany for the benefit of the

⁽¹⁾ OJ No C 123, 18. 5. 1989, p. 3.

motor vehicle industry, with the objective of enforcing the application of the framework.

By letter dated 3 May 1989 from the Minister for the Economy to Sir Leon Brittan, the German Government confirmed its decision not to adopt the framework stressing that, apart from the arguments advanced earlier, a specific framework for this sector is no longer necessary in view of the sector's current performance.

In view of the German authorities' continued negative position on the Community framework, the Commission decided on 27 July 1989 to initiate the Article 93 (2) procedure in respect of all approved aid schemes currently in operation in Germany and available to the motor vehicle industry. In taking this decision, the Commission considered that the arguments put forward by the German Government were not sufficient to justify its failure to apply the framework, in contrast to all other Member States.

By letter dated 9 August 1989, the Commission gave the German Government notice of this decision and requested its comments. In accordance with Article 93 (2), the other Member States and interested parties were also given notice by publication of that letter⁽¹⁾ and were requested to submit their comments.

II

By letters dated 6 October, 31 October and 30 November 1989, the German authorities communicated their comments within the framework of that procedure. Furthermore, two meetings took place between the German authorities and the Commission on 18 October and 6 December 1989. The arguments advanced by the German authorities in order to justify non-application of the framework were the following:

1. The fact that other Member States approved the framework is irrelevant because for a number of them the framework has no practical consequences.
2. The framework is motivated by and can be used for industrial policy objectives. The fact that the Commission stated in the framework that it can contribute to the healthy development of the sector and ensure that the companies adapt and adjust in time to changing market circumstances is considered to be a sectoral industrial policy approach which could prove harmful for the sector and the economy as a whole.

3. On the basis of the experience of recent years and manifest tendencies in the European Community, it can be expected that the framework will increasingly be used to enforce measures which are motivated by industrial policy pursuant to Articles 92 and 93; this would represent an abuse of these Treaty provisions and would be inconsistent with German economic policy which is based on non-discrimination of sectors, on a structural, regional and environmental policy and on Berlin aid schemes which aim at positive adjustment.
4. Investment decisions should be left to the market. Their necessity or effectiveness from a sectoral standpoint cannot be regulated by means of a central control system incapable of functioning effectively because the authority in charge does not have the necessary information on the markets and companies concerned.
5. German aid systems are mainly horizontal and thus sectorally neutral; the aid is of low intensity and therefore cannot create a significant distortion of competition or intra-Community trade.
6. The sectoralization introduced by the framework could endanger the effectiveness of regional and environmental policy in Germany by impairing its continuity and predictability. The framework would result in delays in the decision-making process.
7. The granting of sectoral aids could be boosted by the framework; there are precedents for this in the comprehensive aid for the motor vehicle sector approved by the Commission, which would not be covered by the framework.
8. There are no convincing grounds for a Community framework for aid to the motor vehicle industry in the form of appropriate measures pursuant to Article 93 (1).
9. Incentives for global environmental protection aid schemes represent a top political priority in Germany, and the Community itself pursues the same objectives according to Article 130r.
10. The Commission, in its structural funds policy, acknowledges the independence of Member States with regard to regional and general aid schemes as long as they are not contrary to the common interest; based on Article 92 (2) c), the German aid schemes pursued generally acknowledged objectives (regional and environmental policy) which are not contrary to the common interest as defined, for example, in relation to the structural funds, and it is therefore not justified in introducing new restrictions, in form and in substance, to aid schemes which have existed unchallenged for years.

⁽¹⁾ OJ No C 281, 7. 11. 1989, p. 6.

11. Aid for certain regions under Article 92 (2) (c) has been declared *a priori* compatible with the common market in the Treaty; the necessity and importance of that aid has not declined; without these instruments Berlin would not be viable and the border areas by the East Zone would fall behind in economic terms.
12. Prior notification of individual awards under existing aid schemes is not possible, given that these schemes bestow an automatic legal right on the beneficiary and are not known to the authorities in advance. Because of these domestic difficulties, the German authorities should have been given the necessary time to modify existing schemes by legislation.
13. The Commission should in any case take into consideration the special political and economic situation of Berlin which results from its isolation as it is surrounded by East German territory. It should also be borne in mind that the motor vehicle activities in Berlin covered by the framework are limited to the component production of six vehicle manufacturers and that the amount of aid for these activities is very limited owing to the low level of investment.

The Commission did not receive any comments from other Member States or interested parties.

III

As regards the various arguments put forward by the German authorities, outlined in points II 1 to 13 in part II of this Decision, the Commission maintains as follows:

- Re 1. While it is correct that for a number of Member States the motor vehicle industry is currently of minor importance the framework was accepted by a significant number of Member States whose economies depend heavily on this industry, such as Belgium, France, Italy and the United Kingdom, where the motor vehicle sector represents between 5 and 10 % of the gross added value of their manufacturing industry.
- Re 2. As regards the German Government's view that the framework is motivated by and pursues industrial policy objectives, the Commission refers again to the objective of the framework, which is to establish full transparency of all funds in the industry and to impose, at the same time, a stricter discipline in the granting of aid in order to ensure that the competitiveness of the Community industry is not distorted by unilateral measures. The Commission cannot see how the imposition of undistorted and free competition is an industrial policy approach which could prove harmful for the sector and the economy as a whole.
- Re 3. The Commission cannot accept the argument that the framework would contribute to an increase in interventions motivated by industrial policy considerations. The Commission is aware that, as market integration progresses in line with the creation of a single market by 1992, increased competition may lead to calls for State help and support which Member States are capable of giving only in the form of State aid, as most protective devices usually used by governments to protect their companies from external competition will have disappeared with the creation of the internal market. Unilateral measures of assistance in one country may lead to unemployment in other Member States and subsequently to calls for compensatory aid. Therefore, the strict discipline on State aids imposed by the framework aims precisely at impeding interventions motivated by industrial policy consideration.
- Re 4. The Commission fully shares the view that investment decisions should be left to the market and not be transferred to an administrative authority. In this context it is evident that the framework is not designed to put the Commission in the role of guiding investment decisions in specific directions but, on the contrary, to ensure that such decisions are indeed taken by the investors concerned, that any State aid is consistent with the common interest as established in the Treaty, and that the aid is in strict proportion to the problems which they intend to resolve. Indeed, the Commission seeks to ensure by means of the framework that investors are not influenced in their decisions by the availability of unilateral funds.
- Re 5. As regards the argument that German aid schemes are horizontal, that they are of low intensity and that they do not therefore significantly distort competition and intra-Community trade, the Commission maintains that, in view of the motor vehicle industry's high degree of competitive pressure and its high capital intensity, even low intensity aid could well distort competition and prejudice intra-Community trade. In this respect and given that a large proportion of German aid schemes concern regional aid, the Commission reiterates its position that it will maintain its *a priori* favourable attitude as regards regional aid and recognizes the valuable contribution that the motor vehicle industry can make to regional development. However, given the sector's

importance, its growing sensitivity to competition and the very significant trade flows, the Commission wants to ensure that regional aid will indeed have a significant and long-standing effect on regional development which will outweigh any possible adverse effects on the sector as a whole. Furthermore, the Commission intends to put an end to the widespread and highly unhealthy outbidding practice amongst Member States in granting regional aid in order to attract new industrial establishments.

Re 6. As regards the argument that the framework would impair the continuity and the predictability of regional and environmental policy in Germany and would result in delays in the decision-making process, the Commission maintains that it can operate an effective aid policy only if it is able to appraise individual cases before the aid is authorized. This is a principle which is present in all existing frameworks for other sectors, e.g., artificial fibres, textiles, shipbuilding and steel, and its application was accepted by the German Government. As regards the time span of procedures, the Commission will, as long as Member States cooperate, be able to adhere strictly to the shortest possible time limits.

Re 7. The argument that the framework might boost sectoral aids is not shared by the Commission. Recent cases on sectoral aid demonstrate clearly the restrictive approach which the Commission has adopted (e.g. Alfa Romeo, Renault, Rover Group, Enasa). This approach has been applied in the framework's guidelines which allow for sectoral aids only under very exceptional circumstances and only if very restrictive conditions are fulfilled.

Re 8. With regard to the justification for a framework on State aids in the motor vehicle industry, the Commission, when introducing the framework, outlined the reasons why it considered that appropriate measures pursuant to Article 93 (1) were necessary in the sector in order to ensure the progressive development of the common market. In this context, the Commission refers to the justification for the framework as published in the *Official Journal of the European Communities* as well as to the Commission's letter to the Member States proposing the introduction of the framework, dated 9 August 1988. In taking its decision the Commission considered that the

framework does not necessarily have to be the result of a crisis in a sector, but it can equally be justified where intra-Community competition is of particular importance in a sector.

Re 9. As regards the treatment of environmental aid to the motor vehicle industry, the Commission points out that the way in which it intends to apply the framework to such aid is not contrary to the provisions of Article 130r. Indeed, as provided for in the framework's guidelines, the development of environmentally friendly and energy-saving vehicles is a standard requirement for the motor industry, partly imposed by Community legislation, and should, as a general principle, be financed by the company's own resources. The reduction of motor vehicle pollution and the associated technologies have become a major aspect of competition between manufacturers, and their importance should increase further in the future. The Commission seeks to avoid that competition is distorted through the granting of aid to manufacturers in order to assist them in catching up with existing technologies in this domain.

Re 10. The Commission does not accept the argument that, given the independence of Member States as concerns regional and general aid schemes, it is not justified in introducing new restrictions on existing schemes. The Court of Justice stated in its judgment of 24 February 1987 in *Deufil* (Case 310/85)⁽¹⁾ that a framework on State aid in a particular sector provides guidelines setting out the course of conduct which the Commission intends to follow and with which it asks the Member States to comply when granting aid in the sector in question. The Court considered that such a framework does not contain derogations from Articles 92 and 93. The assessment by the Commission of individual awards under existing regional and general aid schemes will therefore always be based on the provisions of Articles 92 and 93.

Re 11. The Commission also takes the view that aid for certain regions, which is stated to be compatible with the common market in Article 92 (2) (c), should also be subject to the provisions of the framework. The question of whether aid to such regions is compatible depends on the Commis-

⁽¹⁾ [1987] ECR 901.

sion's assessment whether such aid is required in order to compensate for the economic disadvantages caused by the division of Germany.

Re 12. It is claimed on behalf of the German authorities that the relevant existing aid schemes in Germany bestow an automatic legal right on the beneficiary and are not known to the authorities in advance and that because of this prior notification of individual cases of application of these schemes is not possible. As regards this argument it should be said that, as a general rule, since the public authority is responsible for the legal form which the national aid schemes take and is at the same time the administrative body responsible for giving the aid in individual cases, it should be in a position to inform itself of individual cases.

As regards the request for a reasonable time in which to modify existing schemes by legislation, it should be pointed out first that even if the framework in question is simply a recommendation, the German authorities have nevertheless already had 14 months in which to amend their laws in order to comply with the framework.

Secondly, it should be said that the Commission's decisions adopted under Article 93 (2) are directly applicable and their implementation does not call for any legislative measures on the part of the Member States⁽¹⁾. Such decisions take precedence over national provisions if they conflict with the obligations arising out of those decisions. Thus, since the obligation to give prior notification of aid covered by the decision in question is clear and unconditional, it forms an integral part of the legal order applicable in Germany⁽²⁾ without the need for the adoption of amendments by legislation. Furthermore, according to a recent judgment of the Court, it is the duty not only of national courts but also of national administrations, including local and regional authorities, to apply Community provisions in the place of any conflicting national legislation⁽³⁾. That being so, should the Federal Republic of Germany consider it desirable to amend existing aid schemes by

legislation solely in order to satisfy the need for additional legal certainty, it must bear in mind the rule that a Member State cannot rely upon procedures, practices or provisions of its national legal system for the purpose of justifying a failure to comply with Community obligations⁽⁴⁾, such as those resulting from a decision on State aid.

Re 13. In contrast to the other arguments, the Commission accepts the argument advanced by the German authorities concerning aid to Berlin. The Commission acknowledges that the isolated situation of Berlin and its resulting special economic and political problems cannot be compared to the situation of an area of Germany within the meaning of Article 92 (2) (c) or to any other region of the Community. Given also the currently limited size of motor vehicle activities in West Berlin linked with low investments in component production, the Commission considers that aid to motor vehicle manufacturers in Berlin granted under the existing aid schemes of the Berlin Förderungsgesetz can be excluded from the prior notification requirement of the framework.

IV

In view of the foregoing considerations, the arguments and submissions put forward by the German authorities do not justify their refusal to comply with the appropriate measures taken by the Commission on 22 December 1988 pursuant to Article 93 (1) and communicated to them by letter dated 31 December 1988. The measures in question are those set out in Section 2 of the 'Community framework on State aids to the motor industry'. In view of the German Government's refusal to comply with these measures the Commission, having initiated and carried out the procedure laid down in Article 93 (2), is entitled, by means of a decision taken pursuant to that provision and on the basis of the considerations set out at III above, to require existing State aid schemes to be altered by compliance, by the German Government, with the requirements as to prior notification and submission of annual reports contained in those measures.

⁽¹⁾ Judgment of the Court of 19. 6. 1973 in Case 77/72, *Capolon- go*, [1973] ECR p. 611.

⁽²⁾ See *inter alia* judgment of the Court of 6. 2. 1963 in Case 26/62, *Van Gend en Loos*, [1963] ECR p. 6, and judgment of the Court of 9. 3. 1978 in Case 166/77, *Simmenthal*, [1978] ECR p. 629.

⁽³⁾ Judgment of the Court of 22. 6. 1989 in Case 103/88, *Costanzo* (not yet published).

⁽⁴⁾ See *inter alia* judgment of the Court of 11. 4. 1978 in Case 100/77, *Commission v. Italian Republic*, [1978] ECR p. 879, judgment of the Court of 2. 2. 1982 in Case 71/81, *Commission v. Kingdom of Belgium*, [1982] ECR p. 175 and judgment of the Court of 21. 2. 1990 in Case C-79/89, *Commission v. Kingdom of Belgium* (non yet published).

It should be pointed out that the obligation to give prior notification of aid for projects costing more than ECU 12 million from 1 May 1990 should not present any difficulties since, because decisions under Article 93 (2) are directly applicable, it is not necessary to amend existing national aid schemes by legislation (see section III, point 12 of this Decision).

That obligation cannot however have retroactive effect and cover which has already been approved in so far as German law recognizes that the recipient has acquired rights even if the aid is to be paid at a later date, as might be the case with aid taking the form of tax benefits (e.g. annual tax exemption or tax relief on profits in exchange for industrial investments in 1990).

However, account has to be taken of the special political and economic situation of Berlin, as is shown by the arguments put forward by the German authorities in the course of the procedure and accepted by the Commission. Accordingly, having regard to the provisions of Article 92 (2) (c), exemption from the obligation of prior notification as laid down in the first paragraph of sub-section 2.2 of the framework in the case of State aid granted pursuant to the Berlin Förderungsgesetz is to be considered as justified. It follows that such aid is subject only to the requirement as to annual reports laid down in the second paragraph of the said sub-section 2.2,

HAS ADOPTED THIS DECISION:

Article 1

1. From 1 May 1990, the Federal Republic of Germany shall notify to the Commission pursuant to Article 93 (3) of the EEC Treaty all aid measures to be granted for projects costing more than ECU 12 million under the aid schemes set out in the Annex hereto to undertakings

operating in the motor vehicle sector as defined in sub-section 2.1 of the Community framework for State aid to the motor vehicle industry. Such notification shall be effected in conformity with the requirements laid down in sub-sections 2.2 and 2.3. The Federal Republic of Germany shall, moreover, provide annual reports as required by the framework.

2. Further to the list of aid schemes set out in the Annex to this Decision (which list is not exhaustive), the Federal Republic of Germany shall also comply with the obligations of Article 1 (1) with regard to all other aid schemes capable of benefiting the motor vehicle industry.

3. Aid to undertakings in the motor vehicle industry operating in Berlin which are granted under the Berlin Förderungsgesetz are excluded from the prior notification obligation provided for in the framework but shall be included in the annual reports required by that framework.

Article 2

The Federal Republic of Germany shall inform the Commission of the measures taken to comply with this Decision within two months of receipt of notification thereof.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 21 February 1990.

For the Commission

Leon BRITTAN

Vice-President

COMMISSION DECISION**of 12 July 1990****adjusting the weightings applicable from 1 June 1990 to the remuneration of officials of the European Communities serving in non-member countries****(90/382/Euratom, ECSC, EEC)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing a Single Council and a Single Commission of the European Communities;

Having regard to the Staff Regulations of Officials of the European Communities laid down by Regulation (EEC, Euratom, ECSC) No 259/68 ⁽¹⁾, as last amended by Regulation (EEC, Euratom, ECSC) No 3728/89 ⁽²⁾, and in particular the second paragraph of Article 13 of Annex X thereto,

Whereas pursuant to the first paragraph of Article 13 of Annex X to the Staff Regulations, Council Regulation (Euratom, ECSC, EEC) No 1051/90 ⁽³⁾ laid down the weightings to be applied from 1 January 1990 to the remuneration of officials serving in non-member countries payable in the currency of their country of employment;

Whereas the Commission has made a number of adjustments to these weightings in recent months, pursuant to the second paragraph of Article 13 of Annex X to the Staff Regulations ⁽⁴⁾;

Whereas some of these weightings should be adjusted with effect from 1 June 1990 given that the statistics available to the Commission show that in certain non-member countries the variation in the cost of living

measured on the basis of the weighting and the corresponding exchange rate has exceeded 5 % since weightings were last laid down or adjusted,

HAS DECIDED AS FOLLOWS:

Sole Article

With effect from 1 June 1990 the weightings applicable to the remuneration of officials serving in non-member countries payable in the currency of their country of employment are adjusted as shown in the Annex hereto.

The exchange rates for the payment of such remuneration shall be those used for implementation of the budget of the European Communities during the month preceding the date on which this Decision takes effect.

Done at Brussels, 12 July 1990.

For the Commission

António CARDOSO E CUNHA

Member of the Commission

⁽¹⁾ OJ No L 56, 4. 3. 1968, p. 1.

⁽²⁾ OJ No L 364, 14. 12. 1989, p. 1.

⁽³⁾ OJ No L 108, 28. 4. 1990, p. 1.

⁽⁴⁾ OJ No L 163, 29. 6. 1990, p. 75.

ANNEX

Country of employment	Weightings
Brazil	39,65
Fiji	54,65
Ghana	31,04
Guyana	12,62
Haiti	79,16
Jamaica	60,35
Jordan	61,84
Mexico	49,12
Peru	168,59
Poland	10,62
Somalia	24,78
Sudan	326,25
Uganda	88,28
Venezuela	63,47
Yugoslavia	110,51
Zaire	57,96
Zambia	43,68

COMMISSION DECISION

of 13 July 1990

terminating the anti-dumping proceeding concerning imports of NPK fertilizers originating in Hungary, Poland, Romania and Yugoslavia

(90/383/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

After consultation within the Advisory Committee as provided for under Regulation (EEC) No 2423/88,

Whereas :

A. PROCEDURE

- (1) In 1989 the Commission received a complaint lodged by the EFMA/CMC-Engrais, the common market committee of the nitrogen and phosphate fertilizer industry on behalf of producers representing about 90 % of Community production concerning imports of NPK fertilizers originating in Hungary, Poland, Romania and Yugoslavia. The complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

The Commission accordingly announced, by a notice published in the *Official Journal of the European Communities*⁽²⁾, the initiation of an anti-dumping proceeding concerning imports into the Community of NPK fertilizers falling within CN codes 3105 20 10 and 3105 20 90, and commenced an investigation.

- (2) The Commission officially so advised the exporters and importers known to be concerned, the representatives of the exporting countries and the complainant, and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing. Questionnaires were sent to all known exporters and importers concerned.
- (3) The Commission, for the purposes of obtaining all the information it deemed necessary, sent questionnaires to the companies on whose behalf the complaint was made, in order to allow each company to demonstrate the injury caused to it by

dumped imports of NPK fertilizers from the alleged countries. The Commission carried out a detailed analysis of those companies which returned completed questionnaires and whose combined production represents the Community industry.

- (4) All the exporters as well as the importers known to be concerned made known their views in writing. All of them requested and were granted hearings. The complainant also requested and was granted a hearing.
- (5) The Commission verified the information received to the extent it deemed necessary for the purposes of a preliminary determination and carried out investigations at the premises of the following Community companies whose production of NPK fertilizers represents more than 50 % of the total Community output (the remaining complainant companies either failed to respond to the Commission's questionnaire, or comprised individually an extremely small proportion of Community output):
- Superfos Fertilizers A/S, Denmark,
 - Badische Anilin und Soda Fabrik, Federal Republic of Germany,
 - Ruhrstickstoff AG Federal Republic of Germany,
 - Norsk Hydro Azote, France,
 - Agrimonte, SpA, Italy,
 - Sociedad Anonima Cros, Spain,
 - Empresa Nacional de Fertilizantes, SA, Spain,
 - Imperial Chemical Industries Ltd, United Kingdom,
 - Kemira INCE Ltd, United Kingdom,
 - Hydro-fertilizers Ltd, United Kingdom.

The Commission visited, in the course of the investigation, other Community companies which had returned the questionnaires. Nevertheless, most of the information contained in these questionnaires had to be disregarded because the companies in question failed to provide acceptable evidence during the on-the-spot visits.

- (6) The investigation period covered the year 1988 and the first two months of 1989. The trends in the relevant economic factors to determine whether the Community industry is suffering material injury were examined for the years 1985 to 1989 (February).

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No C 55, 4. 3. 1989, p. 3.

- (7) Due to the complexity of the proceedings, in particular the difficulties met by the Commission in obtaining from some of the interested parties the relevant data, the investigation exceeded the normal period of one year.

B. INJURY

- (8) In order to determine whether or not the allegedly dumped imports caused material injury to the Community industry, the Commission took into consideration the following facts:

(a) Volume, market share and price of imports

(i) Volume

- (9) The alleged dumped imports into the Community of NPK fertilizers originating in Hungary, Poland, Romania and Yugoslavia evolved as follows:

Hungary 90 877 tonnes in 1985, 76 957 tonnes in 1988 and 15 124 tonnes in the first two months of 1989; Poland 11 791 tonnes in 1985, 34 065 tonnes in 1988 and 10 310 in the first two months of 1989; Romania 61 655 tonnes in 1985, 20 408 tonnes in 1988, no imports in the first two months of 1989; Yugoslavia 129 324 tonnes in 1985, 261 395 tonnes in 1988 and 109 509 tonnes in the first two months of 1989.

However, it should be stressed that the figures relating to the first two months of 1989 cannot accurately represent in isolation the trade results of a full year since the fertilizer trade is subject to seasonal fluctuations.

(ii) Consumption and market share

- (10) The total Community consumption per annum of the product concerned decreased from 14 734 000 tonnes in 1985 to 13 443 000 tonnes in 1988; this corresponded in percentage terms to a decline of 8,7 %.

In terms of market share, the development as regards the exporters concerned was as follows:

Hungarian exporters: 0,6 % in 1985 and 0,58 % in 1988;

Polish exporters: 0,08 % in 1985 and 0,25 % in 1988;

Romanian exporters: 0,42 % in 1985 and 0,15 % in 1988;

Yugoslav exporters: 0,88 % in 1985 and 1,94 % in 1988.

(iii) Prices

- (11) The evidence available to the Commission shows that during the investigation period the prices of

the alleged dumped imports were, on a weighted average basis, lower than those charged by the community producers by about 20 %.

(b) Effect on Community industry

(i) Community production

- (12) The production of the Community manufacturers concerned decreased from 8 226 295 tonnes in 1985 to 7 534 456 tonnes in 1988 (January and February 1989: 1 532 204 tonnes). This corresponded to a decline of about 8,9 %.

(ii) Sales

- (13) The sales of the Community producers concerned increased from 5 446 258 tonnes in 1985 to 5 858 928 tonnes in 1988 (January and February 1989: 918 693 tonnes). This corresponds to an increase of about 7,5 %.

(iii) Production capacity and capacity utilization

- (14) The production capacity per annum decreased from 9 921 000 tonnes in 1985 to 8 242 000 tonnes in 1988 while the capacity utilization increased from 82,9 % in 1985 to 85,9 % in 1988.

(iv) Prices

- (15) The sales prices of the Community producers generally decreased from 1985 to 1987 and then increased, with a few exceptions, throughout 1988 until the end of the investigation period on 28 February 1989. The overall decrease in prices from 1985 to the end of the investigation period was, on a weighted average basis, approximately 21 %.

(v) Profits

- (16) With regard to profitability, it was found that, while some of the Community producers made substantial losses in the investigation period, others were able to make reasonable profits.

(c) Conclusion on injury

- (17) Taking into account all the relevant economic factors, as referred to above, and in particular, the volume and prices of the imported products and the trend in Community production, the Commission has come to the conclusion that there are some indications of injury sustained by the Community producers.

C. CAUSATION OF INJURY

- (18) Given the volumes of imports from Hungary, Poland and Romania as indicated in the eighth recital and the market shares in the Community represented by these quantities indicated in the ninth recital, the Commission has concluded that

even if these imports were at dumped prices their contribution, if any, to the injury by the imports from these countries could not be considered to be anything more than *de minimis* or not such as to be by itself a cause of material injury and accordingly should not be cumulated together or with other exports for the purposes of establishing causation.

- (19) Consequently the Commission examined whether this injury, to the extent that it could be considered material, may have been caused by the imports from Yugoslavia or factors other than the alleged dumped imports.

In this context, it was found that most of the economic difficulties sustained by the Community producers were due to structural problems which the manufacturers of NPK fertilizers have been facing not only in the Community but worldwide. Indeed, the market demand for the product concerned has been declining in the last few years for several reasons, as is confirmed by the figures indicated in the ninth recital concerning the trend in Community consumption.

- (20) The fall in consumption has caused over-capacity problems that have obliged the Community producers to reduce their output significantly. Another consequence has been a considerable reduction in the level of prices worldwide. This has resulted in a general decrease in price of the products sold within the Community from 1985 to 1988. This fall has amounted to 21 % as regards NPK fertilizers manufactured by the Community producers, to 24 % as regards the imports from Yugoslavia, and to 22 % as regards other imports.

- (21) A further consequence of the contraction in demand of the product concerned has been the need of an urgent restructuring and rationalization of the production facilities of the Community producers. Some of these producers have reacted faster than others to this need which explains the increase in their sales and the improvement in their capacity utilization as indicated in recitals (12) and (13).

- (22) Another factor examined was the volume and price of imports from countries not covered by the investigation. In this context it was found that these imports increased from 785 951 tonnes in 1985 to 893 818 tonnes in 1988 (January and February 1989: 264 840). These imports corresponded, in the investigation period, to 69 % of the overall imports into the Community while the imports from the countries covered by the investigation accounted for 31 %.

As regards the prices of the NPK fertilizers imported from countries not covered by the investigation, these declined from 1985 to 1988 by 22 %, as indicated in recital (19). This had an additional depressive effect on the Community producers

sales, given the considerable volume of the imports in question.

Furthermore, in examining the prices of some of these countries, the Commission established that there was, in the investigation period, significant undercutting ranging from 5,19 to 16,23 %, as compared with the price of the like product in the Community.

- (23) Having considered the above, the Commission has drawn the following conclusions:

- the contribution of the alleged dumped imports from Hungary, Poland and Romania to the injury suffered by the Community industry can be considered as *de minimis*;
- the alleged dumped imports from Yugoslavia, taken in isolation, have not had such effect as to cause material injury to the Community industry, within the meaning of Article 4 of Regulation (EEC) No 2423/88, given the volume of these imports, the volume and price of other imports into the Community and the fall in consumption in the Community market for the product concerned, during the investigation period.

D. DUMPING

- (24) In view of the above findings, the Commission considered it unnecessary — notwithstanding the allegation in the complaint of the existence of dumping practices during the investigation period — to further investigate the question of dumping with regard to the imports concerned.

E. WITHDRAWAL OF THE COMPLAINT

- (25) After having been informed by the Commission of the above findings, the complainant decided to withdraw the complaint on the following grounds:

- as regards the companies located in Hungary, Poland and Romania, in view of the new developments in these markets;
- as regards the companies located in Yugoslavia, in view of the need for a non-discriminatory approach to the case, in spite of the concentration of the Yugoslav exports in the German market.

F. CONCLUSION

- (26) Having considered the circumstances mentioned above, the proceeding should be terminated without the imposition of protective measures. This does not, of course, preclude the possibility of a new investigation being initiated if a new complaint were lodged showing evidence of changed circumstances.

HAS DECIDED AS FOLLOWS:

Done at Brussels, 13 July 1990.

Sole Article

The anti-dumping proceeding concerning NPK fertilizers falling within CN codes 3105 20 10 and 3105 20 90 originating in Hungary, Poland, Romania and Yugoslavia is hereby terminated.

For the Commission

Frans ANDRIESEN

Vice-President
