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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 563/91

of 4 March 1991

**on action by the Community for the protection of the environment in the
Mediterranean region (Medspa)**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 130s thereof,

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

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

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

Whereas, pursuant to Article 130r of the Treaty, one of the objectives of action by the Community relating to the environment is to preserve, protect and improve the quality of the environment; whereas, in preparing this action, the Community is required to take account, *inter alia*, of environmental conditions in the various regions of the Community and of the economic and social development of the Community as a whole and the balanced development of its regions;

Whereas, pursuant to Article 2 of the Treaty, the Community has as its task, *inter alia*, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion and an increase in stability;

Whereas certain action for the protection of the environment in the Mediterranean region can be carried out more successfully by the Community than by individual Member States;

Whereas the Council resolution of 7 February 1983 on the continuation and implementation of a European Community policy and action programme on the environment (1982 to 1986) ⁽⁴⁾ includes protection of the Mediterranean region among the areas in which it is

particularly important for Community action to be carried out; whereas this area was again included in the resolution of 19 October 1987 ⁽⁵⁾ on the continuation and implementation of the abovementioned policy and action programme from 1987 to 1992, which listed overall and integrated environmental protection of the Mediterranean region as one of the priority areas;

Whereas in its communication on the protection of the environment in the Mediterranean basin ⁽⁶⁾ submitted to the Council on 24 April 1984, the Commission undertook to formulate a strategy and plan of action for the protection of the environment in this region; whereas the latter were defined in the communication to the European Parliament, the Council, and the Economic and Social Committee on the protection of the environment in the Mediterranean region, adopted by the Commission on 14 November 1988;

Whereas, in view of the ecological sensitivity of the Mediterranean environment and the pressures to which it is exposed, the environmental operations carried out at regional, national, Community and international level must be intensified and made more effective;

Whereas, since the region forms an ecological entity, protection of the Mediterranean would be inconceivable without a combined effort by all the coastal States;

Whereas, by virtue of geomorphological and socio-economic similarities, the Atlantic coast of the Iberian peninsula, south of the river Tagus, is an ecological entity linked with the Mediterranean region;

Whereas the Community should contribute to implementation of the environmental operations by providing financial support for certain specific measures;

Whereas a management committee should be set up to assist the Commission in implementing this Regulation,

⁽¹⁾ OJ No C 80, 30. 3. 1990, p. 9, and OJ No C 25, 1. 2. 1991, p. 2.

⁽²⁾ OJ No C 19, 28. 1. 1991.

⁽³⁾ OJ No C 332, 31. 12. 1990, p. 116.

⁽⁴⁾ OJ No C 46, 17. 2. 1983, p. 1.

⁽⁵⁾ OJ No C 328, 7. 12. 1987, p. 1.

⁽⁶⁾ OJ No C 133, 21. 5. 1984, p. 12.

HAS ADOPTED THIS REGULATION:

Article 1

1. Community action for the protection of the environment in the Mediterranean region (Medspa), hereinafter referred to as the 'Medspa' action, is hereby instituted.
2. The Medspa action shall cover the entire Mediterranean region, both within the Community and outside it, together with the Spanish and Portuguese territories of the Iberian Peninsula south of the river Tagus not on the Mediterranean coast, hereinafter referred to as the 'region concerned'.

Article 2

The objectives of the Medspa action shall be:

- to intensify efforts to protect and improve the quality of the environment and increase the effectiveness of Community environment policy and measures in the region concerned,
- to help make the environmental dimension a more integral part of action taken by the Community pursuant to other Community policies,
- to increase cooperation and coordination on protection of the environment in the region concerned by integrating Community action and the operations carried out at regional, national and international level,
- to encourage the transfer of the appropriate technologies to protect the Mediterranean environment.

Article 3

1. The budgetary resources allocated to the Medspa action will be shown in the annual appropriations in the general budget of the European Communities, account being taken of the financial perspective and within the limit of the budget funds available for that year.
2. The abovementioned budgetary resources shall be used in accordance with this Regulation.
3. The amount estimated necessary for the execution of the Medspa action during the first two years is ECU 25 million.

Article 4

Priority measures for the first five-year phase of the Medspa action are listed in the Annex. For the second five-year phase, the priority measures will be reviewed in accordance with Article 13.

Article 5

1. The financial support provided for in this Regulation may be granted in respect of operations corresponding to the priority measures referred to in Article 4.

2. Operations benefiting from aid under the Structural Funds or other Community financial instruments shall not qualify for the financial support provided for in this Regulation.

3. The financial support may be granted in respect of the operations referred to in paragraph 1 where they have environmental protection as their principal objective.

Article 6

1. All natural or legal persons and associations bearing ultimate responsibility for the execution of the operations referred to in Article 5 may qualify for financial support.
2. The financial support shall take the form of:
 - capital grants towards investment in projects other than infrastructure projects, or
 - financial contributions towards pilot or demonstration schemes, towards measures designed to provide the information necessary for the execution of the Medspa action or of the technical assistance measures implemented on the initiative of the Commission, or
 - interest rebates for infrastructure projects, or
 - repayable advances decided on a case-by-case basis.

Article 7

Community financial support for the operations referred to in Article 5 shall be subject to the following limits:

- a maximum of 50 % of the total cost in the case of public investment projects, and pilot or demonstration schemes,
- a maximum of 30 % of the total cost in the case of private investment projects for non-commercial purposes,
- 100 % of the total cost of information and public-awareness campaigns and of the costs of executing the measures implemented on the initiative of the Commission.

Article 8

1. In order to guarantee the success of the operations carried out by beneficiaries of Community financial support, the Commission shall take the necessary measures to:

- verify that operations financed by the Community have been properly carried out,
- prevent and take action against irregularities,
- recover any sums unduly paid as a result of irregularities or negligence.

2. Without prejudice to audits carried out by the Court of Auditors in liaison with the national audit bodies or competent national departments pursuant to Article 206a of the Treaty or to any inspection carried out on the basis

of Article 209 (c) of the Treaty, Commission officials or employees may carry out on-the-spot-checks, including sample checks, in respect of operations financed under the Medspa action.

Before carrying out an on-the-spot check, the Commission shall give notice to the beneficiary concerned with a view to obtaining all the assistance necessary.

3. For a period of three years following the last payment in respect of any operation, the beneficiary of financial support shall keep available for the Commission all the supporting documents regarding expenditure on the operation.

Article 9

1. The Commission may reduce or suspend payment of financial support in respect of any operation if it finds an irregularity or a significant change affecting the nature or conditions of the action or measure for which the Commission's approval has not been sought.

2. If the completion dates have not been respected or if a particular operation has been carried out in such a manner that payment of only part of the financial support allocated to it is justified, the Commission shall ask the beneficiary to submit his comments within a fixed period. Unless adequate justification is produced, the Commission may cancel the remaining portion of that support.

3. Any overpayment shall be returned to the Commission. Interest may be charged on sums not repaid in due time. The Commission shall lay down the detailed rules for the implementation of this paragraph.

Article 10

1. The Commission shall ensure effective monitoring of the implementation of the Medspa action. Such monitoring shall be carried out by means of reporting procedures agreed jointly between the Commission and the beneficiary of the operation and by spot checks.

The Commission shall report to the Committee referred to in Article 11 on the progress made in implementing the Medspa action, including the use made of appropriations.

2. For each multiannual action, the beneficiary shall submit progress reports to the Commission within six months of the end of each full year of implementation.

In addition, a final report shall be submitted to the Commission within six months of completion of the operation; for each operation to be implemented over a period of less than two years, the beneficiary shall submit a report to the Commission within six months of completion of the action. The Commission shall determine the form and content of the reports.

3. On the basis of the monitoring reports and procedures referred to in paragraphs 1 and 2, the Commission shall make any necessary adjustments to the amount

of the financial support approved initially, to the conditions for granting that support and to the projected schedule of payments.

4. The Commission shall lay down the detailed rules for the implementation of this Article.

Article 11

1. For the purposes of executing the priority measures and the operations referred to in Articles 4, 5, 6 and 7, the Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

2. 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. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith. In that event, the Commission may defer application of the measures which it has decided for a period of not more than one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the second subparagraph.

Article 12

The list of operations which have received financial support shall be published for information purposes in the *Official Journal of the European Communities*.

Article 13

The Medspa action shall be executed for an initial phase of five years starting on 9 March 1991. In 1994 at the latest, the Commission shall submit a report to the Council containing an assessment of the experience of this first phase, accompanied by appropriate proposals, in particular with regard to the priority measures to be taken during the second five-year phase. In 1995 at the latest, the Council, acting by qualified majority, shall decide on the proposal for this second phase.

Article 14

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, 4 March 1991.

For the Council

The President

J. F. POOS

ANNEX

MEDSPA ACTION

1. Priority measures eligible under this Regulation

A. Action in the Community

- for coastal towns with fewer than 100 000 inhabitants and small islands : collection, treatment, storage and disposal of waste water and solid waste,
- collection, treatment, storage, recycling and disposal of sewage sludge and toxic and dangerous waste,
- treatment of water from ships' tanks containing residues of oil and other chemicals,
- integrated management of biotopes of Community interest in coastal regions,
- protection of soil threatened or degraded by fire or desertification ; protection of land against coastal erosion.

B. Action in non-Community Mediterranean countries

- help with the establishment of the requisite environmental administrative structures,
- technical assistance required for the establishment of environmental policies and action programmes.

2. Operations to deal with a problem likely, within a short time, to give rise to a lasting change in the ecological conditions in the area concerned may also be regarded as priority measures.

COMMISSION REGULATION (EEC) No 564/91

of 8 March 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 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 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 533/91⁽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 7 March 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 533/91 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 9 March 1991.

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

Done at Brussels, 8 March 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 59, 6. 3. 1991, p. 1.

ANNEX

to the Commission Regulation of 8 March 1991 fixing the import levies on cereals and on wheat or rye flour, groats and meal

(ECU/tonne)	
CN code	Levy
0709 90 60	137,13 ⁽²⁾ ⁽³⁾
0712 90 19	137,13 ⁽²⁾ ⁽³⁾
1001 10 10	200,63 ⁽¹⁾ ⁽³⁾
1001 10 90	200,63 ⁽¹⁾ ⁽³⁾
1001 90 91	185,71
1001 90 99	185,71
1002 00 00	158,44 ⁽⁶⁾
1003 00 10	154,17
1003 00 90	154,17
1004 00 10	146,79
1004 00 90	146,79
1005 10 90	137,13 ⁽²⁾ ⁽³⁾
1005 90 00	137,13 ⁽²⁾ ⁽³⁾
1007 00 90	147,75 ⁽⁴⁾
1008 10 00	63,62
1008 20 00	142,00 ⁽⁴⁾
1008 30 00	72,94 ⁽⁵⁾
1008 90 10	⁽⁷⁾
1008 90 90	72,94
1101 00 00	274,35 ⁽⁸⁾
1102 10 00	236,54 ⁽⁸⁾
1103 11 10	323,74 ⁽⁸⁾
1103 11 90	294,84 ⁽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 565/91

of 8 March 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 7 March 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 9 March 1991.

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

Done at Brussels, 8 March 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 8 March 1991 fixing the premiums to be added to the import levies on cereals, flour and malt

A. Cereals and flour

(ECU/tonne)

CN code	Current 3	1st period 4	2nd period 5	3rd period 6
0709 90 60	0	5,07	5,07	5,07
0712 90 19	0	5,07	5,07	5,07
1001 10 10	0	0,53	0,53	0,53
1001 10 90	0	0,53	0,53	0,53
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	5,07	5,07	5,07
1005 90 00	0	5,07	5,07	5,07
1007 00 90	0	0	0	0
1008 10 00	0	0	0	0
1008 20 00	0	0	0	0
1008 30 00	0	0	0	0
1008 90 90	0	0	0	0
1101 00 00	0	0	0	0

B. Malt

(ECU/tonne)

CN code	Current 3	1st period 4	2nd period 5	3rd period 6	4th period 7
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 566/91
of 8 March 1991

fixing the import levies on rice and broken 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 1418/76 of 21 June 1976 on the common organization of the market in rice⁽¹⁾, as last amended by Regulation (EEC) No 1806/89⁽²⁾, and in particular Article 11 (2) thereof,

Having regard to Commission Regulation (EEC) No 883/87 of 23 March 1987 laying down detailed rules for the application of Council Regulation (EEC) No 3877/86 on imports of rice of the long-grain aromatic Basmati variety falling within CN codes 1006 10, 1006 20 and 1006 30⁽³⁾, as amended by Regulation (EEC) No 1546/87⁽⁴⁾, and in particular Article 8 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas Article 11 of Regulation (EEC) No 1418/76 provides for charging an import levy on paddy rice, husked rice, semi-milled rice, wholly milled rice and broken rice; whereas, in the case of husked rice, wholly milled rice and broken rice, the levy is equal to the difference between the threshold price and the cif price; whereas, in the case of paddy rice and semi-milled rice, the levy should be derived from the levies applicable to the corresponding husked rice and wholly milled rice;

Whereas the threshold prices for husked rice, wholly milled rice and broken rice were fixed for the 1990/91 marketing year by Commission Regulation (EEC) No 2104/90⁽⁵⁾;

Whereas, for the purpose of calculating cif prices, the Commission must take account of the factors indicated in Article 16 of Regulation (EEC) No 1418/76 and in Commission Regulation (EEC) No 1613/71 of 26 July 1971 laying down detailed rules for fixing cif prices and levies on rice and broken rice and the corrective amounts relating thereto⁽⁶⁾, as last amended by Regulation (EEC) No 2325/88⁽⁷⁾, and in particular the most favourable purchasing opportunities on the world market which are sufficiently representative of the real trend of the market, account being taken in particular of the need to prevent sudden variations likely to cause abnormal disturbances

on the Community market; whereas the quality of the goods offered must also be taken into account, whether this quality as fixed in Council Regulation (EEC) No 1423/76⁽⁸⁾, or whether adjustments need to be made by applying the corrective amounts provided for in Regulation (EEC) No 1613/71;

Whereas, furthermore, in the case of round grain and long grain husked rice and round grain and long grain wholly milled rice, the cif price is calculated on the basis of quotations or prices on the world market relating, for each type of rice, to the products specified in Article 4 of Regulation (EEC) No 1613/71; whereas, for this calculation, the conversion rates resulting from Commission Regulation No 467/67/EEC of 21 August 1967 fixing the conversion rates, the processing costs and the value of the by-products for the various stages of rice processing⁽⁹⁾, as last amended by Regulation (EEC) No 2325/88, should be used where appropriate;

Whereas, when these conversions are being effected, the Commission must take account of the fact that certain offers are for rice containing a higher percentage of broken rice than that allowed for in the standard quality fixed by Regulation (EEC) No 1423/76 and, in that case, must adjust the offers so as to conform with the value of one kilogram of broken rice fixed by Regulation No 467/67/EEC; whereas no adjustment is made, however, if the prices for husked rice and semi-milled or wholly milled rice taken into consideration are lower than those provided for in the last subparagraph of Article 4 of Regulation No 467/67/EEC;

Whereas Regulation (EEC) No 1613/71 requires the Commission to take account of the fact that certain offers are for delivery cost and freight or relate to a product put up in bags and, if this is the case, to adjust such offers by applying the rates or amounts fixed by the abovementioned Regulation to make the offers comparable to offers for delivery cif or relating to a product presented in bulk;

Whereas the cif price is calculated for Rotterdam on the basis of the abovementioned factors, offers made for other ports being adjusted, account being taken of the corrections necessitated by the difference in transport charges in relation to Rotterdam;

Whereas, if the conditions provided for in Article 1 (3) of Regulation (EEC) No 1613/71 obtain, the cif price may be calculated on the basis of offers for delivery during the following month or may be retained unaltered for a limited period;

⁽¹⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽²⁾ OJ No L 177, 24. 6. 1989, p. 1.

⁽³⁾ OJ No L 80, 24. 3. 1987, p. 20.

⁽⁴⁾ OJ No L 144, 4. 6. 1987, p. 10.

⁽⁵⁾ OJ No L 191, 24. 7. 1990, p. 21.

⁽⁶⁾ OJ No L 168, 27. 7. 1971, p. 28.

⁽⁷⁾ OJ No L 202, 27. 7. 1988, p. 41.

⁽⁸⁾ OJ No L 166, 25. 6. 1976, p. 20.

⁽⁹⁾ OJ No 204, 24. 8. 1967, p. 1.

Whereas, in order that account may be taken of the interests of the African, Caribbean and Pacific States and of the overseas countries and territories, the levy relating to them must be reduced by a fixed amount and by an amount corresponding to 50 % of the levy relating to third countries; whereas, pursuant to Articles 12 and 13 of Council Regulation (EEC) No 715/90 of 5 March 1990 on the arrangements applicable to agricultural products and certain goods resulting from the processing of agricultural products originating in the ACP States or in the overseas countries and territories (OCT)⁽¹⁾, as last amended by Regulation (EEC) No 523/91⁽²⁾, the levy must be further reduced in the case of semi-milled and wholly milled rice;

Whereas on importation into Portugal of products listed in Annex XXIV to the Act of Accession an additional amount is added to the levy; whereas these amounts were set by Commission Regulation (EEC) No 3808/90⁽³⁾;

Whereas Regulation (EEC) No 1423/76 determined the standard qualities for rice and broken rice;

Whereas Council Regulation (EEC) No 3877/86⁽⁴⁾ defined a special arrangement for the importation of certain quantities of Basmati rice into the Community; whereas this arrangement provides for a levy of 75 % of that calculated in accordance with Article 11 of Regulation (EEC) No 1418/76; whereas however this levy may not be less than the difference between the free-at-frontier price for Basmati rice and the threshold price for long-grain rice;

Whereas Council Regulation (EEC) No 3491/90⁽⁵⁾ made import arrangements for rice originating in Bangladesh;

Whereas levies are fixed once a week and are altered in the intervening period to take account of variations in threshold prices or in the factors used to determine cif prices; whereas, in the case of husked rice, wholly milled

rice and broken rice, the levies are altered only if variations in the factors used to calculate the levy entail an increase or a reduction of at least ECU 1,21 per tonne in the amount of the levy in force;

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 Council Regulation (EEC) No 1676/85⁽⁶⁾, as last amended by Regulation (EEC) No 2205/90⁽⁷⁾,
- 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 it follows from applying all the abovementioned provisions that the levies should be fixed as set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies to be charged on the products listed in Article 1 (1) (a) and (b) of Regulation (EEC) No 1418/76 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 11 March 1991.

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

Done at Brussels, 8 March 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 84, 30. 3. 1990, p. 85.

⁽²⁾ OJ No L 58, 5. 3. 1991, p. 1.

⁽³⁾ OJ No L 366, 29. 12. 1990, p. 1.

⁽⁴⁾ OJ No L 361, 20. 12. 1986, p. 1.

⁽⁵⁾ OJ No L 337, 4. 12. 1990, p. 1.

⁽⁶⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁷⁾ OJ No L 201, 31. 7. 1990, p. 9.

ANNEX

to the Commission Regulation of 8 March 1991 fixing the import levies on rice and broken rice

(ECU/tonne)

CN code	Arrangement in Regulation (EEC) No 3877/86	ACP or OCT (⁽¹⁾) (⁽²⁾)	Third countries (except ACP or OCT) (⁽³⁾) (⁽⁴⁾)
1006 10 21	—	158,25	323,71
1006 10 23	227,18	147,85	302,90
1006 10 25	227,18	147,85	302,90
1006 10 27	227,18	147,85	302,90
1006 10 92	—	158,25	323,71
1006 10 94	227,18	147,85	302,90
1006 10 96	227,18	147,85	302,90
1006 10 98	227,18	147,85	302,90
1006 20 11	—	198,72	404,64
1006 20 13	283,97	185,71	378,62
1006 20 15	283,97	185,71	378,62
1006 20 17	283,97	185,71	378,62
1006 20 92	—	198,72	404,64
1006 20 94	283,97	185,71	378,62
1006 20 96	283,97	185,71	378,62
1006 20 98	283,97	185,71	378,62
1006 30 21	—	246,31	516,47 (⁽⁵⁾)
1006 30 23	431,67 (⁽⁵⁾)	275,89	575,56 (⁽⁵⁾)
1006 30 25	431,67 (⁽⁵⁾)	275,89	575,56 (⁽⁵⁾)
1006 30 27	431,67 (⁽⁵⁾)	275,89	575,56 (⁽⁵⁾)
1006 30 42	—	246,31	516,47 (⁽⁵⁾)
1006 30 44	431,67 (⁽⁵⁾)	275,89	575,56 (⁽⁵⁾)
1006 30 46	431,67 (⁽⁵⁾)	275,89	575,56 (⁽⁵⁾)
1006 30 48	431,67 (⁽⁵⁾)	275,89	575,56 (⁽⁵⁾)
1006 30 61	—	262,67	550,04 (⁽⁵⁾)
1006 30 63	462,75 (⁽⁵⁾)	296,15	617,00 (⁽⁵⁾)
1006 30 65	462,75 (⁽⁵⁾)	296,15	617,00 (⁽⁵⁾)
1006 30 67	462,75 (⁽⁵⁾)	296,15	617,00 (⁽⁵⁾)
1006 30 92	—	262,67	550,04 (⁽⁵⁾)
1006 30 94	462,75 (⁽⁵⁾)	296,15	617,00 (⁽⁵⁾)
1006 30 96	462,75 (⁽⁵⁾)	296,15	617,00 (⁽⁵⁾)
1006 30 98	462,75 (⁽⁵⁾)	296,15	617,00 (⁽⁵⁾)
1006 40 00	—	79,78	165,57

(⁽¹⁾) Subject to the application of the provisions of Articles 12 and 13 of Regulation (EEC) No 715/90.

(⁽²⁾) In accordance with Regulation (EEC) No 715/90, the levies are not applied to products imported directly into the overseas department of Réunion of products originating in the African, Caribbean and Pacific States or in the overseas countries and territories.

(⁽³⁾) The import levy on rice entering the overseas department of Réunion is specified in Article 11a of Regulation (EEC) No 1418/76.

(⁽⁴⁾) The import levy on rice originating in Bangladesh is specified in Regulation (EEC) No 3491/90.

(⁽⁵⁾) 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 567/91**of 8 March 1991****fixing the premiums to be added to the import levies on rice and broken 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 1418/76
of 21 June 1976 on the common organization of the
market in rice ⁽¹⁾, as last amended by Regulation (EEC)
No 1806/89 ⁽²⁾, and in particular Article 13 (6) thereof,

Whereas the premiums to be added to the levies on rice
and broken rice were fixed by Commission Regulation
(EEC) No 3847/90 ⁽³⁾, as last amended by Regulation
(EEC) No 479/91 ⁽⁴⁾;

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 shown in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The premiums to be added to the import levies fixed in
advance in respect of rice and broken rice originating in
third countries shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 11 March 1991.

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

Done at Brussels, 8 March 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽²⁾ OJ No L 177, 24. 6. 1989, p. 1.

⁽³⁾ OJ No L 367, 29. 12. 1990, p. 19.

⁽⁴⁾ OJ No L 55, 1. 3. 1991, p. 10.

ANNEX

to the Commission Regulation of 8 March 1991 fixing the premiums to be added to the import levies on rice and broken rice

CN code	(ECU/tonne)			
	Current 3	1st period 4	2nd period 5	3rd period 6
1006 10 21	0	0	0	—
1006 10 23	0	0	0	—
1006 10 25	0	0	0	—
1006 10 27	0	0	0	—
1006 10 92	0	0	0	—
1006 10 94	0	0	0	—
1006 10 96	0	0	0	—
1006 10 98	0	0	0	—
1006 20 11	0	0	0	—
1006 20 13	0	0	0	—
1006 20 15	0	0	0	—
1006 20 17	0	0	0	—
1006 20 92	0	0	0	—
1006 20 94	0	0	0	—
1006 20 96	0	0	0	—
1006 20 98	0	0	0	—
1006 30 21	0	0	0	—
1006 30 23	0	0	0	—
1006 30 25	0	0	0	—
1006 30 27	0	0	0	—
1006 30 42	0	0	0	—
1006 30 44	0	0	0	—
1006 30 46	0	0	0	—
1006 30 48	0	0	0	—
1006 30 61	0	0	0	—
1006 30 63	0	0	0	—
1006 30 65	0	0	0	—
1006 30 67	0	0	0	—
1006 30 92	0	0	0	—
1006 30 94	0	0	0	—
1006 30 96	0	0	0	—
1006 30 98	0	0	0	—
1006 40 00	0	0	0	0

COMMISSION REGULATION (EEC) No 568/91
of 8 March 1991
amending Regulation (EEC) No 1627/89 on the buying-in of beef by invitation to tender

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

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal ⁽¹⁾, as last amended by Regulation (EEC) No 3577/90 ⁽²⁾, and in particular Article 6 (7) thereof,

Whereas Commission Regulation (EEC) No 1627/89 of 9 June 1989 on the buying-in of beef by invitation to tender ⁽³⁾, as last amended by Regulation (EEC) No 425/91 ⁽⁴⁾, opens buying-in by invitation to tender in certain Member States or regions of a Member State for certain quality groups;

Whereas the application of Article 6 (2), (3) and the first indent of (5) of Regulation (EEC) No 805/68 and the need to limit intervention to the buying-in of the quantities necessary to ensure reasonable support for the market result, on the basis of the prices of which the

Commission is aware, in an amendment, in accordance with the Annex hereto, to the list of Member States or regions of a Member State where buying-in is open by invitation to tender, and the list of the quality groups which may be bought in;

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

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EEC) No 1627/89 are hereby replaced by Annexes I and II hereto.

Article 2

This Regulation shall enter into force on 12 March 1991.

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

Done at Brussels, 8 March 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 24.

⁽²⁾ OJ No L 353, 17. 12. 1990, p. 23.

⁽³⁾ OJ No L 159, 10. 6. 1989, p. 36.

⁽⁴⁾ OJ No L 50, 23. 2. 1991, p. 9.

*ANEXO I — BILAG I — ANHANG I — ΠΑΡΑΡΤΗΜΑ I — ANNEX I — ANNEXE I —
ALLEGATO I — BIJLAGE I — ANEXO I*

Estados miembros o regiones de Estados miembros y grupos de calidades previstos en el apartado 1 del artículo 1

Medlemsstater eller regioner og kvalitetsgrupper, jf. artikel 1, stk. 1

Mitgliedstaaten oder Gebiete eines Mitgliedstaats sowie die in Artikel 1 Absatz 1 genannten Qualitätsgruppen

Κράτη μέλη ή περιοχές κρατών μελών και ομάδες ποιότητας που αναφέρονται στο άρθρο 1 παράγραφος 1

Member States or regions of a Member State and quality groups referred to in Article 1 (1)

États membres ou régions d'États membres et groupes de qualités visés à l'article 1^{er}, paragraphe 1

Stati membri o regioni di Stati membri e gruppi di qualità di cui all'articolo 1, paragrafo 1

In artikel 1 lid 1 bedoelde Lid-Staten of gebieden van een Lid-Staat en kwaliteitsgroepen

Estados-membros ou regiões de Estados-membros e grupos de qualidades referidos no n.º 1 do artigo 1.º

Estados miembros o regiones de Estados miembros	Categoría A			Categoría C		
Medlemsstat eller region	Kategori A			Kategori C		
Mitgliedstaaten oder Gebiete eines Mitgliedstaats	Kategorie A			Kategorie C		
Κράτος μέλος ή περιοχές κράτους μέλους	Κατηγορία Α			Κατηγορία Γ		
Member States or regions of a Member State	Category A			Category C		
États membres ou régions d'États membres	Catégorie A			Catégorie C		
Stati membri o regioni di Stati membri	Categoria A			Categoria C		
Lid-Staat of gebied van een Lid-Staat	Categorie A			Categorie C		
Estados-membros ou regiões de Estados-membros	Categoria A			Categoria C		
	U	R	O	U	R	O
Belgique / België	x	x	x			
Danmark		x	x			
Deutschland	x	x				
France	x	x	x		x	x
Italia		x	x			
Luxembourg		x	x			x
Nederland		x				

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

Estados miembros o regiones de Estados miembros y grupos de calidades previstos en el apartado 2 del artículo 1

Medlemsstater eller regioner og kvalitetsgrupper, jf. artikel 1, stk. 2

Mitgliedstaaten oder Gebiete eines Mitgliedstaats sowie die in Artikel 1 Absatz 2 genannten Qualitätsgruppen

Κράτη μέλη ή περιοχές κρατών μελών και ομάδες ποιότητας που αναφέρονται στο άρθρο 1 παράγραφος 2

Member States or regions of a Member State and quality groups referred to in Article 1 (2)

**États membres ou régions d'États membres et groupes de qualités visés à l'article 1^{er},
paragraphe 2**

Stati membri o regioni di Stati membri e gruppi di qualità di cui all'articolo 1, paragrafo 2

In artikel 1 lid 2 bedoelde Lid-Staten of gebieden van een Lid-Staat en kwaliteitsgroepen

Estados-membros ou regiões de Estados-membros e grupos de qualidades referidos no nº 2 do artigo 1º

Estados miembros o regiones de Estados miembros	Categoría A			Categoría C		
Medlemsstat eller region	Kategori A			Kategori C		
Mitgliedstaaten oder Gebiete eines Mitgliedstaats	Kategorie A			Kategorie C		
Κράτος μέλος ή περιοχή κράτους μέλους	Κατηγορία Α			Κατηγορία Γ		
Member States or regions of a Member State	Category A			Category C		
États membres ou régions d'États membres	Catégorie A			Catégorie C		
Stati membri o regioni di Stati membri	Categoria A			Categoria C		
Lid-Staat of gebied van een Lid-Staat	Categorie A			Categorie C		
Estados-membros ou regiões de Estados-membros	Categoria A			Categoria C		
	U	R	O	U	R	O
Ireland				×	×	×
North Ireland				×	×	×
Great Britain				×	×	×

COMMISSION REGULATION (EEC) No 569/91

of 8 March 1991

concerning the stopping of fishing for haddock by vessels flying the flag of a Member State

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities ⁽¹⁾, as amended by Regulation (EEC) No 3483/88 ⁽²⁾, and in particular Article 11 (3) thereof,Whereas Council Regulation (EEC) No 3928/90 of 20 December 1990 allocating, for 1991, certain catch quotas between Member States for vessels fishing in the Norwegian exclusive economic zone and the fishing zone around Jan Mayen ⁽³⁾, provides for haddock quotas for 1991 ;

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

Whereas, according to the information communicated to the Commission, catches of haddock in the waters of ICES divisions I and II (Norwegian waters north of 62° N)

by vessels flying the flag of a Member State or registered in a Member State have reached the quota allocated for 1991,

HAS ADOPTED THIS REGULATION :

Article 1

Catches of haddock in the waters of ICES divisions I and II (Norwegian waters north of 62° N) by vessels flying the flag of a Member State or registered in a Member State are deemed to have exhausted the quota allocated to the Community for 1991.

Fishing for haddock in the waters of ICES divisions I and II (Norwegian waters north of 62° N) by vessels flying the flag of a Member State or registered in a Member State is prohibited, as well as the retention on board, the transshipment and the landing of such stock captured by the abovementioned vessels after the date of entry into force of this Regulation.

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, 8 March 1991.

For the Commission

António CARDOSO E CUNHA

Member of the Commission

⁽¹⁾ OJ No L 207, 29. 7. 1987, p. 1.

⁽²⁾ OJ No L 306, 11. 11. 1988, p. 2.

⁽³⁾ OJ No L 378, 31. 12. 1990, p. 46.

COMMISSION REGULATION (EEC) No 570/91**of 8 March 1991****re-establishing the levying of customs duties on products falling within CN code 3102 10 10, originating in Brazil, to which the preferential tariff arrangements set out in Council Regulation (EEC) No 3831/90 apply**

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

Having regard to Council Regulation (EEC) No 3831/90 of 20 December 1990 applying generalized tariff preferences for 1991 in respect of certain industrial products originating in developing countries⁽¹⁾, and in particular Article 9 thereof,

Whereas, pursuant to Articles 1 and 6 of Regulation (EEC) No 3831/90, suspension of customs duties shall be accorded to each of the countries or territories listed in Annex III other than those listed in column 4 of Annex I within the framework of the preferential tariff ceilings fixed in column 6 of Annex I;

Whereas, as provided for in Article 7 of that Regulation, as soon as the individual ceilings in question are reached at Community level, the levying of customs duties on imports of the products in question originating in each of

the countries and territories concerned may at any time be re-established;

Whereas, in the case of products falling within CN code 3102 10 10, the individual ceiling amounts to ECU 399 000; whereas, on 20 February 1991, imports of these products into the Community originating in Brazil reached the ceiling in question after being charged thereagainst; whereas, it is appropriate to re-establish the levying of customs duties in respect of the products in question against Brazil,

HAS ADOPTED THIS REGULATION:

Article 1

As from 12 March 1991, the levying of customs duties, suspended pursuant to Regulation (EEC) No 3831/90, shall be re-established on imports into the Community of the following products originating in Brazil:

Order No	CN code	Description
10.0400	3102 10 10	Urea containing more than 45% by weight of nitrogen on the dry anhydrous product

Article 2

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

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

Done at Brussels, 8 March 1991.

For the Commission

Christiane SCRIVENER

Member of the Commission

⁽¹⁾ OJ No L 370, 31. 12. 1990, p. 1.

COMMISSION REGULATION (EEC) No 571/91**of 8 March 1991****amending Regulation (EEC) No 2677/85 laying down implementing rules in respect of the system of consumption aid for olive oil**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats ⁽¹⁾, as last amended by Regulation (EEC) No 3577/90 ⁽²⁾, and in particular Article 11 (8) thereof,

Whereas Commission Regulation (EEC) No 2677/85 ⁽³⁾, as last amended by Regulation (EEC) No 3251/90 ⁽⁴⁾, laid down implementing rules in respect of the system of consumption aid for olive oil;

Whereas experience shows that the plant and packaging methods used by each undertaking should be inspected before approval is granted;

Whereas experience also demonstrates the need for more stringent checks on new undertakings during their first year of operation in order to avoid certain distortions; whereas, however, these particular provisions should not apply in Spain and Portugal during the first two years of operation of this aid scheme, which was introduced in those countries on 1 December 1990;

Whereas, to ensure the sound operation of the scheme, there should be closer checks on sales by approved undertakings direct to consumers; whereas, with the same aim in view, the checks on each undertaking should be stepped up and more precisely specified;

Whereas in certain cases, to ensure that checks are effective, inspections should extend to the retail level;

Whereas, in the interests of sound administration, the decanting of oil put up in small containers should be subject to stricter conditions and penalties should be increased where unauthorized decanting has occurred;

Whereas, in the interests of sound administration, the responsibilities of the trade organizations should be more

clearly defined and the penalties for failure to comply with those obligations should be laid down;

Whereas, in order to improve monitoring of the aid scheme in the various Member States, the supplementary information to be communicated periodically to the Commission should be specified;

Whereas the Common Customs Tariff has been replaced by the new combined nomenclature; whereas articles which refer to products under the former tariff headings should therefore be amended;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2677/85 is hereby amended as follows:

1. the following paragraph is added to Article 2:

'For the purpose of granting approval, the competent authorities of the Member State shall carry out an on-the-spot inspection of the plant and packaging capacity of the undertaking seeking approval. In those Member States which have set up the inspection agency referred to in Regulation (EEC) No 2262/84, that agency may participate in such inspections if it considers this necessary.'

2. Article 3 (a) is replaced by the following:

'(a) the stocks of olive oil, by origin and packaging, existing at the date on which it was approved and at the beginning of each marketing year';

3. the following paragraphs are added to Article 3:

'Where a packaging undertaking sells, either directly or through an outlet which it owns, olive oil to direct consumers, it shall record in its daily stock record, in respect of each batch exceeding 20 litres, the quantity and quality of the oil sold and the number of the corresponding sales invoice. In the case of batches not exceeding 20 litres, the reference to the invoice may be replaced by a reference to the dispatch note or other similar document relating to the batch.'

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

⁽²⁾ OJ No L 353, 17. 12. 1990, p. 23.

⁽³⁾ OJ No L 254, 25. 9. 1985, p. 5.

⁽⁴⁾ OJ No L 311, 10. 11. 1990, p. 24.

However, even in the case of batches exceeding 20 litres, the reference to the sales invoice shall not be required if the undertaking keeps and daily record showing the name and address of each purchaser, the quantity and quality sold and the number of the relevant dipatch note.

The qualities referred to in this Article are those defined in the Annex to Regulation No 136/66/EEC;

4. Article 11 (2) is replaced by the following:

'2. The security shall be lodged by an establishment meeting the criteria laid down by the Member State to which application for aid is made. The security shall be valid for at least six months.'

5. the following subparagraph is added to Article 11 (3):

'The body responsible for checking entitlement to aid shall notify the paying agency each month of its findings as regards the recognition of entitlement to aid of each approved undertaking.'

6. the following paragraph is added to Article 11:

'4. Notwithstanding paragraph 1, the grant of an advance to a newly-approved undertaking is subject to lodging of a security amounting to 130 % of each advance applied for during the first year of operation.

The security shall be valid for at least 12 months and shall be released as soon as the Member State has recognized entitlement to the aid in respect of the quantity shown in the application.

This paragraph shall apply to undertakings in Spain and Portugal from the 1992/93 marketing year.'

7. Article 12 is replaced by the following:

Article 12

1. For the purposes of the checks referred to in Article 7 of Regulation (EEC) No 3089/78, Member States shall inspect the stock records of all approved undertakings. They shall also carry out random checks on the financial supporting documents relating to the transactions carried out by these undertakings. Each undertaking shall be inspected for this purpose at least once in each marketing year. Inspections shall cover a substantial percentage of the applications by each undertaking. Where inspection agencies are responsible for carrying out these checks, that percentage shall be indicated in the work schedules referred to in Article 3 of Regulation (EEC) No 27/85.

However, in the case of newly-approved undertakings, the inspection shall cover all applications submitted during the first year of operation. This subparagraph

shall apply to undertakings in Spain and Portugal only from the 1992/93 marketing year.

In the course of the inspections referred to in the first subparagraph Member States shall check that:

— the total quantities of oil stored in bulk and packaged and the empty packagings physically present at the undertaking and the storage place referred to in Article 7,

correspond with

— the data contained in the stock records.

If any doubt arises as to the accuracy of the information given in the application for aid, Member States shall also check the accounts of approved undertakings.

The Member State may also subject approved undertakings to unannounced checks of the same type as those referred to above.

If the approved undertaking packages both olive and seed oil, the checks referred to in this Article may be extended to stock records and accounts in respect of the packaging of oils other than olive oil.

As a horizontal check and particularly where there is doubt about the accuracy of the figures in the aid applications, the Member State shall undertake regular checks among persons supplying raw materials and packaging and operators to whom the packaged oil has been supplied.

2. If any doubt arises as to the accuracy of the information given in the application for aid, the Member State shall suspend payment of aid in respect of the quantity of olive oil which is the subject of the inspection and take any steps necessary to ensure recovery of aid which may turn out to have been wrongly granted and the payment of any fines. The Member State shall also exclude the applicant from receiving aid in the form of an advance in respect of subsequent aid applications submitted during a period not exceeding 18 months. Where such an exclusion measure is taken, the Member State shall, within 180 days of submission of the aid application, carry out the checks required for aid to be granted.

3. Advances and aid wrongly paid shall be reimbursed together with interest calculated for the period between payment of the aid and reimbursement at the interbank rate applicable during the month in which the aid was paid to the applicant plus two percentage points.

The amount paid to the Member State shall be deducted from claims made on the EAGGF by the paying agencies or authorities of the Member States.

4. Where investigations are undertaken to discover fraud, all operators purchasing or selling olive oil put up in immediate containers of a net content not exceeding five litres, with the exception of direct consumers, shall be subject to possible checks.

5. If approval is temporarily withdrawn from a packaging undertaking pursuant to Article 3 (2) of Regulation (EEC) No 3089/78, renewed approval may not be applied for during the period of withdrawal by any natural or legal person carrying out packaging activities in the same establishment as the undertaking affected by the withdrawal unless the person in question proves to the satisfaction of the Member State concerned that such application for renewed approval is not intended to evade the withdrawal of approval provided for in the said Article.

6. Where it is found by the competent authority that an application for aid relates to a quantity greater than that for which the entitlement to aid was recognized, the Member State shall immediately withdraw approval for a period of from one to five years, depending on the seriousness of the infringement, without prejudice to any other penalties.';

8. the following Article 12a is inserted:

Article 12a

1. Subject to paragraph 2, the decanting of olive oil put up in an immediate container of a net content not exceeding five litres shall be prohibited.

2. In duly justified exceptional cases, the Member State may authorize decanting subject to the lodging of a security equal to 150 % of the amount of consumption aid in respect of the quantity of oil that is to be decanted. The security shall be released when the operator can prove to the satisfaction of the Member State concerned that the olive oil decanted has been released for consumption without benefit of the aid or without the certificate referred to in Article 18 (3) having been obtained.

3. In case of unauthorized decanting, the operator shall pay to the Member State in which the operation is carried out an amount equal to double the consumption aid applicable to the quantities involved.

Where an operator is unable to furnish, to the satisfaction of the Member State concerned, proof of the use of oil purchased in immediate containers of a net content not exceeding five litres, the operator involved shall pay to the Member State an amount equal to double the consumption aid applicable to the quantities involved.

If the operator referred to in the previous subparagraphs is the occupier of an approved packaging

undertaking, approval shall be withdrawn for a period of between one and five years.

The amount paid to the Member State shall be deducted from claims made on the EAGGF by the paying agencies or authorities of the Member States.';

9. the second subparagraph of Article 13 (1) is replaced by the following:

'In this case, the recognized trade organizations shall check, on the premises of the approved packaging undertakings indicated to them by the Member States, that the data given on the aid applications conforms to the stock records and that those records have been kept in accordance with Article 3.';

10. the second subparagraph of Article 13 (2) is replaced by the following:

'The trade organizations shall, without delay, inform the Member State in question:

- if they are not granted access to the packaging undertakings, or
- if they find in the course of the checks irregularities in the stock records.';

11. the following paragraph 3 is added to Article 13:

'3. Where checks on their activities reveal that a recognized trade organization has not complied with its obligations, the Member State shall impose an administrative fine of not less than 10 % of the deduction referred to in Article 11 (5) of Regulation No 136/66/EEC for the marketing year in question.

In the case of any further infringement, the Member State shall withdraw approval of the body concerned for a period of from one to five years, depending on the seriousness of the infringement detected. Withdrawal of approval shall take effect from the marketing year following that in which the infringement was detected.

Where approval of a trade organization is withdrawn, its members may submit their applications direct to the responsible body of the Member State or through another approved trade organization, which shall, in this case, assume the functions of the trade organization from which approval has been withdrawn.';

12. in Article 15 (1), 'falling within Common Customs Tariff subheading 15.17 B' and 'falling within Common Customs Tariff subheading 15.10 C' are replaced by 'falling within CN codes 1522 00 31 and 1522 00 39' and 'falling with CN codes 1519 19 00 and 1519 20 00' respectively;

13. in the second subparagraph of Article 16 (1), 'Article 12 (3)' is replaced by 'Article 12a';

14. in Article 17 (1), 'falling within subheading 15.07 A of the Common Customs Tariff' is replaced by 'falling within CN code 1509 or 1510';

15. in point (a) of the second subparagraph of Article 17 (2), 'falling within subheading 15.07 A I b) of the Common Customs Tariff' is replaced by 'falling within CN code 1509 10 10'.

In point (b) of the second subparagraph of Article 17 (2), 'falling within subheading 15.07 A I c) of the Common Customs Tariff' is replaced by 'falling within CN code 1510 00 10' ;

16. in the fifth subparagraph of Article 17 (4), 'falling within subheading 15.07 A I a) of the Common Customs Tariff' is replaced by 'falling within CN code 1509 10 90'.

In the sixth subparagraph of Article 17 (4), 'falling within subheading 15.07 A I b) or 15.07 A I c) of the Common Customs Tariff' is replaced by 'falling within CN code 1509 10 10 or 1510 00 10'.

In the seventh subparagraph of Article 17 (4), 'falling within subheadings 15.07 A I c) and/or 15.07 A II b) of the Common Customs Tariff' is replaced by 'falling within CN codes 1510 00 10 and/or 1510 00 90' ;

17. in Article 18 (1) (c), 'preserved fish or vegetables' is replaced by 'preserved foodstuffs',

18. the following paragraphs are added to Article 19 :

'Each Member State shall notify to the Commission :

- (a) by the end of the second month following the beginning of each marketing year,

- the number of approved undertakings,
- the names of the recognized trade organizations and the undertakings to be inspected by each of them, together with their identification numbers,

- for each undertaking, the quantities of oil in respect of which aid was paid during the previous two marketing years,
- for each recognized trade organization, the total quantities, broken down by quality, packed by all the member undertakings receiving aid during the two preceding marketing years ;

- (b) by the end of the second month following the end of each half year :

- approved undertakings which began or ceased operations during that period,
- for each undertaking, the quantities and qualities of oil in respect of which aid was applied for and recognized during that period, and the quantities and qualities sold to direct consumers,
- undertakings in respect of which precautionary measures under Article 12 were taken or on which penalties were imposed during that period and the measure or penalty imposed on each undertaking,
- the trade organizations on which penalties were imposed and the penalty imposed on each organization.

The Commission shall regularly notify the Member States of the information received.' ;

19. (Does not concern the English text.) ;

20. the Annex is replaced by the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 8 March 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX

CERTIFICATE Regulation (EEC) No 2677/85	EC EG EF CE EK
Issuing body (name and address) :	No Original/Copy
	Holder (name, address and Member State) :
Description :	Net weight (in figures) :
	CN code :
Net weight (in words) :	

Declaration by the issuing body :

This is to certify that the olive oil described above has been made ineligible for consumption aid in accordance with Article 17 (1) of Regulation (EEC) No 2677/85 (packaged/exported/used in preserved products/released on the market for consumption without further treatment/used for industrial purposes) ⁽¹⁾.

(Place)

(Date)

(Signature)

(Stamp)

⁽¹⁾ Delete as appropriate.

COMMISSION REGULATION (EEC) No 572/91

of 8 March 1991

amending Council Regulation (EEC) No 3034/80 fixing the quantities of basic products considered to have been used in the manufacture of goods covered by Regulation (EEC) No 3033/80

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

Having regard to Council Regulation (EEC) No 3034/80 of 11 November 1980 fixing the quantities of basic products considered to have been used in the manufacture of goods covered by Regulation (EEC) No 3033/80 ⁽¹⁾, as last amended by Regulation (EEC) No 3380/90 ⁽²⁾, and in particular Article 4 thereof,

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff ⁽³⁾, as last amended

by Commission Regulation (EEC) No 315/91 ⁽⁴⁾, and in particular Article 9 thereof,

Whereas Commission Regulation (EEC) No 2472/90 ⁽⁵⁾ introduced a number of statistical subdivisions in the combined nomenclature; whereas the description of goods and references to the combined nomenclature headings and subheadings in Regulation (EEC) No 3034/80 should therefore be amended accordingly;

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

HAS ADOPTED THIS REGULATION:

Article 1

The lines concerning CN codes 1902 11 00 and 1902 19 in Annex I to Regulation (EEC) No 3034/80 are hereby amended as follows:

CN code	Description	(per 100 kg of goods)	
		Common wheat	Durum wheat
		kg	kg
(1)	(2)	(3)	(4)
1902 11	Containing eggs		167
1902 19	Other:		
11 and 19	Containing no common wheat flour or meal		167
90	Other	67	100

Article 2

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

It shall apply with effect from 1 January 1991.

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

Done at Brussels, 8 March 1991.

For the Commission

Martin BANGEMANN

Vice-President

⁽¹⁾ OJ No L 323, 29. 11. 1980, p. 7.

⁽²⁾ OJ No L 327, 27. 11. 1990, p. 2.

⁽³⁾ OJ No L 256, 7. 9. 1987, p. 1.

⁽⁴⁾ OJ No L 37, 9. 2. 1991, p. 24.

⁽⁵⁾ OJ No L 247, 10. 9. 1990, p. 1.

COMMISSION REGULATION (EEC) No 573/91**of 8 March 1991****altering the export refunds on cereals and on wheat or rye flour, groats and meal**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to 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 fifth subparagraph of Article 16(2) thereof,

Whereas the export refunds on cereals and on wheat or rye flour, groats and meal were fixed by Commission Regulation (EEC) No 562/91 ⁽³⁾;

Whereas it follows from applying the detailed rules contained in Commission Regulation (EEC) No 562/91 to

the information known to the Commission that the export refunds at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 (a), (b) and (c) of Regulation (EEC) No 2727/75, exported in the natural state, as fixed in the Annex to Regulation (EEC) No 562/91 are hereby altered as shown in the Annex to this Regulation in respect of the products set out therein.

Article 2

This Regulation shall enter into force on 9 March 1991.

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

Done at Brussels, 8 March 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 62, 8. 3. 1991, p. 1.

ANNEX

to the Commission Regulation of 8 March 1991 altering the export refunds on cereals
fixing and on wheat or rye flour, groats and meal

(ECU/tonne)		
Product code	Destination (°)	Amount of refund
0709 90 60 000	—	—
0712 90 19 000	—	—
1001 10 10 000	—	—
1001 10 90 000	04	120,00
	06	50,00
	02	0
1001 90 91 000	—	—
1001 90 99 000	04	90,00
	05	90,00
	02	20,00
1002 00 00 000	03	100,00
	05	100,00
	02	20,00
1003 00 10 000	07	87,00
	02	0
1003 00 90 000	04	87,00
	06	30,00
	02	20,00
1004 00 10 000	—	—
1004 00 90 000	—	—
1005 10 90 000	—	—
1005 90 00 000	03	65,00
	02	0
1007 00 90 000	—	—
1008 20 00 000	—	—
1101 00 00 100	01	0
1101 00 00 130	01	0
1101 00 00 150	01	0
1101 00 00 170	01	0
1101 00 00 180	01	0
1101 00 00 190	—	—
1101 00 00 900	—	—
1102 10 00 600	01	0
1102 10 00 900	—	—
1103 11 10 100	01	0
1103 11 10 200	01	0
1103 11 10 500	01	0
1103 11 10 900	01	0
1103 11 90 100	01	0
1103 11 90 900	—	—

(¹) The destinations are identified as follows :

- 01 All third countries,
- 02 Other third countries,
- 03 Switzerland, Austria and Liechtenstein,
- 04 Switzerland, Austria, Liechtenstein, Ceuta and Melilla,
- 05 Zone II (b),
- 06 The Soviet Union,
- 07 Poland and Hungary.

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

COMMISSION REGULATION (EEC) No 574/91**of 8 March 1991****abolishing the corrective amount on the import of cucumbers into the
Community of Ten from Spain (except the Canary Islands)**

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

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

Having regard to Council Regulation (EEC) No 3709/89
of 4 December 1989 laying down general rules for imple-
menting the Act of Accession of Spain and Portugal as
regards the compensatory mechanism for imports of fruit
and vegetables from Spain ⁽¹⁾, and in particular Article 4
(2) thereof,

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

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

Whereas Commission Regulation (EEC) No 351/91 ⁽³⁾, as
last amended by Regulation (EEC) No 448/91 ⁽⁴⁾, intro-
duces a corrective amount on imports of cucumbers into
the Community of Ten from Spain (except the Canary
Islands);

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 351/91 is hereby repealed.

Article 2

This Regulation shall enter into force on 9 March 1991.

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

Done at Brussels, 8 March 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 363, 13. 12. 1989, p. 3.
⁽²⁾ OJ No L 371, 20. 12. 1989, p. 28.

⁽³⁾ OJ No L 41, 14. 2. 1991, p. 26.
⁽⁴⁾ OJ No L 52, 27. 2. 1991, p. 30.

COMMISSION REGULATION (EEC) No 575/91**of 8 March 1991****fixing the import levies on white sugar and raw sugar**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector⁽¹⁾, as last amended by Regulation (EEC) No 305/91⁽²⁾, and in particular Article 16 (8) thereof,

Whereas the import levies on white sugar and raw sugar were fixed by Commission Regulation (EEC) No 3608/90⁽³⁾, as last amended by Regulation (EEC) No 531/91⁽⁴⁾;

Whereas it follows from applying the detailed rules contained in Commission Regulation (EEC) No 3608/90 to the information known to the Commission that the levies at present in force should be altered to the amounts set out in the Annex hereto;

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 subparagraph of Article 3 (1) of Council Regulation (EEC) No 1676/85⁽⁵⁾, as last amended by Regulation (EEC) No 2205/90⁽⁶⁾,

- 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 7 March 1991,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 9 March 1991.

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

Done at Brussels, 8 March 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 37, 9. 2. 1991, p. 1.

⁽³⁾ OJ No L 350, 14. 12. 1990, p. 68.

⁽⁴⁾ OJ No L 58, 5. 3. 1991, p. 23.

⁽⁵⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁶⁾ OJ No L 201, 31. 7. 1990, p. 9.

ANNEX

to the Commission Regulation of 8 March 1991 fixing the import levies on white sugar and raw sugar

(ECU/100 kg)

CN code	Levy
1701 11 10	39,54 ⁽¹⁾
1701 11 90	39,54 ⁽¹⁾
1701 12 10	39,54 ⁽¹⁾
1701 12 90	39,54 ⁽¹⁾
1701 91 00	43,89
1701 99 10	43,89
1701 99 90	43,89 ⁽²⁾

⁽¹⁾ The levy applicable is calculated in accordance with the provisions of Article 2 or 3 of Commission Regulation (EEC) No 837/68 (OJ No L 151, 30. 6. 1968, p. 42).

⁽²⁾ In accordance with Article 16 (2) of Regulation (EEC) No 1785/81 this amount is also applicable to sugar obtained from white and raw sugar containing added substances other than flavouring or colouring matter.

COMMISSION REGULATION (EEC) No 576/91

of 8 March 1991

on the opening of a sale by periodic invitation to tender for sunflower seed held
by the Spanish intervention agency

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

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by Regulation (EEC) No 3577/90⁽²⁾, and in particular Article 26 (3) thereof,

Having regard to Commission Regulation (EEC) No 3418/82 of 20 December 1982 on the procedure for sale of oil seed held by the intervention agencies⁽³⁾, as last amended by Regulation (EEC) No 676/89⁽⁴⁾, and in particular Article 4 thereof,

Whereas Article 2 of Council Regulation No 724/67/EEC of 17 October 1967 laying down conditions for intervention in respect of oil seeds during the last two months of the marketing year and principles for the disposal of seeds bought in by intervention agencies⁽⁵⁾, as last amended by Regulation (EEC) No 2203/90⁽⁶⁾, provides that oil seeds held by intervention agencies are to be sold by invitation to tender;

Whereas Regulation (EEC) No 3418/82 lays down the procedures and the terms for the sale of oil seeds held by the intervention agencies; whereas, pursuant to the provisions of Article 4 thereof, a sale by periodic invitation to tender may be decided on in accordance with the provisions in Articles 5 to 9 thereof;

Whereas, in the present situation of the market, a periodic invitation to tender should be issued for the sale of 11 370 tonnes of sunflower seed held by the Spanish intervention agency;

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

HAS ADOPTED THIS REGULATION:

Article 1

The Spanish intervention agency shall issue a periodic invitation to tender under the conditions laid down in Regulation (EEC) No 3418/82 for the sale of 11 370 tonnes of sunflower seed.

Article 2

1. The closing date for the submission of tenders for the first partial invitation to tender shall expire on 21 March 1991.
2. The closing date for the submission of tenders for the last partial invitation to tender shall expire on 12 April 1991.
3. The notice of invitation to tender to be published by the intervention agency shall indicate the places of storage.
4. Tenders must be lodged with the intervention agency at the following address:
SENPA, Beneficencia, 8, 28004 Madrid; Tel. 347 65 00
Telex: 23427 SENPA, E Telefax: 521 9382.

Article 3

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, 8 March 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

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

⁽²⁾ OJ No L 353, 17. 12. 1990, p. 23.

⁽³⁾ OJ No L 360, 21. 12. 1982, p. 19.

⁽⁴⁾ OJ No L 73, 17. 3. 1989, p. 17.

⁽⁵⁾ OJ No 252, 19. 10. 1967, p. 10.

⁽⁶⁾ OJ No L 201, 31. 7. 1990, p. 5.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 19 February 1991

relating to a proceeding pursuant to Article 85 of the EEC Treaty

(IV/32.524 — Screensport/EBU Members)

(Only the English text is authentic)

(91/130/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 EEC Treaty⁽¹⁾, as last amended by the Act of Accession of Spain and Portugal, and in particular Article 3 (1) thereof,

Having regard to the application for a finding of an infringement submitted on 17 December 1987 pursuant to Article 3 of Regulation No 17, by W. H. Smith & Son Ltd and Screen Sport (formerly Screensport Ltd) (hereinafter 'Screensport'),

Having regard to the notification and application for negative clearance submitted to the Commission by the Eurosport consortium, Sky Television plc (hereinafter 'Sky'), Satellite Sport Sales Ltd, Satellite Sports Services Ltd and News International plc (hereinafter 'NI') on 17 January 1989,

Having regard to the Commission Decision of 5 December 1988 to initiate proceedings in this case,

Having given the undertakings and association of undertakings concerned the opportunity to make known their views on the objections raised by the Commission, pursuant to Article 19 (1) and (2) of Regulation No 17 and

Commission Regulation No 99/63/EEC of 25 July 1963 on the hearings provided for in Article 19 (1) and (2) of council Regulation No 17⁽²⁾,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas :

I. THE FACTS

Complaint and notification

- (1) On 17 December 1987 Screensport registered a complaint at the Commission concerning the following :
 - (i) certain activities of the European Broadcasting Union (hereinafter 'EBU') and/or its members, in particular, the refusal to grant Screensport sublicences to sports events to which the EBU and/or its members have acquired exclusive rights, with the effect that commercial cable and satellite companies such as Screensport are prevented from competing with the EBU and/or its members, in the field of sports programmes ;
 - and

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

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

- (ii) the joint venture between the EBU and/or certain of its members with NI establishing a television sports channel 'Eurosport'.
- (2) This Decision, while mentioning the EBU's activities, does not deal with the first aspect of this complaint, which is the subject of separate proceedings initiated by the Commission (Case IV/32.150). A statement of objections was sent by the Commission to the Eurosport Consortium and NI in connection with point (ii) above on 20 December 1988.
- (3) On 17 January 1989 the Commission received a notification and application for negative clearance concerning a series of agreements relating to the Eurosport sports channel television service, including :
 - (i) the Eurosport Consortium Agreement, signed on 5 May 1988 between 16 members of the EBU (hereinafter 'Members'). Following withdrawals from and additions to the consortium the current membership is 17, namely ORF (Austria), BRT (Belgium), RTBF (Belgium), DR (Denmark), YLE (Finland), ERT (Greece), RUV (Iceland), RTE (Ireland), RAI (Italy), NRK (Norway), SVT (Sweden), SSR (Switzerland), BBC (United Kingdom), JRT (Yugoslavia), CYBC (Cyprus), TRT (Turkey) and IBA (Israel);
 - (ii) a Shareholders Agreement signed on 23 December 1988 between Sky Television plc and the Eurosport Consortium, providing *inter alia* for exclusive ownership of Satellite Sport Sales Ltd by Sky (see recitals (21) and (32));
 - (iii) a Services Agreement, signed on 23 December 1988 between Satellite Sport Services Ltd (hereinafter 'the service company') jointly owned by the Eurosport Consortium, and Sky;
 - (iv) a Facilities Agreement, signed on 23 December 1988 between Sky and the service company;
 - (v) a Guarantee, signed on 23 December, given by NI, parent company of Sky, to the Eurosport Consortium.

A supplementary statement of objections was sent by the Commission to the Eurosport Consortium and Sky on 10 April 1989.

The complainant

- (4) Screensport is a company registered in England providing a commercial transnational satellite television sports channel service which has been in operation since March 1984. Until March 1989 it

delivered its programmes by low power satellite to cable systems in various parts of Europe. Since then, in addition, the service has also been available directly to consumers by means of domestic satellite dishes following the launch of the Astra satellite in February 1989. The service, which is multi-lingual, is currently available in 12 European countries, including seven EEC Member States, provided either by Screensport alone or in conjunction with partners in certain countries (such as France, Germany and the Netherlands). 75 % of the shareholding in Screensport is owned by W. H. Smith Ltd. The remaining shares are held by ESPN Inc., the major satellite cable channel in the USA which is jointly owned by ABC and Capital Cities. In the year up to June 1989 Screensport's turnover was £3.3 million, resulting in a loss for the company in the same period.

- (5) The Screensport channel consists exclusively of sports programmes, transmitted in four languages — English, French, German and Dutch.

Eurosport

- (6) Eurosport, like Screensport, is a transnational satellite television channel service dedicated to sport, which came into operation on 5 February 1989 on the Astra satellite. Television viewers within the footprint of the satellite receive the service either by cable television operators or directly by domestic satellite dishes. It is currently received in 22 European countries, including eight EEC Member States, and it broadcasts for 17 hours a day in English, German and Dutch.
- (7) The Eurosport Consortium is the product of an agreement concluded between a group of EBU members. The Consortium is contractually linked to Sky, and/or undertakings within the Sky group of companies, and NI, parent of Sky.

The Eurosport Consortium

- (8) The Eurosport Consortium is a consortium of members of the EBU, an association of broadcasting organizations established in 1950. Membership of the EBU is open to broadcasting organizations or groups of such organizations from a member country of the International Telecommunication Union (ITU) situated in the European Broadcasting Area as defined by the Radio Regulations annexed to the International Telecommunication Convention, which provide in that country, with the authorization of the competent authorities, a broadcasting service of national character and national importance, and which furthermore prove that they fulfil all the conditions set out below :

- (a) they are under an obligation to cover the entire national population and in fact cover at least a substantial part thereof, while using their best endeavours to achieve full coverage in due course ;
- (b) they are under an obligation to, and actually do, provide varied and balanced programming for all sections of the population, including a fair share of programmes catering for special-minority interests of various sections of the public, irrespective of the ratio of programme cost to audience ;
- (c) they actually produce and/or commission under their own editorial control a substantial proportion of the programmes broadcast.

The EBU currently has 39 active members in 32 countries situated within the European Broadcasting Area, most of them public service broadcasters. Membership is also open to consortia, including the Eurosport Consortium.

- (9) All active EBU members are eligible to participate in an institutionalized exchange system for TV programmes, including sports programmes, via a European network, known as 'Eurovision', in which all but two members currently participate. The system is also open to consortia, consisting exclusively of active members from different countries providing together a transnational television programme service. Eurovision is based on reciprocity: whenever a broadcasting organization covers an event — including sports events — which takes place on its own national territory and is of potential interest to other Eurovision members, it offers the signal (basic video and international sound feed) free of charge to all the other Eurovision members, on the understanding that in return it will receive corresponding offers from all the other members regarding events taking place in their respective countries. The originating broadcasting organization also provides the necessary infrastructure to enable visiting broadcasters to function properly (commentary positions, etc.).
- (10) Reciprocal arrangements of a similar kind exist with Intervision, the eastern European counterpart of Eurovision. Reciprocity has also been agreed among the six broadcasting unions which have jointly acquired world rights in the FIFA World Cup both in the past and for the future.
- (11) While facing growing competition from the new commercial broadcasters (see below), at present EBU and its members are still able to provide

exclusive programming with respect to many major sports events. They achieve this mainly by jointly acquiring the rights to sports events and exchanging the signal. This is part of the Eurovision system referred to above. At present the major proportion of the exchanges made under Eurovision consist of sports programmes (the balance being made up almost entirely of news items).

- (12) While acquiring the rights to such sports events, however, most EBU members in fact transmit only a small proportion of the events in question. Indeed, on average, members transmit only about 15 % of all sports events that are potentially available through the Eurovision system. EBU members attribute this to their 'public mission' obligations, which prevent them from concentrating unduly on only one type of programme. Thus, in order to provide more extensive coverage of these events, as sought by international sports federations, together with the need to reinforce its own negotiating position for the acquisition of rights to sports events in the face of the new and growing competition from commercial broadcasters for such rights, the EBU began in 1986 to examine the feasibility of an association establishing a satellite television channel dedicated to sport. A working group was set up to this effect, which reported to the interested member organizations of EBU. On the basis of this report it was decided to proceed with the establishment of such a channel. However, having already experienced a commercial failure in the establishment of a previous joint satellite channel (Europa TV), it was decided that a future joint sports channel should not be carried by EBU members alone but in conjunction with an undertaking experienced in the field of commercial satellite television and one which would be willing to bear the financial risk of such a project. Sky was selected from amongst four applicants, as was first announced to the press on 2 December 1987. Prior to its selection, Sky had been planning its own sports channel, as one of a number of specialist channels it intended to launch (see below).
- (13) The Eurosport consortium was established expressly to provide the Eurosport service on the part of the EBU members. The Agreement to this effect was formally signed on 5 May 1988, originally by 16 Members. Certain Members have subsequently withdrawn from the Agreement, while the Consortium has also attracted new membership, all members of the EBU in principle being eligible to participate. New Members are admitted with the consent of two-thirds of existing Members. There are currently 17 Members (see recital (3)).

(14) The Agreement provides that the Consortium, an association without legal personality, is established for a period of 10 years ending on the 10th anniversary of the start of the Eurosport service. The service itself comprises principally programmes based on material made available to the Consortium by EBU members, including the Members of the Consortium. The Members of the Consortium accept, however, that the Consortium is to be free to operate its own programme policy. In particular, it is entitled to include any programme in the service at such time and in such manner as it thinks fit. No Member, therefore, can withhold from the Consortium any programme or any right in any programme with a view to preventing or delaying its inclusion in the service. With regard to each sports programme produced or acquired by a Member, that Member must, at the request of the Consortium :

- (a) make the programme and such rights the Member has in relation to it freely available to the Consortium without restriction for the purpose of the service ;
- (b) use its best endeavours to secure, in consultation with the Consortium or its representatives, such additional rights as are necessary to permit the programme to be included in the service ;
- (c) use its best endeavours, in consultation with the Consortium, to extend the coverage of an event as long as the production facilities are on site ;
- (d) make its commentary available to the Consortium as a guide ;
- and
- (e) provide commentary positions at the event for the Consortium or its representatives in accordance with Eurovision reciprocity rules.

In this context it should be noted that under the Eurovision rules the EBU member originating a programme (the host broadcaster) is entitled to prevent Eurosport from broadcasting the same programme into its territory in its own language. However this limitation does not apply in the case of those sports events which belong to the common sports heritage of all European nations (Winter Olympic Games, Summer Olympic Games, Football World Cup, European Football Championships).

(15) Members are entitled to contributions from the Consortium for costs incurred in connection with the programmes made available and included in the service. These contributions take into account the type of sports programme made available by each Member and the number of hours of

programme material made available by them included in the service. In addition Members suffering a disproportionate impact of loss of audience due to the existence of the service are compensated from part of the profits arising from the activities of the Consortium

- (16) Members wishing to withdraw from the Consortium may do so up to the fourth anniversary of the date on which that Member joined, by giving at least one year's written notice of that fact while undertaking thereafter to use all reasonable endeavours during such notice to make available at the Consortium's request such sports programme material of the same type as it has previously at any time during the period offered to make available through the Eurovision programme exchanges.
- (17) The Consortium is required to inform the EBU Administrative Council regularly of its activities.

Sky

- (18) Sky Television plc (formerly Satellite Television plc), a company registered in England, is a subsidiary of NI. The ultimate parent company is the News Corporation Ltd, a company incorporated in South Australia. In 1988 the consolidated turnover of the group as a whole was £ 2 500 million. The turnover of NI is more than £450 million. Sky itself remains a loss-making undertaking at present.
- (19) The principal activity of Sky is the transmission of an English language satellite broadcasting service in Europe. In the past this has centred on Sky Channel, a general entertainment satellite channel, including sports programmes, which is received by over 15 million households in 18 countries in Europe, including nine EEC Member States.

In June 1988 it was announced that the channel would be relaunched as part of a four-channel direct broadcasting network called Sky Television. The four channels — including Eurosport and (a revamped) Sky Channel (now known as Sky One in the United Kingdom) — began transmission on the Astra satellite in February 1989. Sky Channel has also continued to acquire rights to broadcast certain sports events.

- (20) The involvement of Sky in a proposed European sports channel was made public by an announcement made to the press on 2 December 1987 that NI was involved in a joint venture with a group of EBU Members to launch a satellite sports channel to be known as Eurosport. In fact, representatives from NI had participated in previous meetings of the EBU Sports Working Party held to discuss and organize the setting up of the channel. Certain

elements of each party's involvement in the venture were made known at the time of the press announcement and in the following months, in particular the lease of transponders on the Astra satellite for the Sky channels, including Eurosport. Final details, however, were completed only on the signing of a series of agreements on 23 December 1988. These are as follows:

(21) *The Shareholders Agreement* (signed by Sky and the Eurosport Consortium) which provides *inter alia* that Sky and the Eurosport Consortium share equally in the ownership and management of the service company. As regards management, in particular, Sky and the Eurosport Consortium are each entitled to appoint three directors to the company; the Eurosport Consortium nominates the Head of Programming, while Sky nominated the Managing Director. The Agreement also provides that the sales company is wholly owned by Sky. Sky agrees, however, to appoint one director of this company on the nomination of the Eurosport Consortium, this director being provided with all data relating to the sales company available to all other members of the Board of Directors (including management accounts) and information on the trading position of the sales company, which he/she is then entitled to disclose to the Eurosport Consortium. In addition, the Agreement provides that:

- (a) the Eurosport Consortium is required to execute the Services Agreement while Sky and the Eurosport Consortium use their respective powers to procure the execution of that Agreement by the service company;
- (b) the Eurosport Consortium is required to execute the Sales Agreement and Sky shall procure the execution of that Agreement by the sales company;
- (c) Sky is required to execute and procure the execution by the sales company of the Finances Agreement;
- and
- (d) Sky is required to execute the Facilities Agreement and Sky and the Consortium use their respective powers to procure the execution of that agreement by the service company.

(22) Furthermore, the Shareholders Agreement also details the sports programming material which the Eurosport Consortium undertakes to make available for broadcasting on Eurosport. This is:

- (a) all sports programming produced or acquired by Members (other than such programming described in subparagraph (b) below);
- (b) all sports programming acquired by Members which is programming offered to the EBU Eurovision programme exchanges ("Eurovision") by members of the EBU who are not Members of Eurosport provided that programming forms part of Eurovision and;

- (i) it is not contrary to the national law of the place of incorporation or establishment of the relevant Member for such programming to be so made available;

- (ii) that any additional rights necessary have been acquired at the request of the service company by or through the Members concerned;

- (iii) the said programming shall be made available on a non-exclusive basis;
- and

- (iv) in the case of such programming, it shall be made available subject to such conditions, reservations or other qualifications as may be imposed in accordance with the regulations governing Eurovision from time to time.

(23) However, the Members undertake to Sky that, whenever granting a sublicense permitting the inclusion of such programming as is described in subparagraph (a) of recital (22) in a 'Reserved Service' (as defined below), which is provided primarily for reception within the service area of the transponder which for the time being is used for the transmission of Eurosport, they shall reserve priority for Eurosport for 48 hours after the end of an event or of the daily competition where an event lasts more than one day. It is understood that if a Member gives the service company notice that it wishes to sublicense programming specified in the notice to a Reserved Service without such reservation of priority, then, unless within 48 hours of receipt of such notice the service company gives that Member notice that it has selected such programming for inclusion in Eurosport within the 48-hour priority period described above, the Member may sublicense such programming without reservation of priority. For the purposes of this clause.

'Reserved Service' means:

- (i) a transnational television service, that is to say a television broadcasting service intended for reception in more than one country which is not aimed primarily at audiences in a single country;

or

- (ii) a third party national satellite television service, that is to say a television broadcasting service provided by means of a satellite (whether in the fixed-satellite or broadcasting-satellite service) aimed primarily at audiences in a single country, in which no Member has any *bona fide* economic interest except as a provider of programme material;

other than

- (i) any service provided by a Eurovision member (as that term is from time to time defined by the EBU);

- (ii) any service to which any Member is required in sublicensing such programming to do so without such reservation of priority by reason of any applicable law, regulation or decision of a court or other competent authority or by reason of any contract existing at the date of the Agreement which has been disclosed to Sky prior to the date thereof.

The application of the abovementioned clause may have been modified following a change to the EBU sublicensing rules. On 2 July 1990 the EBU adopted a new scheme for sublicences to non-members. This is dealt with in case IV/32.150 EBU/Eurovision. Under the scheme, sublicences are made available to all interested third parties subject to an embargo for a limited number of hours and further restrictions on the timing and volume of the transmissions.

- (24) A list of sports events to which the EBU, on behalf of its Members, has already acquired 'standard' or 'world' rights, as defined therein, was also attached to the Agreement. The Eurosport Consortium warranted to Sky that such rights were subsisting at the time of signature.
- (25) The Agreement is intended to continue for a period of 10 years. Early termination is permitted in certain circumstances. Provision is also made for extension of the Agreement.
- (26) *The Services Agreement*, concluded between the Eurosport Consortium and the service company (owned jointly by the Eurosport Consortium and Sky), provides that the latter supplies certain facilities and services to the Consortium, including:
 - (i) those relating to the establishment of the Eurosport-channel, including negotiation (on the Consortium's behalf) for the transponder and uplink facility together with technical support and liaison with suppliers, regulatory authorities, etc. necessary to establish the channel;
 - (ii) those relating to the operation of the Eurosport channel, including preparation and selection of programme material for inclusion on the channel;
 - (iii) accounting and administrative services and personnel and other services necessary for the operation and distribution of the services.
- (27) Copyright in the programmes included in the service and in all material included in them belongs to and remains the property of the Eurosport Consortium Members (whether as owners or licensees).

- (28) The *Sales Agreement* is concluded between the Eurosport Consortium and Satellite Sport Sales Ltd (hereinafter 'the sales company') which is wholly owned by Sky, but which includes one director nominated by the Eurosport Consortium.

Under the Agreement the Eurosport Consortium:

- (i) grants to the sales company the exclusive right to contract for the transmission of advertisements on Eurosport;
- (ii) authorizes the sales company to impose charges for the reception and (where appropriate) the retransmission of the satellite service. The contracts made with cable operators to this effect are required to be in a form previously approved in writing by the service company;
- (iii) grants to the sales company the right to enter into agreements with persons or organizations for programme association ('on-air sponsorship of programmes') included in the service. The agreements are in accordance *inter alia* with any guidelines laid down by the service company and with any existing sponsorship obligations of the Eurosport Consortium or any of its Members and which have been notified to the sales company.

In return, the Eurosport Consortium *inter alia* agrees to include in the satellite service the advertisements delivered by the sales company, and to provide the service itself on a daily basis as agreed. In addition, the Eurosport Consortium undertakes to make the satellite service available for distribution so as to enable the sales company to comply with its own obligations under the Agreement concerning the availability of the satellite service to the public generally within the coverage area.

- (29) The *Facilities Agreement* between Sky and the service company provides that Sky agrees to provide or procure for the service company, at cost, such experienced personnel, facilities, recommendations, information, know-how and advice as reasonably requested by the latter so as to enable it to carry out its obligations under the Services Agreement.
- (30) The *Finances Agreement* between Sky and the sales company provides that Sky agrees to provide the sales company such facilities (including know-how, executive and technical personnel and premises), services and funds (by way of interest-free loans) as the sales company shall require in order to carry out its obligations and activities under the Sales Agreement. In return, the sales company is required to pay Sky for the facilities and services provided.

- (31) NI, parent of Sky Television plc, irrevocably guarantees to the Eurosport Consortium, in consideration of the Eurosport Consortium entering into the Shareholders Agreement with its subsidiary, the due and punctual performance and observance by Sky and the sales company of their respective obligations under their Agreements, and in the case of their default, to perform and observe these obligations itself.

The nature of Eurosport

- (32) While accepting the need for Eurosport to be commercially viable, the Eurosport Consortium has constantly stressed that it represents an extension of its Members' activities and, as such, constitutes a public service channel. (At present about 50 % of the Eurosport programme schedule is made up of EBU programme material, 34 % of which is produced by Members of the Consortium, 16 % by other members of the EBU.) Emphasis is placed on the fact that the service is broadcast by the Eurosport Consortium and that they are responsible for its programme schedule. The services provided by Sky through the sales and service companies take the form of a subcontracting relationship. On this basis Eurosport enjoys the rights of an EBU member as far as the Eurovision system is concerned. Cable operators and sports organizers and/or their agents, in particular, are encouraged to accept the public service character of Eurosport. As such, it is inevitable that the service is considered by these bodies to be closely associated with the EBU and its members, including those which are not themselves Members of the Eurosport Consortium.
- (33) By contrast, the viewing public has tended to associate Eurosport more closely with Sky. On its inauguration the channel was heavily advertised, in the United Kingdom at least, as one of the four 'Sky' satellite channels launched by Sky Television on the Astra satellite. On the continent the channel has also been closely linked to Sky Channel by the fact that the two services have shared the same cable channel, with Eurosport replacing Sky Channel after 6 p.m. on certain cable networks receiving the service from another satellite.

The market

- (34) Until recently television viewers have been dependent upon their national public broadcasting organizations for access to televised sport, television itself being transmitted via national terrestrial networks, and licences to operate generally were confined to public organizations charged with 'public service'

obligations relating to programme quality, diversity, education, etc.

- (35) Sport has generally been considered to fall within the scope of this public mission, at least coverage of certain major international events, such as the Olympic Games, Football World Cup and European Football Championships, together with national events of particular interest to the domestic public. Some organizations have chosen to highlight sport or at least certain events more than others. However, in each case, extensive coverage has been constrained by the obligation to televise other types of programmes.
- (36) At the same time, however, the monopolies conferred upon national broadcasting services enabled them to secure exclusive and, frequently, long-term broadcasting rights to sports events — particularly where such rights were negotiated through the EBU. Furthermore, the Eurovision system guaranteed members free access to the signal for programmes broadcast in other members' territories, as well as other privileges. Prices for these rights were kept relatively low as sports organizers were more concerned to secure television coverage in order to attract sponsorship and widest promotion of their events through television audiences.
- (37) In recent years, technical innovation has resulted in the introduction of cable and satellite television services — that is the transmission of a television signal via a satellite to cable operators which have contracted to receive the service(s) in question, and then distribute it/them to the viewers in a given area. This, together with the deregulation of television broadcasting which has taken place in some Member States, has led to the establishment of a number of commercial broadcasters. They operate on a local, national or transnational basis, providing either a diversified range of programmes, including sport, or a more specialist service, such as sports, films, arts or children's programmes, etc.
- (38) The latest technical development has been direct-to-home broadcasting, whereby satellite signals may be picked up directly from small domestic satellite dishes erected for this purpose. Both Eurosport and Screensport operate on this basis, providing a transnational service across most of Europe. However, access to viewers via cable operators remains vital for both services at present, particularly in heavily cabled countries, pending growth of the domestic satellite market.
- (39) All commercial broadcasters are financed principally by advertising revenue although some, in addition, charge a subscription fee. They therefore compete with one another for such revenue, which

is based upon the audience ratings for their services. High ratings, in turn, depend upon the attractiveness of the programme content and its scheduling by the broadcasters concerned.

(40) Public broadcasters have not been immune from the impact of commercial television, even if they are not to the same degree financially dependent upon advertising revenue. On the contrary, all strive to attain the highest possible audience ratings for their services, even while other conditions of operating have also to be fulfilled.

(41) Sport is one area which has been particularly attractive to a number of the new commercial operators, whether as part of general entertainment channels or specialist sports channels. Audience ratings can be very high for certain events, and are also popular with commercial sponsors. National commercial channels are able to select events of particular interest to the domestic audience, while transnational services are attracted by the fact that sports programmes, above all others, transcend linguistic boundaries, making them especially suitable for transnational broadcasting and advertising. As a result, public broadcasters have increasingly faced competition in the acquisition of broadcasting rights to certain sports events. At the same time, organizers of such events, or their agents, have become more and more aware of the value of their events to broadcasters, and prices have accordingly increased. In addition, there has been an increasing tendency to 'unbundle' the rights themselves, that is, to distinguish between, for example, terrestrial, cable and/or satellite rights, whether events can be shown 'live' or on a deferred basis only, and/or whether extensive coverage is permitted or limited highlights only, and to sell these various rights separately.

(42) At present a number of national commercial broadcasters offering general entertainment services include a certain amount of sports programmes for national viewers in various Member States. Prominent amongst these are SAT 1 and RTL Plus in Germany, as well as Canal Plus, La Cinq and M6 in France. Some of these channels have outbid the EBU for specific sports events. In addition, UFA, a member of the Bertelsmann group, has purchased the exclusive world rights for Wimbledon other than the United Kingdom, previously shown on Eurovision.

(43) A commercial satellite channel dedicated to sport began operations in the United Kingdom during

May 1990 (British Satellite Broadcasting). On 10 November 1990 this company agreed to merge with Sky, creating a new company, British Sky Broadcasting. It is currently proposed that this company will operate a sports channel (Sky Sports) directed at the United Kingdom, while the Eurosport channel will be directed at audiences in continental Europe. Plans for a national commercial satellite sports channel also exist in France (Sport-2-3).

(44) Transnational satellite sports channels are currently limited to Screensport and Eurosport. Since both are transmitted on the Astra satellite their footprint covers the same geographical area, which includes most of the Member States of the European Community.

(45) Nevertheless, many sports organizers and/or their agents have sought to maintain their relationships with public broadcasters, a number of which have well-established reputations for the quality of the sports events which they transmit, and can guarantee national coverage of their events. In addition, the Eurovision system — which enables sports organizers or their agents to negotiate the sales rights for a number of countries, or indeed over the Eurovision area as a whole, through a single body, the EBU, and guarantees coverage to all EBU members wishing to participate in a particular event — greatly simplifies the dealing/selling process (notwithstanding its negative impact on competitors outside the system). In any event, the EBU currently still holds the exclusive rights to a number of major international events, the contracts to which have not yet expired.

(46) Moreover, while increased competition from private broadcasters has led to certain major events traditionally broadcast by EBU members (including the Wimbledon Open Tennis Championship) moving into the hands of private broadcasters, in practice the EBU is continuing to acquire rights to other major events. For example, the EBU has secured the rights to both the Summer and Winter Olympic Games taking place in 1992. It also has purchased the rights to the Football World Cup Championships until 1998, together with rights for the European Champion Cup and the final stages of the European Cupwinners' Cup competition.

(47) The creation of Eurosport, it is claimed by Screensport, has exacerbated its previous problems in acquiring access to major sports events, and in particular European events — national and international — which it would like to show on its own

transnational channel. Eurosport has direct access to programmes produced by EBU members (both Members and even non-members of the Eurosport Consortium) whereas Screensport does not, since it is not connected to the Eurovision network. This, it is claimed, discriminates against Screensport and prevents it from broadcasting more European-based sports events which it would like. Of particular concern to Screensport in this respect is that Eurosport has access to 'live' events, either simultaneously with one or more Member of the Eurosport Consortium, or even on its own (the Consortium Member may choose instead to show selected highlights at a later stage). Indeed the Eurosport Consortium has itself admitted that some programme coordination takes place between itself and Eurosport.

- (48) As a result of the above, Screensport claims that cable networks cannot but favour Eurosport by comparison to its own service — including networks in countries where Consortium Members do not exist. This problem has been accentuated by Sky's policy of replacing the Sky Channel service each evening with Eurosport on established networks, and seeking to replace this service entirely by Eurosport once current contracts have expired.
- (49) By contrast, Sky claims that the creation of Eurosport is pro- rather than anti-competitive, since consumers benefit from the introduction of a new, dedicated sports channel enabling them to have much more extensive coverage of sports events shown on national television, either live or possibly at a more convenient time, and possibly in combination with the national channel itself (e.g. early rounds of a competition shown on Eurosport, with the finals on the national channel). In addition, the viewer may be able to see, possibly for the first time, certain new events previously shown only to other national audiences.

II. LEGAL ASSESSMENT

Article 85 (1)

- (50) The parties concerned in this case are undertakings within the meaning of Article 85 (1).
- (51) The basic agreement establishing the transnational satellite television sports channel service Eurosport is the Shareholders Agreement signed by Sky and the Eurosport Consortium on 23 December 1989 and which *inter alia* creates the service company.

However, full details of the operation of the channel and of the rights and obligations of the parties thereto can only be found by reference to a complex series of agreements signed (i) between, currently, 17 members of the EBU which have signed the Eurosport Consortium Agreement, and (ii) between the Eurosport Consortium and Sky and/or undertakings within the Sky Group, together with the guarantee provided by NI, parent of Sky. These are agreements within the meaning of Article 85 (1).

- (52) Collectively, these agreements have the object and/or effect of restricting and distorting competition :
- (i) between the partners to the joint venture, to the extent that they are actual and/or potential competitors on the market for broadcasting sports events ;
 - and
 - (ii) with regard to third parties seeking to broadcast sports events, in particular, transnational dedicated sports channels.

Re (i)

- (53) Prior to launching the package of four satellite channels including Eurosport in the United Kingdom and other Community countries, Sky (then Satellite Television plc) already operated a transnational satellite and cable television service known as Sky Channel, available to viewers in the UK and four other Community countries (Belgium, Germany, Ireland and the Netherlands).
- (54) While being a general entertainment channel, the service included a number of sports events, and Sky was actively involved in seeking to acquire rights to such events for inclusion on the channel. Moreover, having decided to enter into direct satellite broadcasting, it was generally known that Sky was contemplating one channel dedicated to sports. Thus, when considering Sky as a potential partner in their own venture, the interested EBU members, later the Eurosport Consortium, were not only aware of Sky's qualities as an experienced broadcaster in transnational commercial satellite television, including sports events, but also of the threat that Sky might become a direct competitor as a transnational commercial satellite channel dedicated to sport. Sky, for its part, must have known that, in establishing such a channel on its own, it would encounter the same problems as, for example, Screensport, in acquiring sports programming material in competition with the EBU, or in the form of sublicences from the EBU itself.

(55) For its part, a consortium of EBU members, such as the Eurosport Consortium, can be regarded as a potential competitor to Sky, as it was clear that members of the EBU were contemplating the establishment of a transnational satellite sports channel. This is so even though it was decided to carry out this venture in collaboration with another undertaking. In this respect, it should be recalled that three undertakings, in addition to Sky, applied to enter into such collaboration. None of these applicants, however, were actual or potential sports channels, as far as was known at the time.

(56) It follows, therefore, that any incentive for Sky to offer substantive competition to Eurosport was eliminated and that any potential competition between the two parents in the form of rival transnational satellite television channels dedicated to sport ceased as a consequence of their agreement to establish Eurosport together.

Re (ii)

(57) It is pointed out by Sky that Eurosport is but one of many television channels whose programmes include sports programmes, and that more are planned for the near future, including a number of channels dedicated entirely to sport. As such, it is claimed by both Sky and the Eurosport Consortium that the existence of their own channel cannot have any restrictive effect on the market but, on the contrary, is entirely pro-competitive in nature and a stimulus for other potential channels.

(58) In this respect it is appropriate to examine the market for televised sports programmes in more detail. First, there are the established public broadcasters which are required to televise the most important major events, or at least extracts thereof, as well as events of great interest to the domestic audience, including sports of otherwise minority appeal. These broadcasters have an established national audience who expect the above-described events to be included on national television.

(59) The new commercial national television channels have recognised that certain sports events attract high ratings amongst domestic audiences — and hence advertising revenue — and have therefore sought to exploit this market by purchasing rights to specific sports events by which they aim to attract national audiences away from public broadcasters to their own services. Transnational commercial channels providing a general entertainment service may also seek to use sport to the same effect, the particular attraction of sport to these

channels being that it transcends linguistic boundaries. These channels, however, may elect not to select the same sports events as national commercial channels but may instead choose those which have a wider international appeal.

(60) Transnational channels dedicated wholly to sport cannot adopt such a selective policy. On the contrary, their mandate must be to carry a wide variety of sport including, as far as possible, the most extensive coverage of the greatest number of events of interest to their potential audience (including minority groups), taking into account that their financial viability rests on attracting advertising (and/or possibly subscription) revenue from high audience ratings. At present, only two transnational commercial television channels of this type are in operation, namely Screensport and Eurosport. Since both transmit from the Astra satellite they are direct competitors for the same geographic audience. They therefore compete for the same type of programme material, the same sponsors and also the same advertisers. In addition, they are also both seeking to succeed in a new domain, namely the direct satellite market. While awaiting the development of this market, however, both are dependent upon reaching the widest possible audience through cable network operators.

(61) When comparing the position of Eurosport with that of Screensport and other potential transnational commercial satellite television sports channels, the terms of the joint venture clearly confer a privileged position on the former over the latter. First, with regard to programme material, Eurosport is granted unrestricted access to all programmes produced or acquired by Members of the Eurosport Consortium, including programmes which they acquire through the Eurovision system from other EBU members which are not Members of the Consortium. No other service has priority access to these programmes, not even through sublicences granted by the EBU and/or its members (see recital (63)). A list of events to which the EBU and/or its members had already acquired exclusive 'standard' or 'world' rights (as defined therein) was included in the joint venture Agreements, including certain major international events. Eurosport is entitled to select from this list — and of course any rights subsequently acquired — the events it wishes to include in its service. It may also freely choose the extent of coverage it requires, and, what is of utmost importance, whether to offer the programmes live or on a deferred basis. It may do so independently of the Consortium Members themselves or it may choose to coordinate with them the scheduling of the event in question.

- (62) It should be recalled in this context that EBU members reserve exclusivity for themselves for all rights to live sports programmes produced or acquired by their members. By virtue of the Agreements at issue in this Decision, the Eurosport channel is included in this system.
- (63) In contrast to Eurosport, therefore, third parties may only acquire limited access to Eurovision material through sublicences granted by the EBU or individual members, the priority for live broadcasting being given to participants in the Eurovision system. Sublicences are in principle available only for deferred transmissions subject to an embargo and various other restrictions regarding the timing and volume of transmissions. Eurosport, however, has direct access to all EBU programmes without any restrictions imposed upon it. This effectively deprives third parties (in particular transnational television channels and nationally-orientated direct satellite broadcasting or satellite-to-cable channels) of an equal opportunity to compete with Eurosport for such programmes, in particular to show any 'live' coverage.
- (64) In addition, Eurosport has access free of charge to the signal transmitting the abovementioned programmes from the host nation, in the same way as all other members of the EBU, as part of the Eurovision system of reciprocity. No similar concession is available to other commercial sports channels which would always be required to pay for this signal, or provide it themselves.
- (65) Secondly, as to the market for the acquisition of rights to sports events, an important objective of Eurosport as far as the interested EBU members are concerned is to increase the benefits of the collective negotiating position of EBU members with regard to numerous international events. It enables them to make package deals including events which, though being of little interest to many national public broadcasters, constitute useful programme material for a dedicated sports channel. In the view of the Commission, the joint purchasing policy operated by the EBU through the Eurovision scheme already confers upon EBU members a certain degree of market power. This is so despite the fact that private broadcasters have been able to outbid the EBU for certain events. Even if the EBU's current market power appears to be rather diminished compared to its former position, it still continues to be a powerful body in a privileged situation on the market for the acquisition of programme rights, and is likely to remain so during the next years. For members of such a body to reinforce not only their own position but also that of a potential competitor (Sky) by long-term agreements favouring a joint transnational commercial satellite channel wholly dedicated to

sports events can only reduce the opportunities for third parties, in particular independent transnational sports channel services, to compete on an equal footing with Eurosport for the acquisition of satellite cable rights from the EBU.

- (66) Thirdly, the close link between the Eurosport channel and the EBU, through the Eurosport Consortium, and hence to Eurovision programme material, is a factor favouring Eurosport over other potential transnational sports channels as far as cable operators are concerned when determining which sports channel service(s) they may wish to include on their networks. Pending further development of the domestic satellite dish market, the role of cable operators may well be crucial to the continuing financial viability of transnational satellite sports channels, in securing sufficiently high audiences for them to attract enough advertising revenue to continue operation. In this respect, cable operators have been attracted by the claimed 'public service' character of Eurosport. In addition, a number accepted the daily switch from Sky Channel to Eurosport in their contractual relationships with Sky, thereby enabling Eurosport very quickly to have access to a very large audience.

Effect on trade between Member States

- (67) Given the transnational character of Eurosport, which is available either directly by satellite or via cable distribution throughout most of Western Europe, and includes sports programmes on events taking place in many parts of the world, the rights to which have been acquired by a group of broadcasting organizations from many countries in Western Europe, the restrictions on competition stated above affect trade within the common market as a whole. This is all the more so as the relevant advertising markets present strong transnational elements, given the interest of important advertisers engaged in the import and export business, to reach potential clients in other Member States. As such, therefore, this falls within the scope of Article 85 (1). The case is confined, however, to effects felt within the Community itself.

Article 90 (2)

- (68) It is claimed by the Eurosport Consortium that its Members need the satellite channel created together with Sky in order to fulfil their public mission, the purpose of the Eurosport channel being to transmit throughout Europe more of the programmes produced or acquired by the Members of the Consortium. Due to the subcontracting relationship on the basis of which the services to the Eurosport Consortium are provided, the channel is said to be a public broadcasters' channel whatever may be the commercial incentives for its creation.

(Reference is made to the Members' wish to recover the costs of those sports programmes which they have to produce but which they are otherwise not able to broadcast in view of the general programme constraints imposed on them.) For this reason the Eurosport Consortium argues that the exception provided for by Article 90 (2), under which undertakings entrusted with the operation of services of general economic interest must not be hindered by the competition rules from performing the particular tasks assigned to them, applies.

- (69) While it may be possible that the public mission obligations imposed by Member States on their national broadcasting organizations renders them undertakings entrusted with services of general economic interest to this extent, it is highly doubtful that, given the national character of these obligations, they could be interpreted as extending to transnational activities of a collective nature such as Eurosport. In any event, there is nothing in the possible application of Article 85 (1) to their joint venture Agreements with the Sky group which would prevent them from fulfilling these missions, not to mention the readily admitted commercial character of the venture which Sky has entered into for purely economic reasons, providing for management expertise and financial assistance, in the expectation of some day making a profit.

Article 85 (3)

Improvement in the production or distribution of goods or to promoting technical or economic progress

- (70) It is claimed by Sky that Eurosport improves production and distribution in the market in a number of respects: it is one of the first thematic television channels broadcasting across national boundaries promoting sport in general and less well-known sports in particular, thereby promoting a new audience, for the benefit of other channels to follow. Technical and/or economic progress is said to be encouraged through the increased use of satellite technology, the promotion of sport and increased investment in sport and opportunities for sponsors, advertisers Eurosport, etc. For its part, the Eurosport Consortium emphasizes the fact that Eurosport enables its members to optimize the exploitation of their transmission rights thereby recouping their investment. Screensport however rejects this argument by claiming that the same benefit could be achieved by licensing surplus

rights to a multiplicity of parties, including Screensport, while Eurosport, it says, tends to narrow distribution because EBU members prefer to continue channelling surplus rights through a sole outlet rather than being obliged by increasing commercial pressure to license them more widely or to desist in the first place from acquiring rights which they cannot exploit.

- (71) In reply to this argument the Commission acknowledges the achievement of Eurosport in setting up a second transnational commercial satellite television channel dedicated to sports. However, this is not an 'improvement' within the meaning of Article 85 (3) if, in practice, its effect is a disproportionate distortion of competition in the market in question. Nor is technical or economic progress 'promoted' in such circumstances. The Commission takes the view that it is of vital importance in new, developing industries, requiring considerable investment in technology and development, that priority must be given to ensuring that competition at all levels should remain as open as possible so as to confer upon all potential market entrants an equal opportunity to compete.

Benefit to consumers

- (72) As claimed by the parties, it is arguable that, in the short term at least, consumers benefit from the introduction of a new, dedicated sports channel enabling them to have much more extensive coverage of sports events shown on national television, either live or possibly at a more convenient time, and possibly in combination with the national channel itself (e.g. early rounds of a competition shown on Eurosport, with the finals on the national channel). In addition, the viewer may be able to see, possibly for the first time, certain new events previously shown only to other national audiences.

- (73) However, this reasoning fails to consider the possibilities offered by an autonomous development of a dedicated sport channel by the Sky group. It has already been publicly announced that the Sky group would go on anyway with extensive broadcasting of sports events. This being so, the consumer may be better served by being able to make an informed choice between at least two channels offering an equally wide variety of European sports programmes, including the major international events, which may differ in style, presentation, quality and content. In those circumstances, it is the consumer who decides ultimately which/how many channels of this kind should eventually succeed.

Indispensability

- (74) Contrary to the arguments of the parties, the Commission is not convinced that a transnational sports channel such as Eurosport could only come into existence on the basis of such a joint venture between a group of members of the EBU, with the backing of the organization itself, and the most likely main competitor capable of creating an alternative venture. In the view of the Commission, the creation of a joint venture on the basis of the present Agreements is excessive, and the implied restrictions of competition cannot be regarded as indispensable to the establishment of a dedicated sports channel with a transnational dimension capable of rivalling other sports channels to the benefit of the consumers.
- (75) Indeed, the Commission cannot accept that all the restrictions contained in the Agreements themselves are indispensable to the operation of the venture. In particular, the channel has a privileged position compared to other channels broadcasting sports events, especially transnational sports channels.

Conclusion

- (76) In these circumstances, from the viewpoint of competition law, the disadvantages linked to the scheme notified by the parents of Eurosport outweigh possible improvements and benefits on the market in question. For these reasons the Commission rejects the application for an exemption under Article 85 (3),

HAS ADOPTED THIS DECISION :

Article 1

The joint venture Agreements and all related contractual provisions between, on the one hand, the Members of the Eurosport Consortium, and, on the other hand, Sky Television plc, Satellite Sports Sales Ltd, Satellite Sports Services and News International plc which were notified to the Commission on 17 January 1989, constitute an infringement of Article 85 (1) of the EEC Treaty in so far

as they have as their effect the granting of direct access to the Eurovision system.

Article 2

An exemption under Article 85 (3) of the EEC Treaty for the Agreements and implementing and related rules as mentioned in Article 1 is hereby refused.

Article 3

This Decision is addressed to the following undertakings :

- (a) The Members of the Eurosport Consortium,
c/o Union Européenne de Radiodiffusion,
Case postale 67,
CH-1218 Grand-Saconnex (Geneva);
- (b) Sky Television plc,
Sky Television Centre,
6 Centaurs Business Park,
Grant Way,
Isleworth,
UK-Middlesex TW7 5QK;
- (c) Satellite Sport Sales Ltd,
PO Box 495,
Virginia Street,
UK-London E1 9XY;
- (d) Satellite Sports Services Ltd,
PO Box 495,
Virginia Street,
UK-London E1 9XY;
- (e) News International plc,
PO Box 481,
Virginia Street,
UK-London E1 9BD.

Done at Brussels, 19 February 1991.

For the Commission

Leon BRITTAN

Vice-President

