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Legislation

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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 263/91

of 1 February 1991

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 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 3577/90 ⁽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 2205/90 ⁽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 3844/90 ⁽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 the other currencies, an exchange rate based on an average of the ecu rates published in the *Official Journal of the European Communities*, C series, over a period to be determined, multiplied by the coefficient referred to in the preceding indent;

Whereas these exchange rates being those recorded on 31 January 1991;

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 3844/90 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 2 February 1991.

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

Done at Brussels, 2 February 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 353, 17. 12. 1990, p. 23.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 201, 31. 7. 1990, p. 9.

⁽⁵⁾ OJ No L 367, 29. 12. 1990, p. 13.

ANNEX

to the Commission Regulation of 1 February 1991 fixing the import levies on cereals and on wheat or rye flour, groats and meal

CN code	(ECU/tonne)	
	Levies	
	Third country	
0709 90 60	140,99	(¹) (³)
0712 90 19	140,99	(²) (³)
1001 10 10	201,91	(¹) (³)
1001 10 90	201,91	(¹) (³)
1001 90 91	196,07	
1001 90 99	196,07	
1002 00 00	158,99	(⁶)
1003 00 10	157,08	
1003 00 90	157,08	
1004 00 10	148,72	
1004 00 90	148,72	
1005 10 90	140,99	(²) (³)
1005 90 00	140,99	(²) (³)
1007 00 90	148,49	(⁴)
1008 10 00	68,03	
1008 20 00	130,36	(⁴)
1008 30 00	77,23	(⁵)
1008 90 10	(⁷)	
1008 90 90	77,23	
1101 00 00	288,69	(⁸)
1102 10 00	236,78	(⁸)
1103 11 10	327,43	(⁸)
1103 11 90	311,27	(⁸)

(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).

(⁸) On importation into Portugal the levy is increased by the amount specified in Article 2 (2) of Regulation (EEC) No 3808/90.

COMMISSION REGULATION (EEC) No 264/91

of 1 February 1991

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 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 3577/90⁽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 2205/90⁽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 3845/90⁽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 the other currencies, an exchange rate based on an average of the ecu rates published in the *Official Journal of the European Communities*, C series, over a period to be determined, multiplied by the coefficient referred to in the preceding indent;

Whereas these exchange rates being those recorded on 31 January 1991;

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

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 2 February 1991.

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

Done at Brussels, 1 February 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 353, 17. 12. 1990, p. 23.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 201, 31. 7. 1990, p. 9.

⁽⁵⁾ OJ No L 367, 29. 12. 1990, p. 10.

ANNEX

to the Commission Regulation of 1 February 1991 fixing the premiums to be added to the import levies on cereals, flour and malt

A. Cereals and flour

CN code	(ECU/tonne)			
	Current 2	1st period 3	2nd period 4	3rd period 5
0709 90 60	0	0	0	5,05
0712 90 19	0	0	0	5,05
1001 10 10	0	0	0	1,27
1001 10 90	0	0	0	1,27
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	0	0
1004 00 90	0	0	0	0
1005 10 90	0	0	0	5,05
1005 90 00	0	0	0	5,05
1007 00 90	0	0	0	0
1008 10 00	0	0	0	0
1008 20 00	0	3,16	3,16	3,18
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 2	1st period 3	2nd period 4	3rd period 5	4th period 6
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 265/91

of 1 February 1991

on the supply of various lots of skimmed-milk powder as food aid

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

Having regard to Council Regulation (EEC) No 3972/86 of 22 December 1986 on food-aid policy and food-aid management ⁽¹⁾, as last amended by Regulation (EEC) No 1930/90 ⁽²⁾, and in particular Article 6 (1) (c) thereof,

Whereas Council Regulation (EEC) No 1420/87 of 21 May 1987 laying down implementing rules for Regulation (EEC) No 3972/86 on food-aid policy and food-aid management ⁽³⁾ lays down the list of countries and organizations eligible for food-aid operations and specifies the general criteria on the transport of food aid beyond the fob stage;

Whereas following the taking of a number of decisions on the allocation of food aid the Commission has allocated to certain beneficiary organizations 2 268,3 tonnes of skimmed-milk powder;

Whereas it is necessary to provide for the carrying-out of this measure in accordance with the rules laid down by Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community

food aid ⁽⁴⁾; whereas it is necessary to specify the time limits and conditions of supply and the procedure to be followed to determine the resultant costs,

HAS ADOPTED THIS REGULATION:

Article 1

Milk products shall be mobilized in the Community, as Community food aid, for supply to the recipients listed in the Annexes in accordance with Regulation (EEC) No 2200/87 and under the conditions set out in the Annexes. Supplies shall be awarded by the tendering procedure.

The successful tenderer is deemed to have noted and accepted all the general and specific conditions applicable. Any other condition or reservation included in his tender is deemed unwritten.

Article 2

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

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

Done at Brussels, 1 February 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 370, 30. 12. 1986, p. 1.

⁽²⁾ OJ No L 174, 7. 7. 1990, p. 6.

⁽³⁾ OJ No L 136, 26. 5. 1987, p. 1.

⁽⁴⁾ OJ No L 204, 25. 7. 1987, p. 1.

ANNEX I

LOTS A — B — C

1. **Operation Nos** ⁽¹⁾: 1156-1163/90
2. **Programme**: 1990
3. **Recipient**: World Food Programme, Via Cristoforo Colombo 426, I-00145 Rome (telex 626675 WFP I)
4. **Representative of the recipient** ⁽³⁾: see OJ No C 103, 16. 4. 1987
5. **Place or country of destination**: see Annex II
6. **Product to be mobilized**: vitaminized skimmed-milk powder; skimmed-milk powder (C 4)
7. **Characteristics and quality of the goods** ⁽²⁾ ⁽⁶⁾ ⁽⁷⁾:
(see OJ No C 216, 14. 8. 1987, p. 4, I.1.B.1. to I.1.B.3.)
C 4: (see OJ No C 216, 14. 8. 1987, p. 3, I.1.A.1. to I.1.A.2.)
8. **Total quantity**: 1 818,3 tonnes
9. **Number of lots**: three (A: 688 tonnes; B: 473 tonnes; C: 657,3 tonnes)
10. **Packaging and marking**: 25 kg
See OJ No C 216, 14. 8. 1987, p. 4 and 6 (I.1.B.4. and I.1.B.4.3.)
C 4: (see OJ No C 216, 14. 8. 1987, p. 3 (I.1.A.3.)
Supplementary markings on the packaging: see Annex II and see OJ No C 216, 14. 8. 1987, p. 6 (I.1.B.5.)
C 4: p. 3 (I.1.A.4.)
11. **Method of mobilization**: Community market
The skimmed-milk powder must be manufactured and the vitamins incorporated after the award of the tender
C 4: The manufacture of skimmed-milk powder must be carried out after the award of the tender
12. **Stage of supply**: free at port of shipment
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: —
16. **Address of the warehouse and, if appropriate, port of landing**: —
17. **Period for making the goods available at the port of shipment**: 15 — 31. 3. 1991
18. **Deadline for the supply**: —
19. **Procedure for determining the costs of supply**: invitation to tender
20. **In the case of an invitation to tender, date of expiry of the period allowed for submission of tenders** ⁽⁴⁾: 12 noon on 18. 2. 1991
21. **In the case of a second invitation to tender**:
(a) deadline for the submission of tenders: 12 noon on 4. 3. 1991;
(b) period for making the goods available at the port of shipment: 1 — 15. 4. 1991
(c) deadline for the supply: —
22. **Amount of tendering security**: ECU 20 per tonne
23. **Amount of delivery security**: 10 % of the tender in ecus
24. **Address for submission of tenders**: Bureau de l'aide alimentaire, Attention Mr N. Arend, Bâtiment Loi 120, bureau 7/58, rue de la Loi, 200, B-1049 Brussels; telex AGREC 22037 B or 25670 B
25. **Refund payable on application by the successful tenderer** ⁽⁵⁾: refund applicable 1. 1. 1991, fixed by Commission Regulation (EEC) No 3804/90 (OJ No L 365, 28. 12. 1990, p. 54).

LOT D

1. **Operation Nos** ⁽¹⁾: 1141 — 1149/90
2. **Programme**: 1990
3. **Recipient**: Euronaid, PO Box 77, NL-2340 AB Oegstgeest
4. **Representative of the recipient** ⁽²⁾: see OJ No C 103, 16. 4. 1987
5. **Place or country of destination**: see Annex II
6. **Product to be mobilized**: vitaminized skimmed-milk powder
7. **Characteristics and quality of the goods** ⁽³⁾ ⁽⁴⁾ ⁽⁷⁾: (see OJ No C 216, 14. 8. 1987, p. 4, I.1.B.1. — I.1.B.3.)
8. **Total quantity**: 450 tonnes
9. **Number of lots**: one
10. **Packaging and marking**: 25 kg ⁽⁸⁾ ⁽⁹⁾ ⁽¹⁰⁾ see OJ No C 216, 14. 8. 1987, p. 4 and 6 (I.1.B.4. and I.1.B.4.3.)
Supplementary markings on packaging: see Annex II and see OJ No C 216, 14. 8. 1987, p. 6 (I.1.B.5.)
11. **Method of mobilization**: Community market
The skimmed-milk powder must be manufactured and the vitamins incorporated after the award of the tender
12. **Stage of supply**: free at port of shipment
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: —
16. **Address of the warehouse and, if appropriate, port of landing**: —
17. **Period for making the goods available at the port of shipment**: 5 — 18. 3. 1991
18. **Deadline for the supply**: —
19. **Procedure for determining the costs of supply**: invitation to tender
20. **In the case of an invitation to tender, date of expiry of the period allowed for submission of tenders** ⁽⁶⁾: 12 noon on 18. 2. 1991
21. **In the case of a second invitation to tender**:
 - (a) deadline for the submission of tenders: 12 noon on 4. 3. 1991
 - (b) period for making the goods available at the port of shipment: 18. 3 — 4. 4. 1991
 - (c) deadline for the supply: —
22. **Amount of tendering security**: ECU 20 per tonne
23. **Amount of delivery security**: 10 % of the tender in ecus
24. **Address for submission of tenders**: Bureau de l'aide alimentaire, Attention Mr N. Arend, Bâtiment Loi 120, bureau 7/58, rue de la Loi 200, B-1049 Brussels; telex AGREC 22037 B or 25670 B
25. **Refund payable on application by the successful tenderer** ⁽⁵⁾: refund applicable 1. 1. 1991, fixed by Commission Regulation (EEC) No 3804/90 (OJ No L 365, 28. 12. 1990, p. 54)

Notes:

- (1) The operation number is to be quoted in all correspondence.
- (2) The successful tenderer shall deliver to the beneficiary for each action number/shipping number a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded.
Radioactivity analysis must indicate the caesium-134 and -137 levels.
- (3) Commission delegate to be contacted by the successful tenderer: see list published in OJ No C 227, 7. 9. 1985, p. 4.
- (4) In order not to overload the telex, tenderers are requested to provide, before the date and time laid down in point 20 of this Annex, evidence that the tendering security referred to in Article 7 (4) (a) of Regulation (EEC) No 2200/87 has been lodged, preferably:
- by porter at the office referred to in point 24 of this Annex, or
 - by telecopier on one of the following numbers in Brussels:
 - 235 01 32,
 - 236 10 97,
 - 235 01 30,
 - 236 20 05.
- (5) Commission Regulation (EEC) No 2330/87 (OJ No L 210, 1. 8. 1987, p. 56), as last amended by Regulation (EEC) No 2226/89 (OJ No L 214, 24. 7. 1989, p. 10), is applicable as regards the export refund and, where appropriate, the monetary and accession compensatory amounts, the representative rate and the monetary coefficient. The date referred to in Article 2 of the abovementioned Regulation is that referred to in point 25 of the Annexes.
- (6) The successful tenderer shall give the beneficiaries' representative, at the time of delivery, a certificate of origin for each action number/shipping number.
- (7) The successful tenderer shall give the beneficiaries' representative, at the time of delivery, a health certificate for each action number/ shipping number.
- (8) Shipment to take place in 20-foot containers, condition FCL/LCL. The supplier shall be responsible for the cost of making the containers available in the stack position at the container terminal at the port of shipment. The recipient shall be responsible for all subsequent loading costs including the cost of moving the containers from the container terminal.
- The provisions of Article 13 (2), second paragraph, of Regulation (EEC) No 2200/87 shall not apply.
- (9) The supplier should send a duplicate of the original invoice to:
- MM De Keyzer & Schütz BV,
Postbus 1438,
Blaak 16,
NL-3000 BK Rotterdam.
- (10) The successful tenderer has to submit to the recipient's agent a complete packaging list of each container, specifying the number of bags belonging to each shipping number as specified in the invitation to tender.
- The successful tenderer has to seal each container with a numbered locktainer, the number of which is to be provided to the beneficiary's forwarder.

ANEXO II — BILAG II — ANHANG II — ΠΑΡΑΡΤΗΜΑ II — ANNEX II — ANNEXE II — ALLEGATO II — BIJLAGE II — ANEXO II

Designación del lote Parti Bezeichnung der Partie Χαρακτηρισμός της παρτίδας Lot Désignation du lot Designazione della partita Aanduiding van de partij Designação do lote	Cantidad total del lote (en toneladas) Totalmængde (tons) Gesamtmenge der Partie (in Tonnen) Συνολική ποσότητα της παρτίδας (σε τόνους) Total quantity (in tonnes) Quantité totale du lot (en tonnes) Quantità totale della partita (in tonnellate) Totale hoeveelheid van de partij (in ton) Quantidade total (em toneladas)	Cantidades parciales (en toneladas) Delmængde (tons) Teilmengen (in Tonnen) Μερικές ποσότητες (σε τόνους) Partial quantities (in tonnes) Quantités partielles (en tonnes) Quantitativi parziali (in tonnellate) Deelhoeveelheden (in ton) Quantidades parciais (em toneladas)	Beneficiario Modtager Empfänger Δικαιούχος Beneficiary Bénéficiaire Beneficiario Begunstigde Beneficiário	País destinatario Modtagerland Bestimmungsland Χώρα προορισμού Recipient country Pays destinataire Paese destinatario Bestemmingsland País destinatário	Inscripción en el embalaje Emballagens påtegning Aufschrift auf der Verpackung Ένδειξη επί της συσκευασίας Markings on the packaging Inscription sur l'emballage Iscrizione sull'imballaggio Aanduiding op de verpakking Inscrição na embalagem
A	688	688	WFP	Ecuador	Action No 1156/90 / Ecuador 03096 / VSMP / Gift of the European Economic Community / Action of the World Food Programme / Guayaquil
B	473	130	WFP	Niger	Action No 1157/90 / Niger 02072 / VSMP / Gift of the European Economic Community / Action of the World Food Programme / Cotonou in transit to Niamey, Niger
		23	WFP	Niger	Action No 1158/90 / Niger 02445 / VSMP / Gift of the European Economic Community / Action of the World Food Programme / Cotonou in transit to Niamey
		320	WFP	Niger	Action No 1159/90 / Niger 02734 / VSMP / Gift of the European Economic Community / Action of the World Food Programme / Cotonou in transit to Niamey
C	657,3	C 1 : 150	WFP	Bhutan	Action No 1160/90 / Bhutan 03734 / VSMP / Gift of the European Economic Community / Action of the World Food Programme / Phuntsholing
		C 2 : 307,3	WFP	Mauritania	Action No 1161/90 / Mauritania 02822 / VSMP / Gift of the European Economic Community / Action of the World Food Programme / Nouakchott
		C 3 : 157	WFP	Mauritania	Action No 1162/90 / Mauritania 02822 / VSMP / Gift of the European Economic Community / Action of the World Food Programme / Nouakchott
		C 4 : 43	WFP	Mauritania	Action No 1163/90 / Mauritania 02629 / SMP / Gift of the European Economic Community / Action of the World Food Programme / Nouakchott in transit to Fountgleita, Mauritania

Designación del lote Parti Bezeichnung der Partie Χαρακτηρισμός της παρτίδας Lot Désignation du lot Designazione della partita Aanduiding van de partij Designação do lote	Cantidad total del lote (en toneladas) Totalmængde (tons) Gesamtmenge der Partie (in Tonnen) Συνολική ποσότητα της παρτίδας (σε τόνους) Total quantity (in tonnes) Quantité totale du lot (en tonnes) Quantità totale della partita (in tonnellate) Totale hoeveelheid van de partij (in ton) Quantidade total (em toneladas)	Cantidades parciales (en toneladas) Delmængde (tons) Teilmengen (in Tonnen) Μερικές ποσότητες (σε τόνους) Partial quantities (in tonnes) Quantités partielles (en tonnes) Quantitativi parziali (in tonnellate) Deelhoeveelheden (in ton) Quantidades parciais (em toneladas)	Beneficiario Modtager Empfänger Δικαιούχος Beneficiary Bénéficiaire Beneficiario Begunstigde Beneficiário	País destinatario Modtagerland Bestimmungsland Χώρα προορισμού Recipient country Pays destinataire Paese destinatario Bestemmingsland País destinatário	Inscripción en el embalaje Emballagens påtegning Aufschrift auf der Verpackung Ένδειξη επί της συσκευασίας Markings on the packaging Inscription sur l'emballage Iscrizione sull'imballaggio Aanduiding op de verpakking Inscrição na embalagem
D	450	15	Appel détresse	Madagascar	Action n° 1141/90 / Lait en poudre / Madagascar / Appel détresse / 906802 / Antananarivo via Toamasina / Don de la Communauté économique européenne / Pour distribution gratuite
		15	ACA	India	Action No 1142/90 / Milk powder / India / ACA / 901601 / Kanyakumari via Tuticorin / Gift of the European Economic Community / For free distribution
		30	ACA	India	Action No 1143/90 / Milk powder / India / ACA / 901602 / Bombay / Gift of the European Economic Community / For free distribution
		15	ACA	India	Action No 1144/90 / Milk powder / India / ACA / 901604 / Madras / Gift of the European Economic Community / For free distribution
		15	ACA	India	Action No 1145/90 / Milk powder / India / ACA / 901608 / Cochin / Gift of the European Economic Community / For free distribution
		85	CAM	India	Action No 1146/90 / Milk powder / India / CAM / 902002 / Madras / Gift of the European Economic Community / For free distribution
		125	CAM	India	Action No 1147/90 / Milk powder / India / CAM / 902004 / Bombay / Gift of the European Economic Community / For free distribution
		105	Somedi	India	Action No 1148/90 / Milk powder / India / Somedi / 906500 / Bombay / Gift of the European Economic Community / For free distribution
		45	Somedi	India	Action No 1149/90 / Milk powder / India / Somedi / 906501 / Rajkot via Bombay / Gift of the European Economic Community / For free distribution

COMMISSION REGULATION (EEC) No 266/91

of 1 February 1991

modifying Regulation (EEC) No 3816/90 laying down detailed rules for the application of the supplementary trade mechanism for certain products in the pigmeat sector destined for Portugal and originating in other Member States

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 569/86 of 25 February 1986 laying down general rules for the application of the supplementary mechanism applicable to trade⁽¹⁾, as last amended by Regulation (EEC) No 3296/88⁽²⁾, and in particular Article 7 (1) thereof,

Having regard to Council Regulation (EEC) No 3792/85 of 20 December 1985 laying down the arrangements applying to trade in agricultural products between Spain and Portugal⁽³⁾, as last amended by Regulation (EEC) No 3296/88, and in particular Article 13 thereof,

Whereas Commission Regulation (EEC) No 3816/90⁽⁴⁾ lays down detailed rules for the application of the supplementary trade mechanism for certain products in the pigmeat sector destined for Portugal;

Whereas the weekly limit for STM licences should be altered in order to reflect a more representative pattern of trade;

Whereas Regulation (EEC) No 569/86 provides for STM import licences for products coming from third countries; whereas Commission Regulation (EEC) No 574/86 of 28 February 1986 laying down detailed rules for the application of the supplementary trade mechanism⁽⁵⁾ as last amended by Regulation (EEC) No 3296/88 lays down detailed rules on this matter; whereas it is necessary to improve Regulation (EEC) No 3816/90 in order to clarify that some of its provisions apply also to these licences and to specify some aspects of the system of securities linked with these licences;

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

Article 1

Regulation (EEC) No 3816/90 is hereby amended as follows:

1. The title is replaced by the following: 'Commission Regulation (EEC) No 3816/90 of 19 December 1990 laying down detailed rules for the application of the supplementary trade mechanism for certain products in the pigmeat sector destined for Portugal.'

2. Articles 5, 6 and 7 are replaced by the following:

Article 5

The sum of the quantities stated in the STM licences applied for by a given operator in any one week shall, for each of the groups of products specified in the Annex, not exceed 27 tonnes live weight for live animals or 44 tonnes for meat or meat products.'

Article 6

STM licences as provided for in Article 1 of Regulation (EEC) No 569/86 and STM import licences as provided for in Article 3 of the same Regulation shall be valid for 18 days for all products set out in the Annex from the actual date of issue, in accordance with Article 21 (2) of Regulation (EEC) No 3719/88.

Article 7

1. The security relating to licences as provided for in Article 6 shall be:

- ECU 4 per 100 kg live weight in the case of live swine, and
- ECU 5 per 100 kg for all other products set out in the Annex.

2. Article 8 of Regulation (EEC) No 574/86 shall apply *mutatis mutandis* to import licences as provided for in Article 3 of Regulation (EEC) No 569/86.'

Article 2

This Regulation shall enter into force on 4 February 1991.

⁽¹⁾ OJ No L 55, 1. 3. 1986, p. 106.

⁽²⁾ OJ No L 293, 27. 10. 1988, p. 7.

⁽³⁾ OJ No L 367, 31. 12. 1985, p. 7.

⁽⁴⁾ OJ No L 366, 29. 12. 1990, p. 33.

⁽⁵⁾ OJ No L 57, 1. 3. 1986, p. 1.

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

Done at Brussels, 1 February 1991.

For the Commission
Ray MAC SHARRY
Member of the Commission

COMMISSION REGULATION (EEC) No 267/91

of 1 February 1991

amending Regulation (EEC) No 3817/90 laying down detailed rules for the application of the supplementary trade mechanism for certain products in the eggs and poultrymeat sectors destined for Portugal and originating in the other Member States

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 569/86 of 25 February 1986 laying down general rules for the application of the supplementary mechanism applicable to trade⁽¹⁾, as last amended by Regulation (EEC) No 3296/88⁽²⁾, and in particular Article 7 (1) thereof,

Having regard to Council Regulation (EEC) No 3792/85 of 20 December 1985 laying down the arrangements applying to trade in agricultural products between Spain and Portugal⁽³⁾, as last amended by Regulation (EEC) No 3296/88, and in particular Article 13 thereof,

Whereas Commission Regulation (EEC) No 3817/90⁽⁴⁾ of 19 December 1990 lays down detailed rules for the application of the supplementary trade mechanism for certain products in the eggs and poultrymeat sectors destined for Portugal;

Whereas the groups of products referred to in the Annex to the said Regulation should be further subdivided in order to assure an equal treatment of applicants;

Whereas Regulation (EEC) No 569/86 provides for STM import licences for products coming from third countries; whereas Commission Regulation (EEC) No 574/86 of 28 February 1986 laying down detailed rules for the application of the supplementary trade mechanism⁽⁵⁾ as last amended by Regulation (EEC) No 3296/88, provides for detailed rules on this matter; whereas it is necessary to amend Regulation (EEC) No 3817/90 in order to clarify that some of its provisions apply also to these licences and to specify some aspects of the system of securities linked with these licences;

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

HAS ADOPTED THIS REGULATION:

Article 1

Commission Regulation (EEC) No 3817/90 is hereby amended as follows:

1. The title is replaced by the following:

'Commission Regulation (EEC) No 3817/90 of 19 December 1990 laying down detailed rules for the application of the supplementary trade mechanism for certain products in the eggs and poultrymeat sectors destined for Portugal.'

2. Article 2 (1) is replaced by the following:

'1. STM licences shall be requested for imports into Portugal from the other Member States of products falling within:

- one of the codes of the combined nomenclature, or
 - one of the subgroups of codes of the combined nomenclature,
- given in the Annex.'

3. Articles 6 and 7 are replaced by the following:

Article 6

STM licences as provided for in Article 1 of Regulation (EEC) No 569/86 and STM import licences as provided for in Article 3 of the same Regulation shall be valid for 18 days for all products set out in the Annex from the actual date of issue, in accordance with Article 21 (2) of Regulation (EEC) No 3719/88.

Article 7

1. The security relating to STM licences shall be for each of the groups of products specified in the Annex as follows:

Group 1: ECU 3,5 per 100 kg eggs in shell

Group 2: ECU 0,5 per 100 hatching eggs or ECU 0,6 per 100 chicks

Group 3: ECU 2 per 100 hatching eggs or ECU 2,5 per 100 poult

⁽¹⁾ OJ No L 55, 1. 3. 1986, p. 106.

⁽²⁾ OJ No L 293, 27. 10. 1988, p. 7.

⁽³⁾ OJ No L 367, 31. 12. 1985, p. 7.

⁽⁴⁾ OJ No L 366, 29. 12. 1990, p. 36.

⁽⁵⁾ OJ No L 57, 1. 3. 1986, p. 7.

Group 4: ECU 5 per 100 kg carcase weight or ECU 3,5 per 100 kg live weight

Group 5: ECU 5 per 100 kg carcase weight or ECU 3,5 per 100 kg live weight

2. Article 8 of Regulation (EEC) No 574/86 shall apply *mutatis mutandis* to import licences as provided for in Article 3 of Regulation (EEC) No 569/86.

4. The Annex is replaced by the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 4 February 1991.

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

Done at Brussels, 1 February 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX

Group Subgroup	CN code	Description	Indicative ceiling 1991 ⁽¹⁾
1	0407 00 30	Eggs other than hatching eggs	5 000 tonnes from which 1 250 tonnes for each quarter
2	2 (a) 0105 11 00	Live fowls of the species <i>Gallus domesticus</i> weighing not more than 185 g	5 million pieces ⁽²⁾ from which 1,25 million each quarter
	2 (b) ex 0407 00 19	Hatching eggs of hens of the species <i>Gallus domesticus</i>	
3	3 (a) 0105 19 10	Live geese and turkeys of domestic species weighing not more than 185 g	2 million pieces ⁽³⁾ from which 500 000 for each quarter
	3 (b) 0407 00 11	Hatching eggs of turkeys or geese	
4	4 (a) 0105 91 00	Live fowls of the species <i>Gallus domesticus</i> weighing more than 185 g	9 000 tonnes ⁽⁴⁾ from which 2 250 tonnes for each quarter
	4 (b) 0207 10 15 0207 10 19 0207 21 10 0207 21 90 0207 39 13 0207 41 11	Fowls of the species <i>Gallus domesticus</i> , not cut in pieces fresh, chilled or frozen, known as '70 % chickens' or '65 % chickens' or 'chickens otherwise presented' Halves and quarters of fowls of the species <i>Gallus domesticus</i> , fresh, chilled or frozen	
5	5 (a) 0105 99 30	Live turkeys of domestic species weighing more than 185 g	1 500 tonnes ⁽⁵⁾ from which 375 tonnes for each quarter
	5 (b) 0207 10 31 0207 10 39 0207 22 10 0207 22 90 0207 39 33 0207 42 11	Turkeys not cut in pieces, fresh, chilled, or frozen, known as '80 % turkeys', '73 % turkeys' or 'turkeys otherwise presented' Halves and quarters of turkeys, fresh, chilled or frozen	

⁽¹⁾ If the overall quantity for which applications have been submitted in one quarter is less than the quantity available in that quarter, the quantity remaining shall be added to the quantity available in respect of the following quarter.

⁽²⁾ Hatching egg equivalent: 1 chick = 1,25 hatching eggs.

⁽³⁾ Hatching egg equivalent: 1 poult = 1,4 hatching eggs.

⁽⁴⁾ Carcase weight equivalent: 100 kg live fowl = 70 kg carcase weight.

⁽⁵⁾ Carcase weight equivalent: 100 kg live turkeys = 75 kg carcase weight.

COMMISSION REGULATION (EEC) No 268/91
of 1 February 1991

on detailed rules for the application of Council Regulation (EEC) No 3650/90 on measures to strengthen the application of the common quality standards for fruit and vegetables in Portugal

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 3650/90 of 11 December 1990 on measures to strengthen the application of the common quality standards for fruit and vegetables in Portugal⁽¹⁾, and in particular Article 4 thereof,

Whereas in order to facilitate effective operation of the measures in question and the attainment of their purpose, the information to be provided in the programme to be submitted by Portugal should be specified;

Whereas the expenditure eligible for Community financing should be specified and also the supporting documents required in order to permit verification of eligibility;

Whereas the progress of the programme should be monitored and its achievements noted; whereas the notifications to be made for these purposes should be specified;

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

HAS ADOPTED THIS REGULATION:

Article 1

The programme to be submitted for approval by the Commission pursuant to Article 1 of Council Regulation (EEC) No 3650/90 shall provide the following information:

(a) a description and analysis of the existing situation as regards inspector numbers, their geographical distribution and the organization of their work;

(b) reinforcement of inspectorate:

- estimate of requirements,
- the qualifications required for recruitment and the recruitment procedures envisaged,
- an assignment plan covering all inspectors;

(c) training:

- an assessment of training requirements for:
 - inspectors (specialized training, refresher courses),
 - operators,
- the types of training planned (courses, seminars, field training, employment of consultants etc); inspectors must be given both theoretical and practical training and operator training must give priority to producers,
- the estimated timetable for training operations,
- the plans for distribution of teaching materials to operators, specifying priorities and the type of material to be used,
- a reasoned explanation of the number, location and composition of the pilot units, with the timetable for their creation;

(d) checks:

- organization of the various types of check,
- management and administration of checks; provisions not yet adopted shall be notified immediately on adoption,
- measures taken or to be taken to penalize infringements of the common quality standards, in accordance with Article 10 (2) of Council Regulation (EEC) No 1035/72⁽²⁾;

(e) development of packaging designs:

- development and trials of suitable packaging designs for products considered to require priority treatment; this is to be done in cooperation with the relevant operators, in particular producers;

(f) the budget estimate for financing the programme, with a breakdown by type of action or category of expenditure and by year.

⁽¹⁾ OJ No L 362, 27. 12. 1990, p. 22.

⁽²⁾ OJ No L 118, 20. 5. 1972, p. 1.

All changes envisaged shall be immediately notified to the Commission and the reasons specified. The Commission shall make any comments within one month.

Article 2

For the purposes of the Community financial contribution the following shall be considered eligible expenditure :

1. reinforcement of inspectorate :

1.1. remuneration of additional officials, comprising salary and other payments under national provisions, taxes and duties excluded. Only staff engaged from the date of approval of the programme may be counted for determination of eligible expenditure.

1.2. purchase of technical material required for checks

1.3. travel required in order to make checks, calculated either from the supporting documents presented by the official or by using a flat rate, fixed in accordance with national provisions, per kilometre travelled by the official from and to his place of employment.

2. training :

— organization of courses and seminars for inspectors and for operators : the fees and travel and subsistence costs of instructors and the cost of documentation made available to participants,

— field training of inspectors in other Member States : registration fees certified by the responsible authority of the Member State concerned and travel and subsistence costs calculated in accordance with national provisions,

3. creation of pilot units : purchase of material and/or equipment required to simulate the commercial preparation and packaging of products subject to common quality standards.

Expenditure on the construction or alteration of buildings shall not be eligible.

4. preparation and distribution of teaching materials

Expenditure on transmission through the media shall not be eligible.

5. development and testing of packaging designs

Expenditure simply on purchase of packaging shall not be eligible.

Article 3

A report on the cost of implementation of the programme in the previous financial year shall be sent to the Commission every year by 31 April at the latest. It shall be made out as shown in the annexed tables.

Article 4

1. The Portuguese authorities shall with all speed notify the Commission of the department and/or organization responsible for planning and management of the programme.

2. The responsible department shall :

— keep accounts covering execution of the programme that permit eligible expenditure as defined in Article 2 to be distinguished and verified from supporting documents,

— hold available to the Commission until at least the end of the third year following that in question all payment files and the relevant supporting documents.

3. At the end of the second year of execution of the programme the responsible department shall send the Commission a report on execution of the programme.

4. At the end of the fifth year the department shall make a report assessing the achievements of the programme. The Commission shall notify these to the Member States.

Article 5

The Portuguese authorities shall ensure that the action taken, in particular reinforcement of the inspectorate and training, continues after the end of the period of execution of the programme.

Article 6

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, 1 February 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX

ANNUAL DECLARATION OF EXPENDITURE (ARTICLE 3)

199..

I. SUMMARY STATEMENT OF EXPENDITURE

Category	Amount in national currency	Community contribution 80 %
1. Reinforcement of inspectorate		
2. Training		
3. Creation of pilot units		
4. Material for distribution		
5. Packaging designs		
Total		

II. STATEMENTS FOR EACH CATEGORY OF EXPENDITURE (1)

1. Reinforcement of inspectorate

1.1. Remuneration

(in esc)

[illegible]

(¹) Append supporting documents.

(in esc)

Description of material and equipment for each pilot unit	Amount
Total	

(in esc)

Description	Cost of design	Cost of preparation	Cost of distribution	Amount
Total				

(in esc)

Description	Amount
Total	

COMMISSION REGULATION (EEC) No 269/91

of 1 February 1991

setting general implementing rules for the standard amounts used for financing expenditure in connection with public storage

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy ⁽¹⁾, as last amended by Regulation (EEC) No 2205/90 ⁽²⁾, and in particular Article 5 (3) thereof,Having regard to Council Regulation (EEC) No 1883/78 of 2 August 1978 laying down general rules for the financing of interventions by the European Agricultural Guidance and Guarantee Fund (Guarantee Section) ⁽³⁾, as last amended by Regulation (EEC) No 787/89 ⁽⁴⁾, and in particular the second paragraph of Article 6 thereof,Whereas Council Regulation (EEC) No 1678/85 ⁽⁵⁾, as last amended by Regulation (EEC) No 3609/90 ⁽⁶⁾ set the agricultural conversion rates to be used for the standard amounts mentioned in Article 6 of Regulation (EEC) No 1883/78; whereas the operative event determining the rates applicable should be deemed to occur on the first day of the EAGGF Guarantee Section financial year;

Whereas, however, the Council's decision on the agricultural conversion rates for the 1991 financial year has been made after its commencement; whereas in consequence the operative event for the 1991 financial year must be specifically determined;

Whereas in view of the changes made in the method of determining the abovementioned standard amounts they should again be paid in full;

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

HAS ADOPTED THIS REGULATION:

*Article 1*The following Article is hereby inserted in Commission Regulation (EEC) No 1643/89 ⁽⁷⁾:*Article 1a*

The standard amounts shall be converted into national currency using the agricultural conversion rate applicable on the first day of the EAGGF Guarantee Section financial year, concerning the public storage expenses.

For the 1991 financial year, however, the agricultural conversion rate to be used shall be that applicable on 17 December 1990.

*Article 2*Article 2 of Commission Regulation (EEC) No 1730/86 of 3 June 1986 on certain detailed rules for financing interventions by the EAGGF Guarantee Section ⁽⁸⁾ is hereby deleted with effect from 1 October 1990.*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, 1 February 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission⁽¹⁾ OJ No L 164, 24. 6. 1985, p. 1.⁽²⁾ OJ No L 201, 31. 7. 1990, p. 9.⁽³⁾ OJ No L 216, 5. 8. 1978, p. 1.⁽⁴⁾ OJ No L 85, 30. 3. 1989, p. 1.⁽⁵⁾ OJ No L 164, 24. 6. 1985, p. 11.⁽⁶⁾ OJ No L 351, 15. 12. 1990, p. 1.⁽⁷⁾ OJ No L 162, 13. 6. 1989, p. 12.⁽⁸⁾ OJ No L 150, 4. 6. 1986, p. 14.

COMMISSION REGULATION (EEC) No 270/91

of 1 February 1991

amending Regulation (EEC) No 1780/89 laying down detailed rules for the disposal of alcohol obtained from the distillation operations referred to in Articles 35, 36 and 39 of Council Regulation (EEC) No 822/87 and held by intervention agencies

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

Having regard to Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine⁽¹⁾, as last amended by Regulation (EEC) No 3577/90⁽²⁾,

Having regard to Council Regulation (EEC) No 3877/88 of 12 December 1988 laying down general rules on the disposal of alcohol obtained from the distillation operations referred to in Articles 35, 36 and 39 of Regulation (EEC) No 822/87 and held by intervention agencies⁽³⁾, and in particular Articles 2 and 3 thereof,

Whereas the legal consequences for the tenderer who submits more than one tender in respect of each partial invitation to tender should be specified;

Whereas, in the light of experience acquired in the context of individual invitations to tender in respect of countries of the Caribbean region and in particular the administrative periods and logistical problems encountered by the tenderers concerned, the time limits specified for the removal of the alcohol awarded should be extended by one month;

Whereas Commission Regulation (EEC) No 1780/89⁽⁴⁾, as last amended by Regulation (EEC) No 3391/90⁽⁵⁾, should be amended accordingly;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1780/89 is hereby amended as follows:

1. The following sentence is added to Article 5 (3):

'If a tenderer submits more than one tender in respect of each partial invitation to tender, none of those tenders shall be eligible for consideration'.

2. In Article 17 (2), the words 'two months' are replaced by the words 'three months'.

Article 2

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

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

Done at Brussels, 1 February 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 84, 27. 3. 1987, p. 1.

⁽²⁾ OJ No L 353, 17. 12. 1990, p. 23.

⁽³⁾ OJ No L 346, 15. 12. 1988, p. 7.

⁽⁴⁾ OJ No L 178, 24. 6. 1989, p. 1.

⁽⁵⁾ OJ No L 327, 27. 11. 1990, p. 23.

COMMISSION REGULATION (EEC) No 271/91

of 1 February 1991

correcting Regulation (EEC) No 232/91 fixing the export refunds 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 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 3577/90 ⁽²⁾, and in particular the fourth subparagraph
of Article 16 (2) 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 the fourth subparagraph
of Article 17 (2) thereof,

Having regard to the opinion of the Monetary Committee,
Whereas the export refunds on products processed from
cereals and rice, were fixed by Commission Regulation
(EEC) No 232/91 ⁽⁵⁾;

Whereas a check has shown that the Annex thereto does
not correspond to the measures submitted for an opinion
to the management committee; whereas the Regulation
in question should be corrected accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EEC) No 232/91 is replaced by
the Annex to this Regulation.

Article 2

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

It shall apply from 1 February 1991.

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

Done at Brussels, 1 February 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 353, 17. 12. 1990, p. 23.

⁽³⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽⁴⁾ OJ No L 177, 24. 6. 1989, p. 1.

⁽⁵⁾ OJ No L 27, 1. 2. 1991, p. 9.

ANNEX

to the Commission Regulation of 1 February 1991 correcting Regulation (EEC) No 232/91
fixing the export refunds on products processed from cereals and rice

(ECU/tonne)		(ECU/tonne)	
Product code	Refund	Product code	Refund
1102 20 10 100	178,85	1104 22 30 100	165,97
1102 20 10 300	153,30	1104 22 30 900	—
1102 20 10 900	—	1104 22 50 000	—
1102 20 90 100	153,30	1104 23 10 100	191,63
1102 20 90 900	—	1104 23 10 300	146,91
1102 30 00 000	—	1104 23 10 900	—
1102 90 10 100	147,00	1104 29 11 000	—
1102 90 10 900	99,96	1104 29 15 000	—
1102 90 30 100	175,74	1104 29 19 000	—
1102 90 30 900	—	1104 29 91 000	120,00
1103 12 00 100	175,74	1104 29 95 000	105,37
1103 12 00 900	—	1104 30 10 000	30,00
1103 13 11 100	229,95	1104 30 90 000	31,94
1103 13 11 300	178,85	1107 10 11 000	213,60
1103 13 11 500	153,30	1107 10 91 000	174,44
1103 13 11 900	—	1108 11 00 100	240,00
1103 13 19 100	229,95	1108 11 00 900	—
1103 13 19 300	178,85	1108 12 00 100	204,40
1103 13 19 500	153,30	1108 12 00 900	—
1103 13 19 900	—	1108 13 00 100	204,40
1103 13 90 100	153,30	1108 13 00 900	—
1103 13 90 900	—	1108 14 00 100	—
1103 14 00 000	—	1108 14 00 900	—
1103 19 10 000	105,37	1108 19 10 100	253,25
1103 19 30 100	151,90	1108 19 10 900	—
1103 19 30 900	—	1108 19 90 100	—
1103 21 00 000	122,40	1108 19 90 900	—
1103 29 20 000	99,96	1109 00 00 100	0,00
1103 29 30 000	—	1109 00 00 900	—
1103 29 40 000	130,31	1702 30 51 000	267,00
1104 11 90 100	147,00	1702 30 59 000	204,40
1104 11 90 900	—	1702 30 91 000	267,00
1104 12 90 100	195,26	1702 30 99 000	204,40
1104 12 90 300	156,21	1702 40 90 000	204,40
1104 12 90 900	—	1702 90 50 100	267,00
1104 19 10 000	122,40	1702 90 50 900	204,40
1104 19 50 110	204,40	1702 90 75 000	279,77
1104 19 50 130	166,08	1702 90 79 000	194,18
1104 19 50 150	—	2106 90 55 000	204,40
1104 19 50 190	—	2302 10 10 000	27,66
1104 19 50 900	—	2302 10 90 100	27,66
1104 19 91 000	—	2302 10 90 900	—
1104 21 10 100	147,00	2302 20 10 000	27,66
1104 21 10 900	—	2302 20 90 100	27,66
1104 21 30 100	147,00	2302 20 90 900	—
1104 21 30 900	—	2302 30 10 000	27,66
1104 21 50 100	196,00	2302 30 90 000	27,66
1104 21 50 300	156,80	2302 40 10 000	27,66
1104 21 50 900	—	2302 40 90 000	27,66
1104 22 10 100	156,21	2303 10 11 100	102,20
1104 22 10 900	—	2303 10 11 900	—

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).

COMMISSION REGULATION (EEC) No 272/91

of 1 February 1991

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 3577/90⁽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 2205/90⁽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 205/91⁽⁷⁾, as amended by Regulation (EEC) No 258/91⁽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:

(¹) OJ No L 281, 1. 11. 1975, p. 1.
(²) OJ No L 353, 17. 12. 1990, p. 23.
(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 201, 31. 7. 1990, p. 9.
(⁷) OJ No L 23, 29. 1. 1991, p. 24.
(⁸) OJ No L 27, 1. 2. 1991, p. 78.
(⁹) OJ No L 182, 3. 7. 1987, p. 49.
(¹⁰) OJ No L 281, 1. 11. 1975, p. 65.

— 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 the other currencies, an exchange rate based on an average of the ecu rates published in the *Official Journal of the European Communities*, C series, over a period to be determined, multiplied by the coefficient referred to in the preceding indent;

Whereas these exchange rates being those recorded on 31 January 1991;

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 205/91 are hereby altered to the amounts set out in the Annex.

Article 2

This Regulation shall enter into force on 2 February 1991.

(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, 1 February 1991.

For the Commission
Ray MAC SHARRY
Member of the Commission

ANNEX

to the Commission Regulation of 1 February 1991 altering the import levies on products processed from cereals and rice

(ECU/tonne)

CN code	Import levies	
	ACP or OCT	Third countries (other than ACP or OCT) (*)
2302 10 10	69,17	75,17
2302 10 90	148,22	154,22
2302 20 10	69,17	75,17
2302 20 90	148,22	154,22
2302 30 10	69,17	75,17
2302 30 90	148,22	154,22
2302 40 10	69,17	75,17
2302 40 90	148,22	154,22

(*) On importation into Portugal the levy is increased by the amount specified in Article 2 (2) of Regulation (EEC) No 3808/90.

COMMISSION REGULATION (EEC) No 273/91

of 1 February 1991

amending Commission Regulation (EEC) No 3447/90 on special conditions for the granting of private storage aid for sheepmeat and goatmeat

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3013/89 of 25 September 1989 on the common organization of the market in sheepmeat and goatmeat ⁽¹⁾, as amended by Regulation (EEC) No 3577/90 ⁽²⁾, and in particular Article 7 (5) thereof,Whereas Commission Regulation (EEC) No 3447/90 ⁽³⁾ of 28 November 1990 lays down special conditions for the granting of private storage aid for sheepmeat and goatmeat whereas it is appropriate to determine the minimum quantity to be destocked; whereas the provisions of this Regulation should therefore be completed;

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

HAS ADOPTED THIS REGULATION:

Article 1

The following Article 3b is inserted in Regulation (EEC) No 3447/90:

Article 3b

The minimum quantity for each removal is fixed at four tonnes expressed as bone-in meat per store and per contractor. However, where the quantity left in a store is less than this quantity, one further withdrawal operation of the remaining quantity or part thereof shall be permitted.

Where the withdrawal conditions referred to in the preceding subparagraph are not complied with:

- the amount of aid for the quantity withdrawn shall be calculated in accordance with Article 6 (3) of Commission Regulation (EEC) No 3446/90 ^(*), and
- 15 % of the security referred to in Article 4 shall be declared forfeit in respect of the quantity withdrawn.

^(*) OJ No L 333, 30. 11. 1990, p. 39.

Article 2

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

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

Done at Brussels, 1 February 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 289, 7. 10. 1989, p. 1.

⁽²⁾ OJ No L 353, 17. 12. 1990, p. 23.

⁽³⁾ OJ No L 333, 30. 11. 1990, p. 46.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 26 November 1990

on Community actions for the elderly

(91/49/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community and in particular Article 235 thereof,

Having regard to the proposal from the Commission,

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

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

Whereas the European Parliament adopted its resolution of 18 February 1982 on the situation and problems of the aged in the European Community⁽³⁾, its resolution of 10 March 1986 on services for the elderly⁽⁴⁾ and its resolution of 14 May 1986 on Community measures to improve the situation of old people in the Member States of the Community⁽⁵⁾;

Whereas, in its resolution of 14 May 1986, the European Parliament called for a European Year for the Elderly to be proclaimed;

Whereas the Council adopted the recommendation of 10 December 1982 on the principles of a Community policy with regard to retirement age⁽⁶⁾;

Whereas current demographic developments in most Member States tend to an increase in the elderly population with a particular emphasis on the very old; whereas this trend will have considerable economic and social implications, in particular for the employment market, social security and social expenditure;

Whereas exchanges of information and experience on the elderly are important for the development of solidarity within the Community;

Whereas the Community charter of the fundamental social rights of workers, adopted by the Heads of State and of Government of eleven Member States at the European Council meeting in Strasbourg on 9 December 1989, states in particular in its section entitled 'Elderly Persons':

'According to the arrangements applying in each country:

24. Every worker of the European Community must, at the time of retirement, be able to enjoy resources affording him or her a decent standard of living.

25. Every person who has reached retirement age but who is not entitled to a pension or who does not have other means of subsistence must be entitled to sufficient resources and to medical and social assistance specifically suited to his needs.';

Whereas it is important to ensure the consistency of all Community actions concerning the integration of the elderly into society and the promotion of solidarity between the generations;

Whereas the actions to be carried out at Community level are intended to complement the different types of actions carried out in Member States at different levels;

Whereas the Treaty does not provide, for the action concerned, powers other than those of Article 235,

⁽¹⁾ OJ No C 284, 12. 11. 1990, p. 146.

⁽²⁾ OJ No C 225, 10. 9. 1990, p. 14.

⁽³⁾ OJ No C 66, 15. 3. 1982, p. 71.

⁽⁴⁾ OJ No C 88, 14. 4. 1986, p. 17.

⁽⁵⁾ OJ No C 148, 16. 6. 1986, p. 61.

⁽⁶⁾ OJ No L 357, 18. 12. 1982, p. 27.

HAS DECIDED AS FOLLOWS :

Article 1

Community actions for the elderly will be carried out in the period from 1 January 1991 to 31 December 1993.

Article 2

The objective of the actions referred to in Article 1 shall be to contribute, through the transfer of knowledge, ideas and experience, particularly in the context of the effect of the internal market, towards actions carried out by the Member States concerning :

- (a) the definition, at the appropriate level, of preventive strategies to meet the economic and social challenges of an ageing population, including the problems of the dependency and health of the elderly ;
- (b) the identification of innovative approaches to strengthening solidarity between the generations and integration of the elderly ;
- (c) highlighting the positive contribution by the elderly to society.

Article 3

1. The actions referred to in Article 1 shall include :

- (a) stimulation measures and exchanges of information ;
- (b) the carrying out of studies and establishment of a monitoring centre enabling available relevant information, including information on research, to be relayed to the circles concerned ;
- (c) the exploration of the usefulness and the feasibility of setting up a European network of innovative experiences, taking into account the activities of existing bodies in this field.

2. The measures referred to in paragraph 1 shall be decided in accordance with the procedure laid down in Article 6 and shall give priority to the areas specified in the Annex.

Article 4

1. The amount deemed necessary to finance actions during the first two years of the three-year period referred to in Article 1 shall be ECU 2,4 million.

2. The necessary annual appropriations shall be authorized under the annual budgetary procedure, in accordance with the financial prospects as jointly decided by the European Parliament and the Council, and on the basis of trends in those prospects.

Article 5

The Commission shall have responsibility for the implementation of the actions provided for in this Decision and shall take the appropriate measures to that end.

Article 6

The Commission shall be assisted by a Committee of an advisory nature composed of two representatives of each Member State and chaired by the Commission representative.

The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft, within a time limit which the Chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes ; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

Article 7

The Commission shall, before 31 December 1994, submit a report to the European Parliament, the Council and the Economic and Social Committee on the implementation, outcome and evaluation of actions provided for in this Decision.

Article 8

1. The year 1993 shall be designated as 'European Year of the Elderly and of Solidarity between Generations'.

2. The Council shall decide, on a proposal from the Commission, before 31 December 1991, on the activities, priorities and other detailed rules for the implementation of the European Year referred to in paragraph 1.

Article 9

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

Done at Brussels, 26 November 1990.

For the Council

The President

C. DONAT CATTIN

*ANNEX***Priority areas referred to in Article 3 (2)****1. Organization of information exchanges**

The Commission will organize conferences, seminars and studies aimed at facilitating the exchange of information between those responsible in the Member States, concerning :

- demographic trends and their impact on social protection and health systems,
- measures aimed at improving the mobility of the elderly and their ability to lead an independent life,
- measures to strengthen solidarity between generations and promote the positive contribution of the elderly to economic and social life,
- the economic and social integration of the elderly, including their income.

2. Exploration of the usefulness and the feasibility of setting up a European network of innovative experience as regards the promotion :

- of mutual assistance between generations either through the voluntary work of the elderly or through their integration in work for the benefit of the local communities in which they live,
 - measures to foster the independence of the elderly.
-

COMMISSION

COMMISSION DECISION

of 16 January 1991

relating to a proceeding under Article 85 of the EEC Treaty

(IV/32.732 — IJsselcentrale and others)

(Only the Dutch text is authentic)

(91/50/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 17 of 6 February 1962, first Regulation implementing Articles 85 and 86 of the Treaty⁽¹⁾, as last amended by the Act of Accession of Spain and Portugal, and in particular Article 3 thereof,

Having regard to the application made to the Commission on 26 May 1988 under Article 3 of Regulation No 17 by NV IGMO, of Meppel, Centraal Overijsselse Nutsbedrijven NV, of Almelo, NV Regionaal Energiebedrijf Salland, of Deventer, and the Municipality of Hogeveen, requesting it to find that NV Samenwerkende Elektriciteitsproduktiebedrijven (SEP) and the electricity generation companies in the Netherlands have infringed Article 85,

Having given SEP and the electricity generators the opportunity of being heard on the matters to which the Commission has taken objection, in accordance with Article 19 (1) of Regulation No 17 in conjunction with Commission Regulation No 99/63/EEC of 25 July 1963 on the hearings provided for in Articles 19 (1) and (2) of Regulation No 17⁽²⁾,

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas :

I. THE FACTS

1. The complaint

- (1) On 26 May 1988 an application was made under Article 3 of Regulation No 17 by NV IGMO (Intercommunaal Gasbedrijf Meppel en Omstreken) of

Meppel; the Hogeveen municipal distribution undertaking (the two of these have since been merged into Rendo NV); NV Regionaal Energiebedrijf Salland, of Deventer, and Centraal Overijsselse Nutsbedrijven NV of Almelo.

The complaint is against IJsselcentrale; it was made in the course of civil proceedings concerning the imposition by IJsselcentrale of an import and export ban coupled with an exclusive purchasing obligation, and the imposition of an extra cost equalization charge.

The complaint relates to three matters :

1. The import ban explicitly laid down both in the 1971 General SEP Agreement (Article 2) and in the 1986 Cooperation Agreement (Article 21).
2. The exclusive purchasing obligation deriving from the agreements between the complainants and IJsselcentrale, and particularly from Article 2 (2) of the General Terms and Conditions applying. According to the complainants this obligation to purchase, which in effect also prevents imports, is in its turn a consequence of the relevant provisions of the Cooperation Agreement.
3. IJsselcentrale's power to determine prices unilaterally, and the equalization charge which in fact was unilaterally imposed on the complainants by IJsselcentrale under a decision of its Board (*Raad van Commissarissen*) taken on 26 October 1984.

This equalization charge was imposed by IJsselcentrale in order to eliminate differences between the costs of distribution to small and large consumers by, on the one hand, IJsselcentrale, and on the other hand municipal or regional distributors and

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ No 127, 20. 8. 1963, p. 2268/63.

is based on the fact that IJsselcentrale primarily supplies country regions and that the municipal or regional distributors primarily supply city regions.

For the time being the operation of the extra cost equalization charge is outside the scope of this proceeding; but according to the complainants the import ban makes the imposition of the extra charge possible.

The complainants are local distributors which in their turn are supplied by a regional distributor namely IJsselcentrale.

2. The electricity undertakings

- (2) There are at present four electricity generating companies in the Netherlands: NV Elektriciteitsbedrijf Zuid-Holland ('EZH'), of Voorburg; NV Energieproductiebedrijf UNA, of Utrecht; NV Elektriciteits-Produktie maatschappij Zuid-Nederland ('EPZ'), of Eindhoven; and NV Elektriciteits-Produktie maatschappij Oost- en Noord-Nederland ('EPON'), Zwolle; there are at the moment 38 distribution undertakings.

The generators are companies whose share capital is owned by local authorities, both provinces and municipalities, either directly, as in the case of EZH and UNA, or indirectly, through the large distributors which cover the relevant area, in the case of EPZ and EPON.

The shares in the distribution undertakings are likewise held directly or indirectly by the provinces and municipalities, where the distributor is not actually a department of public administration.

- (3) On 3 June 1949 these companies, or in some cases their predecessors, set up NV Samenwerkende Elektriciteitsproductiebedrijven ('SEP').

SEP is a public limited company intended to serve as a vehicle for cooperation between the electricity generators. Initially its object was to administer mutual assistance in the event of breakdowns, by making the best possible use of national and international interconnections.

At present there are a total of four high voltage interconnections between the Netherlands and Germany and three between the Netherlands and Belgium. Except for the Musselkanaal-Lathen interconnection, which is the property of the Elektriciteitsbedrijf voor Groningen en Drenthe ('EGD'), all of these are the property of SEP. SEP also have the use of the one interconnection which is not its own property.

SEP's statutes provide that its shareholders must be public-law bodies, or private-law bodies with legal

personality, which in the Netherlands either operate a public electricity generation undertaking or administer a cooperative arrangement between a group of operators of public electricity generation undertakings.

SEP's objects are laid down in its statutes as follows:

- to draw up a joint Electricity Plan;
- to operate (principally in the capacity of an owner) the 380/220 kV grid;
- to conclude agreements with foreign electricity undertakings concerning imports and exports and the use of international interconnections;
- to arrange the joint purchase of fuels for the purpose of generation;
- to pool energy and generation costs;
- to make the best possible use of domestic electricity generation.

These tasks were given a general basis in legislation with the entry into force of the Electricity Law 1989⁽¹⁾.

3. The agreements

- (4) The Cooperation Agreement which was concluded on 22 May 1986 between the predecessors of the present four generators on the one hand and SEP on the other replaced the General SEP Agreement of 1 February 1971, and was concluded for a duration of 25 years. Article 2 (1) of the Cooperation Agreement lays down among other things that parties to the Agreement are to be shareholders in the Company (i.e. SEP). Parties are also to hold a valid authorization from the Minister with responsibility for electricity supply to build or to operate, or both, one or more generation plants with a view to the public supply of electricity.

- (5) Article 21 of the Cooperation Agreement deals more specifically with imports and exports, as follows:

'1. Electric capacity may be provided and electric power supplied to or by electricity undertakings established outside the Netherlands only through the Company.

2. In supply agreements with undertakings which distribute electric power the parties shall stipulate that those undertakings shall not obtain or supply electric power, with or without any associate electric capacity, from or to electricity

⁽¹⁾ Full title: Law of 16 November 1989 laying down rules on the generation, import, transmission and sale of electricity (Electricity Law 1989); published *Staatsblad* 535, 7 December 1989.

undertakings established outside the Netherlands.

3. Paragraphs 1 and 2 of this Article shall not apply to supply operations, up to a ceiling to be determined by implementing rules laid down in accordance with Article 32 of this Agreement, carried out solely for reasons connected with the local distribution of electric power.'

(The implementing rules referred to in paragraph 3, which are intended to cover the supply of power to firms located near the border, exempt from this prohibition supply operations with a capacity of not more than 5 000 kW and a tension of 15 kV.)

Moreover, Article 10 (4) of the OVS States :

'Participants are obliged — and are responsible for the proper implementation of this obligation — to stipulate in supply agreements with distributors of electric power that all electricity of a nominal capacity, generated by their installations, will be delivered to the company through the intermediary of the Participant in whose territory the relevant installation is located. This capacity equals or exceeds the threshold referred to in Article 12 (3).'

The old General SEP Agreement of 1 February 1971, which was replaced by the Cooperation Agreement, also included provisions similar to those to be found in the Cooperation Agreement covering such matters as the electricity plan, inter-connections, supply and settlement, and implicitly imports and exports.

- (6) The general terms and conditions for the supply of power to municipalities with their own distributors in the territory of IJsselcentrale's concession, which have been in force since 1 April 1965, include an Article 2 (2) under which the municipality undertakes 'to obtain electric power for supply in its territory exclusively from IJsselcentrale, and to use that power only for its own consumption or for supply to third parties for consumption in the territory of the Municipality.' This clause imposes an exclusive purchasing obligation on the municipality, and a ban on supplying third parties outside its territory. In Article 13 (1) IJsselcentrale undertakes not to supply electric power to third parties in the territory of the municipality without the municipality's consent, with a few stated exceptions.

The complainants in this proceeding, in their capacity as distributors and purchasers from IJsselcentrale, which supplies only as a main distributor, also impose an exclusive purchasing obligation. Thus the Municipality of Deventer, for example, in its

Large Consumer's Contract for the supply of electricity, includes the following clause in Article 1 : 'The consumer undertakes to obtain the electric power needed for his business in Deventer from the Municipality.'

Under the model General Terms and Conditions for the supply of electricity to large consumers (1984), drawn up and published by the Vereniging van Exploitanten van Elektriciteitsbedrijven in Nederland (Association of Operators of Electricity Undertakings in the Netherlands — 'VEEN'), the distributors apply a provision in Article 19 (2) which reads as follows :

'The consumer may not without the written consent of the distributor :

- (a) obtain electric power from third parties ;
- (b) operate or procure the operation of autogenerating plant alongside the public grid ;
- (c) use the power supplied otherwise than on his own premises.'

Thus consumers too are bound by an exclusive purchasing obligation and a ban on supplying power to third parties.

- (7) Before the entry into force of the Electricity Law 1989, electricity undertakings frequently operated under concessions granted by the authorities. Production and distribution were then frequently in the same hands. This was the case with IJsselcentrale, which was granted a concession by the Royal Order of 13 June 1918, No 54. Such concessions, including IJsselcentrale's, were for the construction and operation of plant and of works for the production, transmission, transformation, distribution and supply of electricity, with the exception of electricity for telegraph and telephone purposes ; at least in IJsselcentrale's case they did not confer any exclusive rights in the territory of the concession. The concession contains a supply obligation. If this obligation is not properly performed, the concession may be revoked.
- (8) On 5 June 1975, during the currency of the General SEP Agreement of 1 February 1971, an agreement was concluded between the State of the Netherlands, SEP, and the eleven electricity generators of the time, which, like SEP itself, were all parties to the General SEP Agreement. This new agreement is commonly known as 'the Compact (Covenant) of 1975.' The main objective of the Compact was to require SEP to submit the Electricity Plan it drew up for approval by the Minister for Economic Affairs. This Compact entered into force on 3 July 1975 and was to apply for the duration of the Cooperation Agreement.

4. The legislation

- (9) Until very recently the legislation governing the electricity market in the Netherlands was very restricted in scope. Only a part of the Electricity Law of 22 October 1938 (published *Staatsblad* 1938, 523) had actually entered into force. The concessions granted by the authorities to electricity undertakings were not based on that legislation. The Law, which applied until 8 December 1989, did not prevent parties other than electricity undertakings from importing electricity themselves. Under the Law of 10 December 1936, however (*Staatsblad* 524), authorization was required for any such imports. In principle such authorization could be obtained by anyone.

Under the old legislation there was an agreement between the distributors and the national authorities which made the prices charged to final consumers (maximum prices) subject to approval by the Minister for Economic Affairs. The prices charged to large consumers were the subject of negotiations between organizations representing large consumers and electricity undertakings.

Two developments can be observed on the Dutch market: on the one hand there is a movement towards concentration on the generation side with the result that only four generators remain; and on the other hand there is a movement towards a more formal type of regulation of the market by means of legislation. On 8 December 1989 the new Electricity Law 1989 entered into force with the exception of certain provisions for which there is a transitional period. It represents an important step to a more open electricity market in the Netherlands.

Broadly speaking, the scheme laid down in the Cooperation Agreement has been given a basis in legislation. In some respects, however, the Law allows greater freedom than the Cooperation Agreement.

The main features of the new Law are as follows:

- As regards the national electricity supply, Article 2 provides that licensees (i.e. the electricity generators which operate electric power stations and produce for the public electricity supply) and the Designated Company⁽¹⁾ are jointly to ensure the reliable and efficient operation of the national public electricity

supply at costs which are as low as possible and in a socially responsible fashion, subject to the provisions of the Law and any rules made under it.

- The designated company is every two years to draw up an Electricity Plan covering developments in the supply of electricity in the Netherlands (Article 15 (1)).
 - Any person who operates one or more electric power stations for the public electricity supply may supply any electricity available when the generating capacity of that plant exceeds a stated threshold using those power stations or otherwise, only to the designated company, and may supply the electricity supplied to him by that company only to distributors (Article 11 (1)).
 - Notwithstanding any provision to the contrary, the owner of a distribution undertaking is entitled to have electricity supplied and electric capacity provided to him by the licensee (Article 12 (1)). Generators thus have an obligation to supply to distributors. Article 12 (3) provides that notwithstanding any provision to the contrary any person is entitled to have electricity supplied and electric capacity provided to him by any person who operates the public supply of electricity to consumers in the territory in which he requests such supply of electricity or provision of capacity.
- Thus distributors also have an obligation to supply to final consumers.
- SEP, as the 'Designated Company', is to have the sole right to import electric power with a view to public supply (Article 34) with the exception of electricity with a voltage below 500 volts. Distributors are therefore prohibited from importing electricity with a view to public supply. Certain final consumers however may import electric power for their own consumption (this follows from Article 34)⁽²⁾.

- Large private consumers are no longer to be bound by an exclusive purchasing obligation to their local or regional distributor (Article 13 (2))⁽²⁾.
- Distributors and large-scale consumers who find their own generator or distributor too dear may transfer to another supplier within the

⁽¹⁾ I.e. the SEP. Designation was made by Ministerial Order of 20 March 1990 (*Staatscourant* 58, 22. 3. 1990).

⁽²⁾ As one of a number of stimuli to competition introduced by the Law, according to a summary of the Law drawn up by the Ministry of Economic Affairs.

Netherlands (who will normally be operating outside their territory); this is known as 'cross-shopping' (*horizontaal winkelen*)⁽¹⁾.

- Consumers may themselves generate current and may feed any surpluses of autogenerated current to distributors (Article 41).

- Anyone who with a view to public supply operates lines for the transmission of electric power, with the associated transformers, substations and other accessory plant is upon written application obliged to make an offer concerning the transmission for the applicant of electricity for public supply, of electricity for large private consumers, or of imported electricity (Article 47 (1))⁽²⁾.

- Any owner of a distribution undertaking is obliged to accept an offer for the supply of electricity made by:

- (a) a natural or legal person who generates that electricity in the territory in which electricity is supplied to consumers by that distribution undertaking or by a distribution undertaking to which that distribution undertaking supplies electricity;

- (b) a distribution undertaking to which the relevant distribution undertaking supplies electricity.

This obligation does not apply where the electricity:

- (a) is generated by a power station;
- (b) is generated by a natural or legal person to which imported electricity is also available for use in the relevant establishment (Article 41).
- The designated company may not, without the approval of the Minister, conclude any agreement under which electric capacity outside the Netherlands is to be provided to that company. The Minister may withhold approval from an agreement only where this is necessary in the interests of proper electricity supply (Article 35).
- The Law broadens the scope for local electricity generation by distributors: they may always operate their own autogenerating plant up to a maximum capacity of 25 MW, and approval for the construction or operation of autogenerating plant with a higher capacity may be withheld only if certain requirements are not met (Article 40).
- As the Law does not regulate exports, it is to be assumed that anyone, private consumers as well as distributors, is free to export. The Law does not, however, impose any obligation to transmit electricity for export similar to the obligation to transmit imported electricity.

⁽¹⁾ As one of a number of stimuli to competition introduced by the Law, according to a summary of the Law drawn up by the Ministry of Economic Affairs.

⁽²⁾ On the obligation to transmit, the explanatory memorandum has the following to say:

'Where an application for transmission is made, the line operator must, if necessary, show that he is unable to satisfy the application for lack of transmission capacity. SEP, as the operator of the interconnections with foreign countries, may here refer to multiannual contracts it has already concluded regarding imports for purposes of public supply'.

Reference: Lower House, 1987/88 session; 19591 (hereinafter referred to as 'Kamerstukken No 19591'), No 3, p. 56.

The memorandum in response to the Final Report reads:

'This obligation applies in the case of cross-shopping by both distributors and especially large consumers. It also applies in the case of purchase of current abroad by final consumers, and, in particular, by especially large consumers. The obligation applies to imports only in so far as it can reasonably be said that capacity is sufficient. The owner or owners of the grid may not avoid their obligation to transmit by asking an unreasonably high price. The Bill therefore provides that transmission must be provided against payment of the costs reasonably attributable to such transmission itself, in proportion to consumption. To avoid any misunderstanding it should be pointed out that in practice, of course, this will almost always be fictitious transmission'.

Kamerstukken No 19591, No 9, p. 8.

The Electricity Law 1989 entered into force on 8 December 1989. It itself provides, in Article 61, that certain of its Articles are to enter into force only on 1 July 1990, of which Articles 11 and 34 concern us here; and in Articles 58 and 59 that Articles 2 to 11 of the Electricity Law 1938 (*Staatsblad* 1938, 523) are repealed and that the Law of 10 December 1936 (*Staatsblad* 524) is repealed (Articles 58 and 59).

5. Consumption, importation and exportation of electricity and autogenerated electricity in the Netherlands

- (10) The electricity consumed in the Netherlands may be generated by the electricity undertakings responsible for public supply, or imported or generated by the users themselves.

	1984	1985	1986	1987	1988
Consumption in the Netherlands, GWH	54 970	56 370	57 320	60 400	62 410
Net generation in SEP framework, TWh	53	52,8	56,4	56,8	56,6
Autogeneration	7 486	8 190	8 555	9 967	10 800
(% of generation)	(12 %)	(13 %)	(12,7 %)	(14,6 %)	(15,6 %)
Fed to public grid	888	1 072	1 320	1 680	1 940
(% of Netherlands consumption)	(1,6 %)	(2 %)	(2,3 %)	(2,8 %)	(3,1 %)
(% of autogeneration)	(11,9 %)	(13 %)	(15,5 %)	(16,8 %)	(18 %)
Imports	not available	5 240	2 370	3 645	5 840
(% consumption)		(9,5 %)	(4,2 %)	(6,4 %)	(9 %)
Including ESD's imports (see recital 14)	not available	294	222	46	0

Sources: — Information supplied by SEP to the Commission

— *Elektriciteit in Nederland 1988*, publication commissioned by SEP and VEEN.

— Information supplied by VEEN.

NB: the figures in the brochure *Elektriciteit in Nederland* differ somewhat from those in SEP annual reports. The effect on the percentage figures is only slight.

The turnover in money terms represented by consumption in the Netherlands in 1988 was approximately Fl 8 300 million on the basis of final consumer prices ⁽¹⁾.

Like imports, the figures for autogenerated energy are considerable; they have been growing in recent years, and in 1988 accounted for about 15,6 % of total power generated ⁽²⁾.

Autogenerators also feed a substantial quantity back into the public grid; in 1988 this accounted for about 3 % of consumption in the Netherlands, and 18 % of autogenerated electrical energy.

As regards the external trade balance, in the years 1984 to 1988 the Netherlands was a net importer. Until 1985 import/export trade took place via four international interconnections; at present there are seven such interconnections. Further details are given in the table.

- (11) The organization of international connecting networks between the Netherlands and other countries is regulated through the Union for the Coordination of the Production and Transport of Electric Power (UCPTE), in which along with the Netherlands, Belgium, France, Germany, Austria and Switzerland are also represented. For more than 30 years trade has been managed by this private-law cooperative association of the national electricity organizations, which themselves conclude commercial agreements for the exchange of electric power, based on three forms of cooperation:

- exchange hour-to-hour, on the basis of costs,
- contracts for net transfers, mainly short term,
- more long-term agreements, for example where a power station in a neighbouring country is jointly owned.

About 8 % of total consumption in these countries is exchanged via these interconnections ⁽³⁾.

This arrangement is thus based on voluntary cooperation between the national monopolies and has no binding character.

6. Imports of electric power into the Netherlands in the future

- (12) The Dutch electric power grid is connected with grids in other Member States by lines which are the property of SEP or which are controlled and administered by SEP. Depending on the year considered, imports and exports leave the Netherlands a net importer of power by between 4 % and 9 % of Dutch consumption.

SEP regularly draws up an electricity plan, which also covers foreseeable imports and exports of electric power and an estimate of the autogeneration by the industry. The Cooperation Agreement lays down specific rules here.

- (13) In the 1989-98 electricity plan SEP discusses the imports to be expected in future. On page 8 the plan has this to say:

⁽¹⁾ Source: *Elektriciteit in Nederland 1988*.

⁽²⁾ Source: *Elektriciteit in Nederland 1988*.

⁽³⁾ Source: UCPTE brochure *Elektrisch Europa*, 1987.

'Agreement has been reached with foreign electricity undertakings for import contracts guaranteeing a capacity of 1 050 MW. There would be 300 MW provided in the period running from 1996 to 2006, and 750 MW in the period from 1997 to 2008. ... Together with the guaranteed imports already agreed with VEW, this will make full use of the scope for importation.'

And on page 39 of the same plan we read the following:

'Electricity imports

A useful way to meet part of the new capacity requirement has been found in the conclusion of import contracts for a determined period with a guaranteed capacity available. A guaranteed supply has already been agreed with VEW for the period from 1990 to 2000, though for separate reasons. This is for a capacity of 800 MW in the period after 1993.

After completion of the circular 380 kV grid, which is already underway, and after the Meeden-Diele interconnection with the North German electricity grid has been connected to the 380 kV grid, as decided in this plan, it will, in principle, be possible to meet a capacity requirement of about 2 000 MW by means of imports covered by a capacity guarantee. The interconnections with foreign grids would also continue to be used for mutual assistance and exchanges on a spot market-basis.'

7. Purchases of foreign electricity by Elektro-Schmelzwerk Delfzijl BV

- (14) Elektro-Schmelzwerk Delfzijl BV ('ESD'), based in Delfzijl, is a subsidiary of the Wacker-Chemie group, which has its head office in Munich. Between 1982 and 1987 ESD purchased power in Germany via the Musselkanaal-Lathen international interconnection. The power was imported at ESD's request, but SEP in fact acted as importer. In the middle of 1987 this operation ran into difficulties, which according to SEP were of a technical nature. ESD expressed the wish to import power itself, and no longer through SEP. When it became clear that under the Law of 1936 this was not possible without authorization, ESD sought authorization from the Minister of Economic Affairs, and obtained it on 23 January 1987. In a letter to the Lower House of Parliament dated 23 January 1987 the Minister told the House that SEP did not wish to continue importing for ESD during 1987,

although this would have been technically possible (for example using the Meeden-Diele interconnection). In the same letter the Minister said that ESD was dependent for further imports on the willingness of SEP, but that SEP had 'major reservations' on the point.

- (15) A letter from SEP to the Ministry of Economic Affairs dated 17 February 1987 makes it clear that SEP was very unhappy at the granting of the authorization, and that SEP itself had agreed only to temporary import 'for' ESD. SEP took it that these imports would be 'specifically earmarked' for a particular purchaser.

It was still being assumed, therefore, that power would be imported for, and not by, the purchaser. In the same letter SEP observed that it would be possible to introduce 'special rates' for large private consumers, so that imports would no longer be an alternative⁽¹⁾.

- (16) In a letter of 5 March 1987 the Ministry stated that imports by individual purchasers had been repeatedly discussed but that SEP had each time expressly rejected the possibility, and it again urged SEP to import for ESD. The letter also mentioned the practice of 'specific earmarking' and stated that the use of this terminology struck at the heart of SEP's policy, noting that only SEP imports and that SEP as a monopolist decides whether or not an individual consumer is allotted a share of the imported electricity. In its reply of 17 March 1987 SEP said among other things that application of Article 27 of the Cooperation Agreement (separate rates for a large private consumer) would make 'imports by third parties' unnecessary, once the category of large private consumers became interested, as SEP anticipated.

By letter of 13 October 1987 SEP made an offer to ESD under which SEP would import for use by ESD power generated by the German electricity undertaking PREAG via the Meeden-Diele line. SEP would import and supply to EPON, and the power imported would be for the use of ESD only. SEP would charge transmission and other costs.

⁽¹⁾ On the question of rates for large consumers, SEP's annual report for 1987 says the following, on page 9:

'Every purchaser in this category is free to choose between a contract on the basis of the LBT (*Landelijk Basis Tarief*, i.e. the national basic tariff), importation, autogeneration, or the new tariff for large consumers; where the new tariff is chosen it must cover the total electricity requirement, and the choice may not be changed during the currency of the contract.'

SEP also said that after 1 January 1988 it would be able to apply special rates for large consumers, and consequently advised ESD to agree any imports only up to that date.

By letter of 14 October 1987 ESD told SEP that in view of the pressure of time it would accept this offer, for the period up to 1 April 1988, with an option until 1 January 1989. Thus ESD did not make use of its authorization to import directly, but continued to buy through SEP.

This is also clear from a letter from ESD to SEP dated 30 December 1987, in which ESD agreed to purchase from the distributor EGD (Electriciteitsbedrijf voor Groningen en Drenthe) for the first quarter of 1988. The letter said that ESD continued to be interested in importing, and as a directly interested party would be glad to attend the negotiations on imports if these resumed.

The above described practice of SEP is in line with its view of its 'planning' function as set out in its letter of 22 September 1988 to the Commission and is connected with its supply obligation towards its final consumers. The import monopoly according to SEP is the logical consequence and imports and exports must therefore be integrated into the capacity planning function which is necessary because of its supply obligation.

8. 'Import gains'

- (17) At least from 1984 onward SEP's annual accounts show that SEP had built up a financial reserve out of what were termed 'import gains' (*importvoordelen*). This reserve is clearly accounted for by the difference between the costs of the power imported by SEP and the cost of power generated within the Netherlands.

This means that the lower price paid by SEP for imported power was not passed on to consumers, or at any rate not directly passed on in full. Furthermore, it means that private consumers can obtain benefits from imports.

On page 37 of the Annual Report for 1985 it was stated that this arrangement was intended as far as possible to avoid sudden changes in rates in future. In 1985 about Fl 73 million was added to the reserve out of import gains.

In 1985 the reserve amounted to about Fl 277 million, and the Annual Report stated that a sum

of Fl 193 million would be put to a use to be determined by the Minister for Economic Affairs.

In the year covered by the report imports came mainly from France (EdF) and West Germany (RWE) and to a lesser extent from Belgium and Switzerland.

The Annual Report for 1986 stated that out of the tariff equalization reserve, which then amounted to $\pm$ Fl 341 million, a sum of about Fl 235 million would in the future be allocated for a purpose to be determined by the Minister for Economic Affairs. The gains from electricity imports were falling rapidly, the report said, and would ultimately disappear, because prices in the Netherlands and abroad had arrived at the same level.

- (18) The Annual Reports for 1987 and 1988 no longer make express reference to import gains as the source of the tariff equalization reserve. In 1988 the reserve amounted to about Fl 381 million, of which about Fl 350 million was once again to be allocated by the Minister for Economic Affairs.

On page 30 of the Annual Report for 1988 we find the following:

'The increase in consumption is covered almost entirely by an increase in imports. Imports of power totalled 5 840 GWh, which amounts to about 9 % of national consumption. Never before has the import balance reached such a high level.'

- (19) The Commission has no knowledge of cases in which exports of electricity by others than SEP has been obstructed by the latter. On the contrary there is a case of effective export by the distributor Provinciale Limburgse Elektriciteits-Maatschappij, which since recently supplies VEGLA (Vereinigte Glaswerke GmbH) at Aachen, West Germany. According to SEP there are no objections against this because VEGLA is supplied via their own powerline located on Dutch territory. From this it may be concluded that SEP does not consider supplies to be exports as long as the 'plug' of the consumer is located on Dutch territory.

9. The Cooperation Agreement in conjunction with the entry into force of the Electricity Law 1989

- (20) Although the Electricity Law 1989 entered into force on 8 December 1989, the provisions dealing with imports in Article 34 entered into force on 1 July 1990.

By letter of 15 December 1989 SEP informed the Commission that in the meantime Article 21 of the Cooperation Agreement would continue to apply. According to SEP that Article would not be adjusted to take account of the new Law even after 1 July 1990. As far as is known to the Commission this Article has not yet been adapted. The same is true for the General Terms and Conditions for the supply of electricity to large-scale consumers of 'VEEN'. This Decision consequently relates both to the period before the Electricity Law 1989 entered into force and to the period thereafter.

The immediate subject matter of this Decision is Article 21 of the Cooperation Agreement in so far as it relates to imports by private consumers, or is applied by SEP to such imports, and combined with SEP's control of the interconnections has the effect of restricting imports and exports by those consumers, and exports by distributors.

II. LEGAL ASSESSMENT

A. Article 85 (1) of the Treaty

1. Agreements between undertakings

- (21) The Cooperation Agreement is an agreement between undertakings within the meaning of Article 85 (1). It must be considered in the light of the fact that the four electricity generation companies are shareholders in SEP, a joint subsidiary which acts as a vehicle for cooperation between them.

The Agreement is a matter of private law only. Despite the influence which the Dutch authorities exercise over planning and generation of electricity for public supply, there is no evidence that the Agreement was concluded under pressure from the authorities. Nor does the Compact between the State and the electricity generators which has already been referred to form any bar to the generators' own responsibility. The General SEP Agreement, the predecessor of the Cooperation Agreement, in any event predates the Compact.

- (22) SEP has argued that the participating electricity generators together form an economic unit, because they are components in 'one indivisible public electricity supply system.' The real function of Article 21 of the Cooperation Agreement, according to SEP, is to secure an allocation of tasks

between the generators, with certain tasks being centralized and allocated to SEP. SEP here invokes the Court of Justice's Judgment in *Hydrotherm v. Compact* (Case 170/83) ⁽¹⁾. SEP contends that there can therefore be no question of competition between the parties, so that Article 85 does not apply.

- (23) This reasoning cannot be accepted. It is true that Article 85 is not concerned with agreements between undertakings belonging to the same group of companies, and having the status of parent company and subsidiary, if the undertakings form an economic unit within which the subsidiary has no real freedom to determine its course of action on the market, and if the agreements are concerned merely with the internal allocation of tasks as between the undertakings (Court of Justice, Case 30/87 *Bodson* ⁽²⁾); but that is not the situation here.
- (24) To begin with, the four participants do not belong to a single group of companies. They are separate legal persons, and are not controlled by a single person, natural or legal. Each generating company determines its own conduct independently. It is hard to see how else there could be differences between the prices different generators charge for power making it worthwhile for a consumer to buy in another distribution zone (the so-called 'cross-shopping'). This observation certainly applies after the introduction of the Electricity Law 1989, which expressly permits cross-shopping.

The fact that the generators all form part of one indivisible system of public supply changes nothing here. The distributors likewise form part of the same system, but there is no reason to suppose that they form an economic unit with the generators on that ground alone.

Finally, it cannot be said that SEP itself forms an economic unit with one or more of the generating companies. SEP is a joint venture controlled by its parent companies together.

2. Restriction of competition

- (25) Article 21 of the Cooperation Agreement, the subject of this Decision, prohibits the importation and exportation of electricity by undertakings other than SEP; it does so:

— horizontally, by prohibiting generators from exporting or importing (paragraph 1);

⁽¹⁾ [1984] ECR 2999.

⁽²⁾ [1988] ECR 2479.

- vertically, by requiring generators to impose the same ban on distributors in their supply agreements (paragraph 2).

These prohibitions restrict competition.

- (26) The parties to the Agreement also undertake, in Article 10 (4) of the Agreement, to include a clause in their supply agreements requiring all power autogenerated by distributors (with a minimum capacity per establishment of 5 MW or more) to be supplied to SEP via the party in whose supply territory the relevant plant is located. Distributors are therefore prevented from exporting locally generated power, or supplying it direct to purchasers. This means that local generation is not an alternative to the imports prohibited by Article 21.

Article 10 (4) of the Cooperation Agreement thus reinforces the restrictive effect of Article 21.

- (27) In the course of the administrative proceedings SEP emphasized that Article 21 does not prevent anyone who is not a distributor from importing or exporting. After investigation, however, the Commission has reached the conclusion that within the structure of electricity supply in the Netherlands the way in which SEP applies Article 21 in practice enables it to exercise total control of imports and exports.

- (28) In this connection it must be pointed out first of all that in their general terms and conditions distributors impose an exclusive purchasing obligation on their customers (usually local energy undertakings), and that those customers do the same to their own customers (large consumers); imports are thus made impossible. The distributors who impose this exclusive purchasing obligation are themselves bound by an exclusive purchasing obligation towards the generators grouped in SEP. Thus the purchasing obligation which the generators impose works its way down the distribution chain, with the result that large consumers who purchase from the public grid cannot also import. This is also clear from the inclusion of the same purchasing obligations in the 1984 General Terms and Conditions for the Supply of Electricity to Large Consumers, which were drawn up by VEEN and are generally applied by the distributors. The succession of

exclusive purchasing obligations forms a coherent system in conjunction with Article 21 of the Cooperation Agreement as it is applied by SEP and the generators, so that these provisions of the General Terms and Conditions together with Article 21 form a whole, operating both among generators and ultimately between them and their industrial consumers.

- (29) Secondly, SEP operates and/or owns the international interconnections through which all imports and exports must be channelled, whether for public or private supply. Lines privately owned by consumers are not a real alternative.

SEP itself imports substantial quantities of electricity, from other Member States and elsewhere (see recitals 10 *et seq.*). In principle it is technically possible to make power lines available to private importers at reasonable prices, provided SEP has sufficient capacity available, as is now provided in the Electricity Law 1989. But SEP has not been prepared to do this. The ESD case (see recitals 14 to 16 above) is an illustration: it was not ESD but SEP which ultimately imported from Germany. From the correspondence between SEP and the Ministry of Economic Affairs already referred to it is clear that SEP was opposed to direct imports by ESD, and indeed regarded importation for ESD by SEP itself as a temporary measure. From ESD's letter to SEP dated 30 December 1987 it is clear that SEP was keeping ESD from having contact with the German supplier. In any event it is plain that SEP wished to reserve importation, even as a temporary arrangement, to itself, and wishes to continue doing so in future too. As a last resort SEP was prepared to apply a special tariff which was so attractive that ESD decided not to import, and agreed to be supplied by EGD.

SEP has thus been applying Article 21 of the Cooperation Agreement in such a way that it in practice prevents private industrial consumers from themselves importing electricity. SEP is claiming what in fact amounts to an import monopoly. It may be mentioned, too, that SEP's complete refusal to make power lines available to others can be considered an agreement or concerted practice between the generators participating in SEP, which could constitute a separate infringement of Article 85.

- (30) In the third place, SEP itself has argued that power imported for the importers' own use cannot be considered separately from power intended for public supply. In its planning function SEP must take account of imports. In practice, in any case, a final consumer who proposes to import himself will have to announce his intention in good time beforehand to the supplier with whom he has a supply contract. SEP will be informed, because its cooperation is indispensable for transmission over the international interconnections and the high-tension grid. Consumers cannot feed surpluses of imported power back into the public grid.
- (31) The Commission concludes that Article 21 of the Cooperation Agreement enables SEP to control the import and export of power in the interest of its shareholders. The consumers' theoretical entitlement to import themselves is thereby rendered inoperative in practice, and they are consequently deprived of access to other sources of supply.

3. *Effect on trade between Member States*

- (32) The import and export ban in Article 21 is liable appreciably to affect trade between Member States. This is the more so as the Cooperation Agreement is to apply for a period of 25 years, and covers the entire territory of the Netherlands. In addition, as has already been pointed out, imports by industrial consumers are rendered difficult in a way which conflicts with the achievement of a single market in energy.

B. *The operation of the Cooperation Agreement under the Electricity Law 1989*

- (33) According to SEP Article 21 of the Cooperation Agreement continues to apply even after the entry into force of the Electricity Law 1989, and particularly Article 34 of this Law. SEP evidently considers that the new Law changes nothing in Article 21 of the Cooperation Agreement. The Commission would make the following observations in this respect.

1. *Imports*

- (34) Article 34 of the Electricity Law 1989 prohibits anyone other than SEP from importing power with a view to public supply. On the other hand, imports for purposes other than public supply are no longer subject to prior authorization. Imports by

final consumers, and essentially industrial consumers, are therefore unrestricted, provided they are intended for the importer's own consumption: imported power cannot be supplied to third parties (Article 37 (1) of the new Law), nor can it be fed into the public supply (Article 41 (2) (b)).

Under Article 47 (1) (c) SEP now has an obligation to transmit any power imported SEP must allow the importer access to its connections on reasonable terms, provided there is sufficient capacity available.

Under the new rules, therefore, an industrial consumer is indeed entitled to import, but for the technical facilities needed he remains dependent on SEP, which with its control of the high-tension grid is still in a position to place difficulties in the way of imports. This may occur particularly where the connections are fully loaded as a result of power imports by SEP itself.

- (35) Contrary to SEP's claims, therefore, Article 21 has not simply been incorporated into the Law. If that had been done Article 21 would now no longer serve any purpose. The fact that SEP wishes to continue to apply Article 21 is an indication that the Article continues to have significance alongside the Law. All this confirms the Commission's view that Article 21 is being applied in a way which goes beyond the terms of the Law.

2. *Exports*

- (36) The Electricity Law 1989 makes no rules regarding the export of power, except for the obligation of generators to supply electricity only to SEP (Article 11). In response to a questionnaire the Dutch Government informed the Commission that the export of power from the Netherlands is completely unrestricted. According to the Dutch Government not only SEP but also distributors and private consumers are free to export. This applies whether the power involved is taken from the public grid or autogenerated.
- (37) Like importers, however, exporters continue to be dependent on SEP for transmission. The new Law does not impose an obligation to transmit power for export. A potential exporter must therefore reach agreement with SEP and with the owners of foreign grids. SEP thus retains a key role. The way in which it plays that role depends on the way in which it applies Article 21 of the Cooperation Agreement.

3. Conclusion

- (38) It must be concluded that the application of Article 21 of the Cooperation Agreement continues to infringe Article 85 of the Treaty under the rules introduced by the new Law.

C. Article 90 (2) of the Treaty: non-public supply

- (39) Article 90 (2) of the Treaty states that undertakings entrusted with the operations of services of general economic interest are to be subject to the rules contained in the Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.

SEP invokes the exception laid down in Article 90 (2). It argues that the electricity industry possesses special features: on the one hand, it is under an obligation to guarantee supply, and on the other, as a necessary consequence of that obligation, it must be able to exercise control of generation, imports and exports.

1. *The undertakings are entrusted with the operation of services of general economic interest*

- (40) SEP's main task is to ensure the reliable and efficient operation of the national public electricity supply at costs which are as low as possible and in a socially responsible fashion (Article 2 of the Electricity Law 1989). This definition of SEP's tasks is complemented by the generators' obligation to supply to distributors (Article 12 (1) of the Law). The arrangement is clearly based on the terms of the concessions formerly granted by the Minister for Economic Affairs. The generators' obligation to supply was a central feature there too (*cf.* Ijsselcentrale's concession, recital 7).

In these circumstances it can be accepted that both SEP and the participating generators are engaged in 'the operation of services of general economic interest'.

- (41) The operation of these services now has a basis in legislation, which it did not have before the entry into force of the new Law. But even before the new Law these tasks had been assigned to the generators by an act of public law, namely the grant of

concessions by the Minister for Economic Affairs. It must be concluded that both before and after the entry into force of the Electricity Law 1989 SEP and the generators were 'entrusted' with the operation of these services.

- (42) The first test of Article 90 (2) is therefore satisfied.

2. *The application of the competition rules does not obstruct the performance of the tasks assigned*

- (43) In the Commission's view the application of the competition rules does not obstruct SEP in the proper performance of the tasks assigned to it, because the performance of those tasks does not require absolute control of imports and exports, including imports and exports by private consumers and particularly industrial consumers, which as we have seen is the consequence of Article 21 of the Cooperation Agreement.

- (44) As far as imports are concerned this can be seen from the following considerations.

- (a) In 1988 15,6 % of total power generated in the Netherlands was accounted for by what are known as autogenerators (see recital 10 above). These autogenerators feed their surpluses into the public grid. Autogeneration evidently does not interfere with the performance of SEP's tasks. There is no reason to suppose that importation should be any different.

SEP has argued in this respect that importation is a one-off operation, whereas autogeneration has a structured and therefore more long-term character. But the distinction SEP is suggesting does not, in fact, exist. Imports too have to be planned. Part of SEP's function is to adapt its own generation activities to the scale of imports and local generation. Imports too have to be notified to SEP in advance (see recital 30). Imports too are allowed for in the Electricity Plan. Thus there is no difference here between importation and autogeneration.

Furthermore, in the case of autogeneration as in the case of importation the distributors are released from their obligation to supply; a consumer who announces his intention of meeting his power requirements wholly or partly by means of importation or autogeneration cannot in an emergency simply fall back on the public supply. He may conclude a back-up contract with the distributor, under

which a stated capacity is 'set aside' for him against payment. There is no obligation to conclude such a contract under the new Law.

- (b) The Dutch authorities do not believe that absolute control of imports by SEP is necessary to the performance of the tasks assigned to it. It would be difficult to explain otherwise why the new Law expressly leaves imports for the importer's own consumption unrestricted. In the course of the Parliamentary debate on the new Law the Minister for Economic Affairs referred to the similarities between autogeneration and importation which have just been discussed (*Kammerstukken*, Verslag van een schriftelijk overleg, No 15, pp. 8, 17 and 18). In both cases the 'absolute obligation to supply' does not apply. There is consequently no need for 'absolute control of generation and importation' either.

Thus the absolute control of imports given to SEP by Article 21 of the Cooperation Agreement is not considered by the Dutch authorities themselves to be indispensable to the performance of these tasks of general interest.

- (c) Lastly, SEP's rights of ownership over the international interconnections do not justify total control over imports. Even before SEP's obligation to transmit was laid down in legislation (Article 47 (1) (c) of the new Law), the power lines could be made available on reasonable terms to other parties for the transmission of power they were importing themselves. The other requirements that SEP might lay down for transmission operations could be that nothing must be done to endanger the reliability of the grid; that the transaction must be an economically justifiable one with some measure of regularity (no spot transactions); that the operations must have a measure of continuity over a reasonable period; and that the prices must be reasonable and non-discriminatory. As a general rule these requirements will be met only by private consumers with significant power requirements, such as large consumers or groups of several industrial consumers. Thus there was and is no reason for absolute control as a consequence of SEP's operation of the power lines.

- (45) With regard to exports of power by private industrial consumers there are in principle the same reasons for holding that control by SEP cannot be justified for the purposes of Article 90 (2) of the Treaty.

- (a) As SEP has itself argued, when power is obtained from the public grid the Dutch elec-

tricity undertakings do not 'look behind the meter': they supply current to a customer, and are not concerned with what the customer does with it, whether he consumes it himself, exports it, or supplies it in his turn to someone else. There is no reason why autogenerated current should not be exported in the same way. It does not after all affect the public supply, indeed that is why the new Law leaves it unrestricted.

- (b) Here again the new Dutch legislation leaves industrial consumers, including autogenerators, free to export.
- (c) Rights of ownership over the interconnections cannot justify absolute control of exports either.

- (46) It must be concluded that the second test of Article 90 (2) is not satisfied.

3. *The development of trade*

- (47) In view of the foregoing there is no need to consider the last sentence of Article 90 (2). It is clear, however, that obstruction of imports and exports such as that deriving from Article 21 of the Cooperation Agreement does affect trade to an extent contrary to the interests of the Community. In the light of the Community's efforts to achieve a single internal market in energy such obstruction of imports and exports, which moreover is intended to continue for a period of 25 years, cannot be accepted.

- (48) Thus this provision of Article 90 (2) is in any event not satisfied either.

D. Article 90 (2) of the Treaty : public supply

- (49) To the extent that Article 21 is applied to imports with a view to public supply, and to exports by generators and distributors, the following observations are in order.

1. *Imports*

- (50) The ban on imports by generators and distributors otherwise than through SEP in the context of public supply, is now laid down in Article 34 of the Electricity Law 1989. The present proceeding is a proceeding under Regulation No 17, and the Commission will not pass judgment here on the question whether such restriction of imports is justified for the purposes of Article 90 (2) of the Treaty. To do so would be to anticipate the ques-

tion whether the new Law is itself compatible with the Treaty, and that is outside the scope of this proceeding.

2. Exports

- (51) An export ban imposed on generators in the field of public supply can be deduced from the supply obligation imposed by Article 11 of the Electricity Law 1989 which obliges the generators to supply their electricity only to SEP and to supply exclusively to distributors the electricity supplied to them by SEP. Again, no judgment will be made on this export ban under the present proceedings.

The ban on exports, including those made outside the field of public supply, by distributors imposed by Article 21 of the Cooperation Agreement, conflicts with the scheme of the new Law in which these exports are left unrestricted. It appears doubtful to the Commission whether the parties to the Cooperation Agreement are entitled to impose an export ban that runs counter to the Law in this way, but to judge by what is said in SEP's letter to the Commission of 15 December 1989 SEP evidently considers that the possibility does exist.

Accepting therefore that the ban on exports by distributors laid down in Article 21 continues to apply, the Commission takes the view that it cannot be justified by Article 90 (2). There is no apparent reason why exports by these distributors should endanger the public supply. As long as distributors are in a position to meet their supply obligations domestically, there is no reason to prevent them from exploiting any surpluses by exporting them.

- (52) It must be concluded that the ban on exports which continues to be imposed by Article 21 of the Cooperation Agreement on distributors even after the entry into force of Article 34 of the Electricity Law 1989 cannot be justified by reference to Article 90 (2).

E. Article 85 (3) of the Treaty

- (53) The Cooperation Agreement was not notified to the Commission in accordance with Article 4 of Regulation No 17. Neither were earlier agreements between the participants in SEP ever so notified. Even if the Cooperation Agreement were to be notified, it would not qualify for exemption under

Article 85 (3). It follows from the foregoing that the absolute effect which SEP has given to the import and export ban in Article 21 is not indispensable to the attainment of the objectives of the Cooperation Agreement. The third test of Article 85 (3) is thus in any event not satisfied.

F. Conclusion

- (54) The Commission concludes that Article 21 of the Cooperation Agreement between SEP and the Dutch electricity generators, as applied in conjunction with the control and influence in fact exercised over international supplies of power, constitutes an infringement of Article 85 (1) of the Treaty in so far as it has as its object or effect:

- (a) the restriction of imports by private industrial consumers, and
- (b) the restriction of exports by distributors and industrial consumers, including autogenerators,

and that it does not satisfy the conditions for application of Article 90 (2) of the Treaty.

G. Article 3 of Regulation No 17

- (55) Article 3 of Regulation No 17 allows the Commission to adopt a decision finding that an infringement has been committed in the past, in order to clarify the legal position, and to require the undertakings concerned to bring such infringement to an end, to the extent that it still continues.

SEP has stated that it will continue to apply Article 21 of the Cooperation Agreement, so that it cannot be said that SEP and the electricity generators participating in it have put an end to the infringement. They must therefore be required to do so. One way in which the infringement could be ended would be for SEP to inform the parties to the Cooperation Agreement, and purchasers, that the Agreement is to be interpreted and applied as meaning that exports of quantities of electric power not intended for public supply, and direct imports by private industrial consumers, are unrestricted, and will not, without good reason, be obstructed by virtue of the ownership or operation of the power grid by SEP and the parties to the Agreement; and that the Agreement will be applied accordingly.

The Commission will allow the parties three months from the date of notification of this Decision to make proposals for the ending of the infringement.

HAS ADOPTED THIS DECISION :

Article 1

Article 21 of the Cooperation Agreement concluded on 22 May 1986 by the predecessors of the present four electricity generating companies on the one hand and by NV Samenwerkende Elektriciteitsproductiebedrijven on the other, as applied in conjunction with the control and influence in fact exercised over the international supply of electricity, constitutes an infringement of Article 85 (1) of the Treaty in so far as it has as its object or effect the restriction of imports by private industrial consumers and of exports of production outside the field of public supply, by distributors and private industrial consumers, including autogenerators.

Article 2

The companies referred to in Article 3 shall take all necessary steps to bring the infringement referred to in Article 1 to an end. Within three months of reception of this Decision they shall submit to the Commission proposals for the ending of the infringement.

Article 3

This Decision is addressed to :

- NV Samenwerkende Elektriciteitsproductiebedrijven, Utrechtseweg 310, 6812 AR NL-Arnhem ;
- NV Electriciteitsbedrijf Zuid-Holland, Von Geusastraat 193, 2274 RJ NL-Voorburg ;
- NV Energieproductiebedrijf UNA, Keulsekade 189, 3534 AC NL-Utrecht ;
- NV Elektriciteits-Produktiemaatschappij Zuid-Nederland EPZ, Begijnenhof 1, 5611 EK NL-Eindhoven ;
- NV Elektriciteits-Produktiemaatschappij Oost- en Noord-Nederland, Dr Stolteweg 92, 8025 AZ NL-Zwolle.

Done at Brussels, 16 January 1991.

For the Commission

Leon BRITTAN

Vice-President

CORRIGENDA

Corrigendum to Commission Regulation (EEC) No 3201/90 of 16 October 1990 laying down detailed rules for the description and presentation of wine and grape musts*(Official Journal of the European Communities No L 309 of 8 November 1990)*

On page 6, Article 3 (3) (g), third indent :

for: 'grand réserve',
read: 'grande réserve';

On page 49, under 20. Turkey, point 3, first indent :

for: '— Burduir',
read: '— Burdur';

On page 49, under 20. Turkey, point 4 :

— left column, fourth indent :

for: '— Sihil',
read: '— Sihli';

— right column, sixth indent :

for: 'Sungur in',
read: 'Sungurlu';

On page 50, under 20. Turkey, point 5 :

— left column, the first indent 'Kahramanmaras' is deleted ;

— right column, first indent :

for: 'S Urfa',
read: 'Ş. Urfa';

On page 68, point 12. Israel reads as follows :

'12. ISRAEL

Chardonnay
Sauvignon blanc
Semillon
Chenin blanc
Colombard
Muscat
Cabernet Sauvignon
Petite Sirah
Carignan
Pinotage
Grenache
Malvoisie
Merlot
Ugni blanc
Black Malvoisie
Tinta amarella
Zinfandel

Shiraz

Malvasia, Malvasia bianca

Trebbiano'

Corrigendum to Commission Regulation (EEC) No 3459/90 of 30 November 1990 fixing the refunds applicable for December 1990 to cereal and rice sector products supplied as Community and national food aid

(Official Journal of the European Communities No L 336 of 1 December 1990)

On page 17 in the Annex:

for: '1101 00 00 110	139,00
1101 00 00 120	139,00',

read: '1101 00 00 100	139,00'.
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Corrigendum to Commission Regulation (EEC) No 3741/90 of 21 December 1990 fixing the refunds applicable for January 1991 to cereal and rice sector products supplied as Community and national food aid

(Official Journal of the European Communities No L 360 of 21 December 1990)

On page 16 in the Annex:

for: '1101 00 00 110	138,00
1101 00 00 120	138,00',

read: '1101 00 00 100	138,00'.
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Corrigendum to Commission Regulation (EEC) No 3819/90 of 19 December 1990 laying down detailed rules for the application of the supplementary trade mechanism to trade in fresh fruit and vegetables between Portugal and the other Member States

(Official Journal of the European Communities No L 366 of 29 December 1990)

Page 41:

— Article 1:

for: '... Regulation (EEC) No 3647/90 ...',

read: '... Regulation (EEC) No 3659/90 ...';

— footnote ⁽⁶⁾ reads as follows:

⁽⁶⁾ OJ No L 362, 27. 12. 1990, p. 38.'

Corrigendum to Council Regulation (EEC) 3921/90 of 20 December 1990 opening and providing for the administration of autonomous Community tariff quotas for certain fishery products (1991)

(Official Journal of the European Communities No L 376 of 31 December 1990)

On page 2 in the table in Article 1 (1) under the column headed 'Description' the entry against Series No 09.2769 should read :

'Fish fillets of cod (*Gadus morhua*, *Gadus ogac*, *Gadus macrocephalus*) and of fish of the species *Boreogadus saida*, dried, salted or in brine, but not smoked'.

Corrigendum to Commission Regulation (EEC) No 173/91 of 24 January 1991 fixing the amount of the subsidy on oil seeds

(Official Journal of the European Communities No L 19 of 25 January 1991)

On page 15 in Annex II, column '3rd period':

— 1. Gross aids (ECU), Portugal :

for: '30,760',

read: '30,780'.

— 2. Final aids, seeds harvested and processed in Greece (Dr):

for: '4 858,62',

read: '4 888,62'.

Corrigendum to Commission Regulation (EEC) No 203/91 of 28 January 1991 fixing the refunds applicable for February 1991 to cereal and rice sector products supplied as Community and national food aid

(Official Journal of the European Communities No L 23 of 29 January 1991)

On page 21 in the Annex:

for: '1101 00 00 110	119,00
1101 00 00 120	119,00',

read: '1101 00 00 100	119,00'.
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Corrigendum to Commission Regulation (EEC) No 205/91 of 28 January 1991 fixing the import levies on products processed from cereals and rice

(Official Journal of the European Communities No L 23 of 29 January 1991)

Page 27, Annex, CN code 1108 13 00, column 'Third countries (other than ACP or OCT)':

for: '251,01 (°)',

read: '250,01 (°)'.

Corrigendum to Commission Regulation (EEC) No 261/91 of 31 January 1991 fixing the export refunds on milk and milk products

(Official Journal of the European Communities No L 27 of 1 February 1991)

Page 95, Annex, product code 0405 00 10 700, destination 056, column 'Amount of refund':

for: '212,00',

read: '212,00 (")'.
