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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 881/92

of 26 March 1992

on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 75 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 the establishment of a common transport policy involves, *inter alia*, laying down common rules applicable to access to the market in the international carriage of goods by road within the territory of the Community; whereas those rules must be laid down in such a way as to contribute to the attainment of the internal transport market;

Whereas these uniform arrangements for market access also involve introducing the freedom to provide services by eliminating all restrictions imposed on the provider of services because of his nationality or the fact that he is established in a Member State other than that in which the service is to be provided;

Whereas, as regards carriage from a Member State to a non-member country and vice versa, implementation of the freedom to provide services for the journey within the territory of the Member State of loading or unloading should be deferred until appropriate agreements with the non-member countries concerned have been concluded or amended, in order to guarantee compliance with the principle of non-discrimination and equality of conditions of competition between Community carriers;

Whereas, following the Judgment of the Court of Justice of 22 May 1985 in Case 13/83 ⁽⁴⁾ and the conclusions adopted on 28 and 29 June 1985 by the European Council on the Commission communication on the completion of the internal market, on 21 June 1988 the Council adopted Regulation (EEC) No 1841/88 ⁽⁵⁾ amending Regulation (EEC) No 3164/76 on access to the market in the international carriage of goods by road ⁽⁶⁾;

Whereas under Article 4a of Regulation (EEC) No 3164/76 inserted by Regulation (EEC) No 1841/88 from 1 January 1993, Community quotas, bilateral quotas between Member States and quotas for transit traffic to and from non-member countries will be abolished for the types of carriage referred to in that Article, and arrangements for access to a market without quantitative restrictions based on qualitative criteria which hauliers must meet will be introduced;

Whereas these qualitative criteria are laid down principally in Council Directive 74/561/EEC of 12 November 1974 on admission to the occupation of road haulage operator in national and international transport operations, as last amended by Council Directive 89/483/EEC of 21 June 1989 ⁽⁷⁾;

Whereas pursuant to Article 4b of Regulation (EEC) No 3164/76, as inserted by Regulation (EEC) No 1841/88, the Council must adopt the measures necessary for the implementation of the aforementioned Article 4a;

Whereas with regard to the rules for applying the access arrangements the international carriage of goods by road must be made conditional on the possession of a quota-free Community transport authorization;

⁽¹⁾ ECR 1985, p. 1513.

⁽²⁾ OJ No L 163, 30. 6. 1988, p. 1.

⁽³⁾ OJ No L 357, 29. 12. 1976, p. 1. Regulation last amended by Regulation (EEC) No 3914/90 (OJ No L 375, 31. 12. 1990, p. 7).

⁽⁴⁾ OJ No L 308, 19. 11. 1974, p. 1. Directive last amended by Regulation (EEC) No 3572/90 (OJ No L 353, 17. 12. 1990, p. 12).

⁽¹⁾ OJ No C 238, 13. 9. 1991, p. 2.

⁽²⁾ OJ No C 39, 17. 2. 1992.

⁽³⁾ OJ No C 40, 17. 2. 1992, p. 15.

Whereas at present, under the First Council Directive of 23 July 1962 on the establishment of common rules for certain types of carriage of goods by road between Member States⁽¹⁾, a certain number of types of carriage are exempt from any quota and carriage authorization system; whereas, within the framework of the new organization of the market introduced by this Regulation, a system of exemption from Community authorization and from any other carriage authorization must be maintained for some of those types of transport, because of their special nature;

Whereas the conditions governing the issue and withdrawal of authorizations and the types of carriage to which they apply, their periods of validity and the detailed rules for their use must be determined,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation shall apply to the international carriage of goods by road for hire or reward for journeys carried out within the territory of the Community.

2. In the event of carriage from a Member State to a non-member country and vice versa, this Regulation shall apply to that part of any journey carried out within the territory of the Member State of loading or unloading, after conclusion of the necessary agreement between the Community and the non-member country concerned.

3. Pending the conclusion of agreements between the Community and the non-member countries concerned, this Regulation shall not affect:

- provisions relating to the carriage referred to in paragraph 2 included in bilateral agreements concluded by Member States with those non-member countries. However, Member States shall endeavour to adapt those agreements to ensure compliance with the principle of non-discrimination between Community hauliers,
- provisions relating to the carriage referred to in paragraph 2 included in bilateral agreements concluded between Member States which either under bilateral authorizations or under liberalization arrangements, allow loading and unloading in a Member State by hauliers not established in that State.

Article 2

For the purposes of this Regulation:

- '*vehicle*' shall mean a motor vehicle registered in a Member State or a coupled combination of vehicles the motor vehicle of which at least is registered in a Member State and which are used exclusively for the carriage of goods,

— *international carriage*, shall mean:

- a journey undertaken by a vehicle the point of departure and the point of arrival of which are in two different Member States, with or without transit through one or more Member States or non-member countries;
- a journey undertaken by a vehicle from a Member State to a non-member country or vice versa, with or without transit through one or more Member States or non-member countries;
- a journey undertaken by a vehicle between non-member countries, with transit through the territory of one or more Member States;
- an unladen journey in conjunction with such carriage.

Article 3

1. International carriage shall be carried out subject to Community authorization.

2. Community authorization shall be issued by a Member State, in accordance with Article 5 and 7, to any haulier carrying goods by road for hire or reward who:

- is established in a Member State, hereinafter referred to as the 'Member State of establishment' in accordance with the legislation of that Member State,
- is entitled in that Member State, in accordance with the legislation of the Community and of that State concerning admission to the occupation of road haulage operator to carry out the international carriage of goods by road.

Article 4

The Community authorization referred to in Article 3 shall replace the document issued by the competent authorities of the Member State of establishment, where such a document exists, certifying that the haulier has been granted access to the market in the international carriage of goods by road.

For carriage falling within the scope of this Regulation it shall also replace both the Community authorizations and the bilateral authorizations exchanged between Member States which are necessary until this Regulation comes into force.

Article 5

1. The Community authorization referred to in Article 3 shall be issued by the competent authorities of the Member State of establishment.

2. The Member States shall issue the holder with the original of the Community authorization, which shall be kept by the haulage undertaking, and the number of certified true copies corresponding to the number of vehicles at the disposal of the holder of the Community authorization, whether wholly owned or, for example, under hire purchase, hire or leasing contracts.

⁽¹⁾ OJ No L 70, 6. 8. 1962, p. 2005/62. Directive last amended by Directive 84/647/EEC (OJ No L 335, 22. 12. 1984, p. 72).

3. The Community authorization shall correspond to the model set out in of Annex I, which also lays down the conditions governing its use.

4. The Community authorization shall be made out in the haulier's name, he may not transfer it to any third party. A certified true copy shall be kept in the vehicle and must be produced whenever required by an authorized inspecting officer.

Article 6

The Community authorization shall be issued for a renewable period of five years.

Article 7

Whenever an application for a Community authorization is lodged, not more than five years after issue and subsequently at least every five years, the competent authorities of the Member State of establishment shall verify whether the haulier satisfies or still satisfies the conditions laid down in Article 3 (2).

Article 8

1. If the conditions laid down in Article 3 (2) are not satisfied, the competent authorities of the Member State of establishment shall reject an application for the issue or renewal of a Community authorization, by means of a reasoned decision.

2. The competent authorities shall withdraw a Community authorization where the holder:

- no longer satisfies the conditions laid down in Article 3 (2),
- has supplied incorrect information in relation to the data required for the issue of a Community authorization.

3. In the event of serious infringements or repeated minor infringements of carriage regulations, the competent authorities of the Member State of establishment of the haulier who has committed such infringements may *inter alia* temporarily or partially suspend the certified true copies of the Community authorization.

These sanctions shall be determined having regard to the seriousness of the infringement committed by the holder of the Community authorization and having regard to the total number of certified copies that he holds in respect of international traffic.

Article 9

The Member States shall guarantee that the applicant or the holder of a Community authorization is able to appeal against any decision by the competent authorities of the Member State of establishment to refuse or withdraw an authorization.

Article 10

By 31 January each year Member States shall inform the Commission of the number of hauliers possessing

Community authorizations on 31 December of the previous year and of the number of certified true copies corresponding to the vehicles in circulation at that date.

Article 11

1. The Member States shall give each other mutual assistance in ensuring the application and monitoring of this Regulation.

2. Where the competent authorities of a Member State are aware of an infringement of this Regulation attributable to a haulier from another Member State, the Member State within the territory of which the infringement is established shall inform the competent authorities of the Member State in which the haulier is established and may ask the competent authorities of the Member State of establishment to impose sanctions in accordance with this Regulation.

3. In the event of a serious infringement or repeated minor infringements of carriage regulations, the competent authorities of the Member State in which the haulier is established shall examine the ways in which the sanctions provided for in Article 8 (3) are applied and shall communicate their decision to the competent authorities of the Member State in which the infringements were established.

Article 12

The following shall be repealed:

- Council Regulation (EEC) No 3164/76,
- Article 4 of Council Directive 75/130/EEC of 17 February 1975 on the establishment of common rules for certain types of combined carriage of goods between Member States⁽¹⁾,
- Council Directive 65/269/EEC of 13 May 1965 concerning the standardization of certain rules relating to authorizations for the carriage of goods by road between Member States⁽²⁾,
- Council Decision 80/48/EEC of 20 December 1979 on the adjustment of capacity for the carriage of goods by road for hire or reward between Member States⁽³⁾.

Article 13

The First Council Directive of 23 July 1962 is hereby amended as follows:

1. the title shall be replaced by: 'First Council Directive of 23 July 1962 on the establishment of common rules for certain types of carriage of goods by road';

⁽¹⁾ OJ No L 48, 22. 2. 1975, p. 31. Directive last amended by Directive 91/224/EEC (OJ No L 103, 23. 4. 1991, p. 1).

⁽²⁾ OJ No 88, 24. 5. 1965, p. 1469/65. Directive as last amended by Directive 85/505/EEC (OJ No L 309, 21. 11. 1985, p. 27).

⁽³⁾ OJ No L 18, 24. 1. 1980, p. 21.

2. Article 1 shall be replaced by:

*Article 14**'Article 1*

1. Under the conditions laid down in paragraph 2, Member States shall liberalize the types of international carriage of goods by road for hire or reward and on own account listed in the Annex where such carriage is performed to or from or in transit through their territory.
2. The types of carriage and unladen journeys made in conjunction with the carriage listed in the Annex shall be exempted from Community authorization and from any carriage authorization';
3. Annex II shall be deleted and the text of Annex I shall be replaced by that appearing in Annex II to this Regulation.

The Member States shall communicate to the Commission the measures they take to implement this Regulation.

Article 15

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

It shall apply from 1 January 1993.

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

Done at Brussels, 26 March 1992.

For the Council

The President

Joaquim FERREIRA DO AMARAL

ANNEX I

ANNEX

EUROPEAN ECONOMIC COMMUNITY

(a)

(Blue card — DIN A4)

(First page of the authorization)

(Text in (one of) the official language(s) of the Member State issuing the authorization)

State issuing the authorization Distinguishing sign ⁽¹⁾	Name of the competent authority or body
---	---

AUTHORIZATION No

for the international carriage of goods by road for hire or reward

This authorization entitles ⁽²⁾

.....

.....

.....

to engage in the international carriage of goods by road for hire or reward by any route, for journeys or parts of journeys effected for hire or reward within the territory of the Community, as laid down in Council Regulation (EEC) No 881/92 of 26 March 1992 and subject to the general provisions of this authorization.

Particular remarks :

.....

.....

.....

.....

This authorization shall be valid from to

Issued in, on

.....

⁽³⁾

⁽¹⁾ The distinguishing signs are (B) Belgium, (DK) Denmark, (D) Germany, (GR) Greece, (ES) Spain, (F) France, (IRL) Ireland, (I) Italy, (L) Luxembourg, (NL) Netherlands, (P) Portugal, (UK) United Kingdom.

⁽²⁾ Name or business name and full address of the haulier.

⁽³⁾ Signature and stamp of the issuing competent authority or body.

(b)

(SECOND PAGE OF THE AUTHORIZATION)

(Text in (one of) the official language(s) of the Member State issuing the authorization)

GENERAL PROVISIONS

This authorization is issued under Council Regulation (EEC) No 881/92 of 26 March 1992, on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States ⁽¹⁾.

It entitles the holder to engage in the international carriage of goods by road for hire or reward by any route for journeys or parts of journeys effected within the territory of the Community and, where appropriate, subject to the conditions laid down herein :

- where the point of departure and the point of arrival are situated in two different Member States, with or without transit through one or more Member States or non-member countries,
 - from a Member State to a non-member country or vice versa, with or without transit through one or more Member States or non-member countries,
 - between non-member countries with transit through the territory of one or more Member States,
- and unladen journeys in connection with such carriage.

In the case of carriage from a Member State to a non-member country or vice versa, this authorization is valid for that part of the journey effected on the territory of the Member State of loading or unloading upon conclusion of the necessary agreement between the Community and the non-member country in question in accordance with Regulation (EEC) No 881/92.

The authorization is personal to the holder and is not transferable.

It may be withdrawn by the competent authority of the Member State which issued it, notably where the haulier has :

- not complied with all the conditions for using the authorization,
- supplied incorrect information with regard to the data needed for the issue or extension of the authorization.

The original of the authorization must be kept by the haulage undertaking.

A certified copy of the authorization must be kept in the vehicle ⁽²⁾. In the case of a coupled combination of vehicles it must accompany the motor vehicle. It covers the coupled combination of vehicles even if the trailer or semi-trailer is not registered or authorized to use the roads in the name of the authorization holder or if it is registered or authorized to use the roads in another Member State.

The authorization must be produced whenever required by an authorized inspecting officer.

Within the territory of each Member State the holder must comply with the laws, regulations and administrative provisions in force in that State, in particular with regard to transport and traffic.

⁽¹⁾ See page 1 of this Official Journal.

⁽²⁾ 'Vehicle' means a motor vehicle registered in a Member State or a coupled combination of vehicles, the motor vehicle of which at least is registered in a Member State, used exclusively for the carriage of goods.'

*ANNEX II**ANNEX***Types of carriage to be exempted from any Community authorization and from any carriage authorization**

1. Carriage of mail as a public service.
2. Carriage of vehicles which have suffered damage or breakdown.
3. Carriage of goods in motor vehicles the permissible laden weight of which, including that of trailers, does not exceed six tonnes or the permissible payload of which, including that of trailers, does not exceed 3,5 tonnes.
4. Carriage of goods in motor vehicles provided the following conditions are fulfilled :
 - (a) the goods carried must be the property of the undertaking or must have been sold, bought, let out on hire or hired, produced, extracted, processed or repaired by the undertaking ;
 - (b) the purpose of the journey must be to carry the goods to or from the undertaking or to move them, either inside the undertaking or outside for its own requirements ;
 - (c) motor vehicles used for such carriage must be driven by employees of the undertaking ;
 - (d) the vehicles carrying the goods must be owned by the undertaking or have been bought by it on deferred terms or hired provided that in the latter case they meet the conditions of Council Directive 84/647/EEC of 19 December 1984 on the use of vehicles hired without drivers for the carriage of goods by road ⁽¹⁾.

This provision shall not apply to the use of a replacement vehicle during a short breakdown of the vehicle normally used ;

 - (e) carriage must be no more than ancillary to the overall activities of the undertaking.
5. Carriage of medicinal products, appliances, equipment and other articles required for medical care in emergency relief, in particular for natural disasters.

⁽¹⁾ OJ No L 335, 22. 12. 1984, p. 72.

COMMISSION REGULATION (EEC) No 882/92

of 8 April 1992

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 674/92⁽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,

Whereas the import levies on cereals, wheat and rye flour, and wheat groats and meal were fixed by Commission Regulation (EEC) No 594/92⁽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 April 1992;

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 594/92 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 April 1992.

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

Done at Brussels, 8 April 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 73, 19. 3. 1992, p. 7.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 201, 31. 7. 1990, p. 9.

⁽⁵⁾ OJ No L 64, 10. 3. 1992, p. 4.

ANNEX

to the Commission Regulation of 8 April 1992 fixing the import levies on cereals and on wheat or rye flour, groats and meal

(ECU/tonne)	
CN code	Levy ^(*)
0709 90 60	143,22 ⁽²⁾ ⁽³⁾
0712 90 19	143,22 ⁽²⁾ ⁽³⁾
1001 10 10	168,85 ⁽¹⁾ ⁽⁵⁾ ⁽¹⁰⁾
1001 10 90	168,85 ⁽¹⁾ ⁽⁵⁾ ⁽¹⁰⁾
1001 90 91	154,69
1001 90 99	154,69 ⁽¹¹⁾
1002 00 00	165,68 ⁽⁶⁾
1003 00 10	144,15
1003 00 90	144,15 ⁽¹¹⁾
1004 00 10	122,99
1004 00 90	122,99
1005 10 90	143,22 ⁽²⁾ ⁽³⁾
1005 90 00	143,22 ⁽²⁾ ⁽³⁾
1007 00 90	148,00 ⁽⁴⁾
1008 10 00	54,09 ⁽¹¹⁾
1008 20 00	119,14 ⁽⁴⁾
1008 30 00	61,50 ⁽⁵⁾
1008 90 10	⁽⁷⁾
1008 90 90	61,50
1101 00 00	229,57 ⁽⁸⁾ ⁽¹¹⁾
1102 10 00	244,96 ⁽⁹⁾
1103 11 10	275,29 ⁽⁸⁾ ⁽¹⁰⁾
1103 11 90	246,42 ⁽⁹⁾

⁽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.

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

⁽⁴⁾ Where millet and sorghum originating in the ACP 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 and Commission Regulation (EEC) No 2622/71.

⁽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.

⁽⁹⁾ No levy applies to OCT originating products according to Article 101 (1) of Decision 91/482/EEC, except if paragraph 4 of the same Article applies.

⁽¹⁰⁾ An amount equal to the amount fixed by Regulation (EEC) No 1825/91 is to be levied in accordance with Article 101 (4) of Decision 91/482/EEC.

⁽¹¹⁾ Products falling within this code, imported from Poland, Czechoslovakia or Hungary under the Interim Agreements concluded between those countries and the Community, and in respect of which EUR.1 certificates issued in accordance with Regulation (EEC) No 585/92 have been presented, are subject to the levies set out in the Annex to that Regulation.

COMMISSION REGULATION (EEC) No 883/92

of 8 April 1992

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 674/92⁽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,

Whereas the premiums to be added to the levies on cereals and malt were fixed by Commission Regulation (EEC) No 1845/91⁽⁵⁾ and subsequent amending Regulation;

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 April 1992;

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 April 1992.

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

Done at Brussels, 8 April 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 73, 19. 3. 1992, p. 7.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 201, 31. 7. 1990, p. 9.

⁽⁵⁾ OJ No L 168, 29. 6. 1991, p. 4.

ANNEX

to the Commission Regulation of 8 April 1992 fixing the premiums to be added to the import levies on cereals, flour and malt

A. Cereals and flour

(ECU/tonne)

CN code	Current 4	1st period 5	2nd period 6	3rd period 7
0709 90 60	0	0	0	0
0712 90 19	0	0	0	0
1001 10 10	0	0	0	0
1001 10 90	0	0	0	0
1001 90 91	0	0	0	0
1001 90 99	0	0	0	0
1002 00 00	0	0	0	0
1003 00 10	0	0	0	0
1003 00 90	0	0	0	0
1004 00 10	0	0	0	0
1004 00 90	0	0	0	0
1005 10 90	0	0	0	0
1005 90 00	0	0	0	0
1007 00 90	0	0	0	0
1008 10 00	0	0	0	0
1008 20 00	0	0	0	0
1008 30 00	0	0	0	0
1008 90 90	0	0	0	0
1101 00 00	0	0	0	0

B. Malt

(ECU/tonne)

CN code	Current 4	1st period 5	2nd period 6	3rd period 7	4th period 8
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 884/92**of 7 April 1992****establishing unit values for the determination of the customs value of certain perishable goods**

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

Having regard to Commission Regulation (EEC) No 1577/81 of 12 June 1981 establishing a system of simplified procedures for the determination of the customs value of certain perishable goods ⁽¹⁾, as last amended by Regulation (EEC) No 3334/90 ⁽²⁾, and in particular Article 1 thereof,

Whereas Article 1 of Regulation (EEC) No 1577/81 provides that the Commission shall periodically establish unit values for the products referred to in the classification in the Annex;

Whereas the result of applying the rules and criteria laid down in that same Regulation to the elements communi-

cated to the Commission in accordance with Article 1 (2) of that Regulation is that the unit values set out in the Annex to this Regulation should be established in regard to the products in question,

HAS ADOPTED THIS REGULATION:

Article 1

The unit values provided for in Article 1 (1) of Regulation (EEC) No 1577/81 are hereby established as set out in the table in the Annex hereto.

Article 2

This Regulation shall enter into force on 10 April 1992.

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

Done at Brussels, 7 April 1992.

For the Commission

Karel VAN MIERT

Member of the Commission

⁽¹⁾ OJ No L 154, 13. 6. 1981, p. 26.

⁽²⁾ OJ No L 321, 21. 11. 1990, p. 6.

ANNEX

Code	CN code	Description	Amount of unit values per 100 kg net									
			ECU	Bfrs/Lfrs	Dkr	DM	FF	Dr	£ Irl	Lit	Fl	£
1.10	0701 90 51 0701 90 59	New potatoes	38,70	1 625	306,66	78,98	267,58	9 213	29,72	59 651	88,93	27,77
1.20	0702 00 10 0702 00 90	Tomatoes	78,95	3 315	625,51	161,11	545,81	18 794	60,62	121 674	181,39	56,66
1.30	0703 10 19	Onions (other than seed)	34,30	1 440	271,75	69,99	237,12	8 165	26,34	52 861	78,80	24,61
1.40	0703 20 00	Garlic	157,97	6 633	1 251,58	322,36	1 092,10	37 604	121,31	243 455	362,95	113,37
1.50	ex 0703 90 00	Leeks	30,35	1 276	240,49	61,99	211,30	7 174	23,24	46 691	69,78	21,59
1.60	ex 0704 10 10 ex 0704 10 90	Cauliflowers	31,88	1 340	252,88	65,14	221,09	7 537	24,43	48 965	73,34	22,77
1.70	0704 20 00	Brussels sprouts	53,72	2 267	423,88	110,06	374,08	11 735	41,29	82 719	124,09	37,72
1.80	0704 90 10	White cabbages and red cabbages	23,05	975	182,88	47,36	160,54	5 181	17,70	35 248	53,35	16,11
1.90	ex 0704 90 90	Sprouting broccoli or calabrese (<i>Brassica oleracea</i> var. <i>italica</i>)	73,01	3 066	578,46	148,99	504,75	17 380	56,06	112 522	167,75	52,39
1.100	ex 0704 90 90	Chinese cabbage	69,25	2 908	548,71	141,33	478,79	16 486	53,18	106 734	159,12	49,70
1.110	0705 11 10 0705 11 90	Cabbage lettuce (head lettuce)	66,67	2 799	528,20	136,05	460,90	15 870	51,19	102 746	153,18	47,84
1.120	ex 0705 29 00	Endives	22,96	965	182,14	46,92	159,25	5 429	17,59	35 268	52,83	16,40
1.130	ex 0706 10 00	Carrots	28,95	1 216	229,43	59,09	200,20	6 893	22,23	44 629	66,53	20,78
1.140	ex 0706 90 90	Radishes	77,18	3 241	611,48	157,49	533,56	18 372	59,26	118 945	177,33	55,38
1.150	0707 00 11 0707 00 19	Cucumbers	47,24	1 983	374,28	96,40	326,58	11 245	36,27	72 804	108,54	33,90
1.160	0708 10 10 0708 10 90	Peas (<i>Pisum sativum</i>)	292,56	12 285	2 317,88	597,01	2 022,53	69 642	224,66	450 870	672,18	209,95
1.170		Beans :										
1.170.1	0708 20 10 0708 20 90	Beans (<i>Vigna</i> spp., <i>Phaseolus</i> spp.)	195,33	8 202	1 547,56	398,60	1 350,36	46 497	149,99	301 029	448,79	140,18
1.170.2	0708 20 10 0708 20 90	Beans (<i>Phaseolus</i> spp., <i>vulgaris</i> var. <i>Compressus Savi</i>)	301,95	12 679	2 392,21	616,15	2 087,39	71 875	231,86	465 329	693,74	216,69
1.180	ex 0708 90 00	Broad beans	92,83	3 894	734,40	189,09	645,42	21 793	71,04	142 837	212,96	66,61
1.190	0709 10 00	Globe artichokes	142,29	5 975	1 127,36	290,37	983,71	33 872	109,27	219 293	326,93	102,12
1.200		Asparagus :										
1.200.1	ex 0709 20 00	— green	346,15	14 536	2 742,46	706,37	2 393,01	82 399	265,81	533 459	795,31	248,41
1.200.2	ex 0709 20 00	— other	206,72	8 680	1 637,78	421,84	1 429,09	49 208	158,74	318 579	474,95	148,35
1.210	0709 30 00	Aubergines (egg-plants)	102,05	4 285	808,52	208,24	705,49	24 292	78,36	157 271	234,47	73,23
1.220	ex 0709 40 00	Ribbed celery (<i>Apium graveolens</i> var. <i>dulce</i>)	51,48	2 161	407,88	105,05	355,91	12 255	39,53	79 341	118,28	36,94
1.230	0709 51 30	Chantarelles	713,23	30 060	5 626,73	1 460,68	4 977,83	162 425	546,18	1 092 598	1 645,94	501,92
1.240	0709 60 10	Sweet peppers	124,54	5 230	986,72	254,14	860,99	29 646	95,63	191 936	286,14	89,38
1.250	0709 90 50	Fennel	51,05	2 143	404,45	104,17	352,91	12 152	39,20	78 674	117,29	36,63
1.260	0709 90 70	Courgettes	38,41	1 614	304,72	78,38	267,79	8 982	29,39	59 164	88,32	27,15
1.270	ex 0714 20 10	Sweet potatoes, whole, fresh (intended for human consumption)	98,95	4 174	781,50	202,59	690,51	22 594	75,77	151 536	228,30	69,55
2.10	ex 0802 40 00	Chestnuts (<i>Castanea</i> spp.), fresh	131,65	5 522	1 041,42	268,14	915,24	30 904	100,74	202 551	301,99	94,47
2.20	ex 0803 00 10	Bananas (other than plantains), fresh	58,58	2 460	464,17	119,55	405,02	13 946	44,99	90 289	134,60	42,04
2.30	ex 0804 30 00	Pineapples, fresh	52,16	2 190	413,24	106,43	360,59	12 416	40,05	80 384	119,84	37,43
2.40	ex 0804 40 10 ex 0804 40 90	Avocados, fresh	133,73	5 616	1 059,54	272,90	924,53	31 834	102,69	206 101	307,26	95,97

Code	CN code	Description	Amount of unit values per 100 kg net									
			ECU	Bfrs/Lfrs	Dkr	DM	FF	Dr	£ Irl	Lit	Fl	₣
2.50	ex 0804 50 00	Guavas and mangoes, fresh	170,12	7 143	1 347,79	347,15	1 176,05	40 495	130,63	262 171	390,85	122,08
2.60		Sweet oranges, fresh :										
2.60.1	0805 10 11 0805 10 21 0805 10 31 0805 10 41	— Sanguines and semi-sanguines	50,03	2 101	396,43	102,10	345,91	11 911	38,42	77 113	114,96	35,90
2.60.2	0805 10 15 0805 10 25 0805 10 35 0805 10 45	— Navels, Navelines, Navelates, Salustianas, Vernas, Valencia lates, Maltese, Shamoutis, Ovalis, Trovita and Hamlins	40,87	1 716	323,80	83,40	282,54	9 728	31,38	62 986	93,90	29,33
2.60.3	0805 10 19 0805 10 29 0805 10 39 0805 10 49	— Others	23,74	998	188,15	48,54	164,94	5 596	18,17	36 391	54,61	16,93
2.70		Mandarins (including tangerines and satsumas), fresh ; clementines, wilkings and similar citrus hybrids, fresh :										
2.70.1	ex 0805 20 10	— Clementines	116,38	4 887	922,03	237,48	804,54	27 703	89,36	179 353	267,38	83,52
2.70.2	ex 0805 20 30	— Monreales and Satsumas	55,39	2 329	439,38	113,18	384,15	13 097	42,45	85 077	127,44	39,56
2.70.3	ex 0805 20 50	— Mandarins and wilkings	60,07	2 525	476,03	122,82	417,30	14 158	45,99	92 072	138,19	42,83
2.70.4	ex 0805 20 70 ex 0805 20 90	— Tangerines and others	72,88	3 060	577,40	148,72	503,82	17 348	55,96	112 315	167,44	52,30
2.80	ex 0805 30 10	Lemons (<i>Citrus limon</i> , <i>Citrus limonum</i>), fresh	32,35	1 358	256,32	66,02	223,66	7 701	24,84	49 860	74,33	23,21
2.85	ex 0805 30 90	Limes (<i>Citrus aurantifolia</i>), fresh	134,07	5 630	1 062,22	273,59	926,87	31 915	102,95	206 622	308,04	96,21
2.90		Grapefruit, fresh :										
2.90.1	ex 0805 40 00	— white	25,31	1 062	200,52	51,64	174,97	6 024	19,43	39 005	58,15	18,16
2.90.2	ex 0805 40 00	— pink	69,31	2 910	549,18	141,45	479,20	16 500	53,23	106 826	159,26	49,74
2.100	0806 10 11 0806 10 15 0806 10 19	Table grapes	113,30	4 758	897,70	231,21	783,31	26 971	87,01	174 619	260,33	81,31
2.110	0807 10 10	Water-melons	25,62	1 076	203,27	52,29	178,63	5 992	19,61	39 467	58,92	18,11
2.120		Melons (other than water-melons) :										
2.120.1	ex 0807 10 90	— Amarillo, Cuper, Honey dew (including Cantalene), Onteniente, Piel de Sapo (including Verde Liso), Rochet, Tendral, Futuro	91,64	3 848	726,07	187,01	633,55	21 815	70,37	141 233	210,55	65,76
2.120.2	ex 0807 10 90	— other	171,54	7 203	1 359,07	350,05	1 185,89	40 834	131,72	264 364	394,12	123,10
2.130	0808 10 91 0808 10 93 0808 10 99	Apples	84,27	3 538	667,64	171,96	582,57	20 059	64,71	129 869	193,61	60,47
2.140		Pears										
2.140.1	0808 20 31 0808 20 33 0808 20 35 0808 20 39	Pears — Nashi (<i>Pyrus pyrifolia</i>)	116,12	4 876	920,03	236,97	802,80	27 643	89,17	178 964	266,81	83,33
2.140.2	0808 20 31 0808 20 33 0808 20 35 0808 20 39	Other	81,28	3 413	643,96	165,86	561,91	19 348	62,41	125 263	186,75	58,33
2.150	0809 10 00	Apricots	61,28	2 577	485,48	125,15	426,56	14 483	46,92	94 255	140,88	43,60
2.160	0809 20 10 0809 20 90	Cherries	150,60	6 316	1 191,32	306,73	1 046,98	35 352	115,24	231 706	345,46	108,06
2.170	ex 0809 30 00	Peaches	109,44	4 596	867,09	223,33	756,61	26 052	84,04	168 666	251,45	78,54

Code	CN code	Description	Amount of unit values per 100 kg net									
			ECU	Bfrs/Lfrs	Dkr	DM	FF	Dr	£ Irl	Lit	Fl	£
2.180	ex 0809 30 00	Nectarines	149,44	6 275	1 183,98	304,95	1 033,11	35 573	114,75	230 305	343,35	107,24
2.190	0809 40 11 0809 40 19	Plums	131,28	5 512	1 040,09	267,89	907,56	31 250	100,81	202 317	301,62	94,21
2.200	0810 10 10 0810 10 90	Strawberries	163,15	6 851	1 292,56	332,92	1 127,86	38 836	125,28	251 427	374,84	117,08
2.205	0810 20 10	Raspberries	891,69	37 500	7 072,44	1 821,90	6 183,50	210 815	683,35	1 369 428	2 051,31	636,81
2.210	0810 40 30	Fruit of the species <i>Vaccinium myrtillus</i>	136,31	5 755	1 079,64	279,74	950,71	30 917	104,59	209 154	315,16	95,45
2.220	0810 90 10	Kiwi fruit (<i>Actinidia chinensis</i> Planch.)	115,66	4 857	916,34	236,02	799,58	27 532	88,81	178 246	265,73	83,00
2.230	ex 0810 90 80	Pomegranates	64,68	2 721	513,07	132,36	450,09	15 261	49,56	99 270	148,90	45,90
2.240	ex 0810 90 80	Khakis (including Sharon fruit)	310,20	13 026	2 457,63	633,00	2 144,47	73 841	238,20	478 053	712,70	222,61
2.250	ex 0810 90 30	Lychees	166,22	6 980	1 316,93	339,20	1 149,12	39 568	127,64	256 168	381,90	119,29

COMMISSION REGULATION (EEC) No 885/92**of 8 April 1992****altering the export refunds on white sugar and raw sugar exported in the natural state**

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 61/92 ⁽²⁾, and in particular the second subparagraph of Article 19 (4) thereof,Whereas the refunds on white sugar and raw sugar exported in the natural state were fixed by Commission Regulation (EEC) No 822/92 ⁽³⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 822/92 to the informa-

tion 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 (1) (a) of Regulation (EEC) No 1785/81, undenatured and exported in the natural state, as fixed in the Annex to Regulation (EEC) No 822/92 are hereby altered to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 9 April 1992.

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

Done at Brussels, 8 April 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.⁽²⁾ OJ No L 6, 11. 1. 1992, p. 19.⁽³⁾ OJ No L 87, 2. 4. 1992, p. 7.

ANNEX

to the Commission Regulation of 8 April 1992 altering the export refunds on white sugar and raw sugar exported in the natural state

(ECU)

Product code	Amount of refund	
	per 100 kg	per percentage point of sucrose content and per 100 kg net of the product in question
1701 11 90 100	35,19 ⁽¹⁾	
1701 11 90 910	33,31 ⁽¹⁾	
1701 11 90 950	⁽²⁾	
1701 12 90 100	35,19 ⁽¹⁾	
1701 12 90 910	33,31 ⁽¹⁾	
1701 12 90 950	⁽²⁾	
1701 91 00 000		0,3826
1701 99 10 100	38,26	
1701 99 10 910	37,70	
1701 99 10 950	37,70	
1701 99 90 100		0,3826

⁽¹⁾ Applicable to raw sugar with a yield of 92 % ; if the yield is other than 92 %, the refund applicable is calculated in accordance with the provisions of Article 5 (3) of Regulation (EEC) No 766/68.

⁽²⁾ Fixing suspended by Commission Regulation (EEC) No 2689/85, as amended by Regulation (EEC) No 3251/85.

COMMISSION REGULATION (EEC) No 886/92

of 8 April 1992

on the arrangements on imports of barley of brewery quality originating in Czechoslovakia

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 520/92 of 27 February 1992 on certain procedures for applying the Interim Agreement on trade and trade-related matters between the European Economic Community and the European Coal and Steel Community, of the one part, and the Czech and Slovak Federal Republic, of the other part⁽¹⁾, and in particular Article 1 thereof,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽²⁾, as last amended by Regulation (EEC) No 674/92⁽³⁾, and in particular Article 12 thereof,

Whereas Commission Regulation (EEC) No 585/92⁽⁴⁾ lays down certain detailed rules regarding the exemption from the import levy of agricultural products originating in Czechoslovakia;

Whereas special provisions must be laid down to ensure that barley of brewery quality is not diverted from the uses specified; whereas, to that end, the granting of the reduced-rate import levy must be made subject to an undertaking by importers to abide by the planned use of the product in question and the lodging of a security equal to the reduction in the import levy; whereas a reasonable processing time is required for the administration of the arrangements in question; whereas, where the product released for free circulation is dispatched to another Member State for processing, the T5 control copy drawn up by the Member State of release for free circulation pursuant to Commission Regulation (EEC) No 2823/87 of 18 September 1987 on the documents to be used for the purpose of implementing Community measures entailing verification of the use and/or destination of goods⁽⁵⁾ is the appropriate instrument for providing proof of processing;

Whereas an element of proportionality must be introduced as regards the release of securities, in particular where the quantities to be processed and/or the time limits laid down by the arrangements have not been met;

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

Article 1

This Regulation covers imports of barley of brewery quality covered by CN code ex 1003 00 90 and originating in Czechoslovakia under Regulation (EEC) No 585/92.

Article 2

Box 20 of licence applications and licences shall bear the following:

Cebada destinada a fabricación de malta; Reglamento (CEE) n° 585/92

Byg til fremstilling af malt; forordning (EØF) nr. 585/92

Gerste zur Herstellung von Malz; Verordnung (EWG) Nr. 585/92

Κριθή ζυθοποιίας προοριζόμενη για την παρασκευή βύνης· Κανονισμός (ΕΟΚ) αριθ. 585/92

Barley for malting; Regulation (EEC) No 585/92

Orge destinée à la fabrication de malt; Règlement (CEE) n° 585/92

Orzo per la produzione di malto; Regolamento (CEE) n. 585/92

Gerst voor verwerking tot mout; Verordening (EEG) nr. 585/92

Cevada para o fabrico de malte; Regulamento (CEE) n° 585/92.

Article 3

1. Eligibility for the reduced levy provided for in Article 1 of Regulation (EEC) No 585/92 shall be conditional on:

- (a) a written undertaking by the importer entered into at the time of release for free circulation, to the effect that all the goods declared will be processed in accordance with the use specified in box 20 of the import licence within six months from the date of acceptance of the declaration of release for free circulation;
- (b) the lodging by the importer, at the time of release for free circulation, of a security equal to the difference between the reduced levy and the full levy.

⁽¹⁾ OJ No L 56, 29. 2. 1992, p. 9.

⁽²⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽³⁾ OJ No L 73, 19. 3. 1992, p. 7.

⁽⁴⁾ OJ No L 62, 6. 3. 1992, p. 40.

⁽⁵⁾ OJ No L 270, 23. 9. 1987, p. 1.

2. Importers shall indicate the place where processing is to be carried out. If the latter is to be carried out in another Member State, a T 5 control copy shall be compiled on dispatch of the goods in the Member State of departure in accordance with the rules laid down in Regulation (EEC) No 2823/87.

Box 104 of the T 5 control copy shall bear the following :

Reglamento (CEE) n° 585/92
Forordning (EØF) nr. 585/92
Verordnung (EWG) Nr. 585/92
Κανονισμός (ΕΟΚ) αριθ. 585/92
Regulation (EEC) No 585/92
Règlement (CEE) n° 585/92
Regolamento (CEE) n. 585/92
Verordening (EEG) nr. 585/92
Regulamento (CEE) n° 585/92.

3. Except in cases of *force majeure*, the security provided for in paragraph 1 (b) shall be released when proof is provided to the competent authorities of the Member State of release for free circulation to the effect that all the quantities released for free circulation have been processed into malt within the time limit laid down in paragraph 1 (a).

Processing shall be deemed to have taken place when the barley has undergone soaking.

Where processing is carried out in a Member State other than that of release for free circulation, proof of processing shall be provided by means of the original of the T 5 control copy.

Where quantities actually used for the manufacture of malt are less than 95 % of the total quantity released for free circulation, that part of the security corresponding to the difference between 95 % of the total quantity released for free circulation and the quantity actually processed shall be forfeited.

In addition, the security to be released for goods released for free circulation which have not been processed within the abovementioned time limit shall be reduced by :

- 15 % and
- 2 % of the remainder, after the 15 % has been deducted, per day over the time limit.

That part of the security which is not released shall be forfeited as a levy.

4. Proof of processing shall be provided to the competent authorities within six months following the end of the processing time limit. However, where proof is established within six months but is supplied within the twelve months following those six months, the amount forfeited, less 15 % of the security, shall be reimbursed.

Article 4

This Regulation shall enter into force on 9 April 1992.

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

Done at Brussels, 8 April 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

COMMISSION REGULATION (EEC) No 887/92

of 8 April 1992

amending Regulation (EEC) No 3665/87 laying down common detailed rules for the application of the system of export refunds on agricultural products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Economic Community,

Article 1

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 674/92⁽²⁾, and in particular Articles 16 (6) and 24 thereof, and to the corresponding provisions of the other Regulations on the organization of the markets in agricultural products,

Having regard to Council Regulation (EEC) No 2746/75 of 29 October 1975 laying down general rules for granting export refunds on cereals and criteria for fixing the amount of such refunds⁽³⁾, and in particular the second subparagraph of Article 8 (2) and Article 8 (3) thereof, and to the corresponding provisions of the other Regulations on general rules on the granting of export refunds on agricultural products,

Whereas Article 18 (1) of Commission Regulation (EEC) No 3665/87⁽⁴⁾, as last amended by Regulation (EEC) No 1615/90⁽⁵⁾, requires that the customs document be presented as proof of release for consumption in a third country;

Whereas international control and supervisory agencies are well established intermediaries with a recognized position in international trade; whereas it should be made easier for Community exporters to obtain proof of release for consumption in third countries; whereas in order to ensure equality of treatment for Community exporters, provision should be made for control and supervisory agencies authorized to issue certificates of completion of the customs formalities specified in Article 18 of Regulation (EEC) No 3665/87 to be approved at Community level;

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

Article 18 of Regulation (EEC) No 3665/87 is hereby replaced by the following:

Article 18

1. Proof that the product has been cleared through customs for release for consumption shall, at the exporter's choice, be furnished by production of one of the following documents:

- (a) the customs document or a copy or photocopy thereof; such copy or photocopy must be certified as being a true copy by the body which endorsed the original document, an official agency of the third country concerned, an official agency of a Member State in the third country concerned or an agency responsible for paying the refund;
- (b) a certificate of unloading and release for consumption drawn up by an international control and supervisory agency approved by the Commission in accordance with the procedure referred to in paragraph 4. The date and number of the customs document of release for consumption must appear on the certificate concerned.

2. If the exporter cannot obtain the document chosen in accordance with paragraph 1 (a) or (b) even after taking the appropriate steps or if there are doubts as to the authenticity of the document furnished, proof that the product has been cleared through customs for release for consumption may be deemed to have been furnished by the production of one or more of the following documents:

- (a) a copy of the unloading document issued or endorsed in a third country for which a refund is to be paid;
- (b) a certificate of unloading issued by an official agency of one of the Member States established in or competent for the country of destination, certifying also that the product has left the port zone or at least that, to its knowledge, the product has not subsequently been loaded for re-export;

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 73, 19. 3. 1992, p. 7.

⁽³⁾ OJ No L 281, 1. 11. 1975, p. 78.

⁽⁴⁾ OJ No L 351, 14. 12. 1987, p. 1.

⁽⁵⁾ OJ No L 152, 16. 6. 1990, p. 33.

- (c) a certificate of unloading drawn up by an international control and supervisory agency approved by the Commission in accordance with the procedure referred to in paragraph 4, certifying also that the product has left the port zone or at least that, to its knowledge, the product has not subsequently been loaded for re-export;
- (d) a bank document issued by approved intermediaries established in the Community certifying, in the case of the third countries listed in Annex III, that payment for the export in question has been credited to the exporter's account with them;
- (e) a statement of acceptance of delivery issued by an official agency of the third country concerned where the goods have been bought by that country or by an official agency of that country or where the goods form part of a food-aid programme;
- (f) a statement of acceptance of delivery issued by an international organization if the goods form part of a food-aid programme;
- (g) a statement of acceptance of delivery issued by a body in a third country in respect of which invitations to tender can be accepted for the purposes of Article 44 of Commission Regulation (EEC) No 3719/88^(*) where the goods have been purchased by the said body.

3. The exporter shall in all cases where this Article applies produce a copy or photocopy of the transport documents.

4. The Commission may, in accordance with the procedure laid down in this Article 38 of Regulation No 136/66/EEC and in the corresponding Articles of the other Regulations on the organization of the markets, provide in certain specific cases to be determined that the proof of import referred to in paragraphs 1 and 2 may be deemed to be furnished by production of a specific document or in any other way.

5. Pending approval by the Commission of international control and supervisory agencies, approvals by the Member States shall be valid.

(*) OJ No L 331, 2. 12. 1988, p. 1.

Article 2

Certificates of unloading and release for consumption made out by an international control and supervisory agency shall be valid for exports in respect of which formalities are completed between the date of entry into force of this Regulation and 31 December 1994.

Article 3

This Regulation shall enter into force on 1 July 1992.

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

Done at Brussels, 8 April 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

COMMISSION REGULATION (EEC) No 888/92

of 8 April 1992

amending for a second time Regulation (EEC) No 1327/89 authorizing Spain not to apply in certain areas the measures provided for in Council Regulation (EEC) No 1442/88 on the granting, for the 1989/90 to 1995/96 wine years, of permanent abandonment premiums in respect of wine-growing areas

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

Having regard to Council Regulation (EEC) No 1442/88 of 24 May 1988 on the granting, for the 1988/89 to 1995/96 wine years, of permanent abandonment premiums in respect of wine-growing areas⁽¹⁾, as amended by Regulation (EEC) No 833/92⁽²⁾, and in particular Article 12 (1) and (2) thereof,

Whereas, pursuant to Commission Regulation (EEC) No 2729/88 of 31 August 1988 laying down detailed rules for the application of Regulation (EEC) No 1442/88 on the granting, for the 1988/89 to 1995/96 wine years, of permanent abandonment premiums in respect of wine-growing areas⁽³⁾, as last amended by Regulation (EEC) No 678/89⁽⁴⁾, Spain lodged before 1 October 1991 an application to alter the areas excluded from the scope of the measures provided for in Regulation (EEC) No 1442/88 from the 1992/93 wine year;

Whereas in the areas listed in the Annex there are risks of depopulation or of the quality policy being called into question or limited possibilities of alternative crops; whereas the criteria selected to determine the list correspond to those defined in Article 12 (1) and (2) of Regula-

tion (EEC) No 1442/88; whereas the wine-growing potential of the areas recognized as suitable for the production of quality wine psr in those areas as a whole is less than 10 % of the national wine-growing potential; whereas the Annex to Regulation (EEC) No 1327/89⁽⁵⁾, as amended by Regulation (EEC) No 3354/90⁽⁶⁾, should be amended accordingly;

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

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Commission Regulation (EEC) No 1327/89 is hereby replaced by the Annex to this Regulation.

Article 2

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

It shall apply from the 1992/93 wine year.

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

Done at Brussels, 8 April 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 132, 28. 5. 1988, p. 3.

⁽²⁾ OJ No L 88, 3. 4. 1992, p. 16.

⁽³⁾ OJ No L 241, 1. 9. 1988, p. 108.

⁽⁴⁾ OJ No L 73, 17. 3. 1989, p. 23.

⁽⁵⁾ OJ No L 133, 17. 5. 1989, p. 8.

⁽⁶⁾ OJ No L 324, 23. 11. 1990, p. 23.

ANNEX

Areas in respect of which Spain is authorized not to apply the measures provided for in Regulation (EEC) No 1442/88

Wine-growing areas recognized as suitable for the production of quality wines for the purpose in accordance with the national procedure laid down pursuant to Regulation (EEC) No 823/87 ⁽¹⁾, located in the following provinces for the following designations:

Region	Designation of origin	Province
Castilla-León	Bierzo	León
	Cigales	Palencia, Valladolid
	Ribera del Duero	Burgos, Segovia, Soria, Valladolid
	Rueda	Avila, Segovia, Valladolid
	Toro	Valladolid, Zamora
Castilla-La Mancha	Almansa (white varieties)	Albacete
	Mancha (red varieties)	Albacete, Ciudad Real, Cuenca, Toledo
	Mentrida (white varieties)	Toledo
	Jumilla (white varieties)	Albacete, Toledo
	Valdepeñas (red varieties)	Ciudad Real
Valencia	Almansa (white varieties)	Valencia
	Utiel-Requena (recommended varieties)	Valencia

⁽¹⁾ OJ No L 84, 27. 3. 1987, p. 59.

COMMISSION REGULATION (EEC) No 889/92
of 8 April 1992
fixing the import levy on molasses

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 market in sugar ⁽¹⁾, as last amended by Regulation (EEC) No 61/92 ⁽²⁾, and in particular Article 16 (8) thereof,

Whereas the import levy on molasses was fixed by Commission Regulation (EEC) No 277/92 ⁽³⁾, as last amended by Regulation (EEC) No 557/92 ⁽⁴⁾;

Whereas it follows from applying the rules and other provisions contained in Regulation (EEC) No 277/92 to the information at present available to the Commission that the levy at present in force should be altered pursuant to Article 1 of this Regulation;

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 April 1992,

HAS ADOPTED THIS REGULATION:

Article 1

1. The import levy referred to in Article 16 (1) of Regulation (EEC) No 1785/81 shall be, in respect of molasses falling within CN codes 1703 10 00 and 1703 90 00, ECU 0,42 per 100 kilograms.

2. However, no import levy applies to OCT originating products according to Article 101 (1) of Council Decision 91/482/EEC ⁽⁷⁾.

Article 2

This Regulation shall enter into force on 9 April 1992.

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

Done at Brussels, 8 April 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.
⁽²⁾ OJ No L 6, 11. 1. 1992, p. 19.
⁽³⁾ OJ No L 30, 6. 2. 1992, p. 17.
⁽⁴⁾ OJ No L 60, 5. 3. 1992, p. 15.
⁽⁵⁾ OJ No L 164, 24. 6. 1985, p. 1.
⁽⁶⁾ OJ No L 201, 31. 7. 1990, p. 9.

⁽⁷⁾ OJ No L 263, 19. 9. 1991, p. 1.

COMMISSION REGULATION (EEC) No 890/92
of 7 April 1992
concerning the stopping of fishing for cod by vessels flying the flag of the
United Kingdom

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 3884/91 of 18 December 1991 allocating, for 1992, certain catch quotas between Member States for vessels fishing in the Norwegian exclusive economic zone and the fishing zone around John Mayen⁽³⁾, provides for cod quotas for 1992;

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 cod in the waters of ICES divisions I, II (Norwegian waters north of 62°N) by

vessels flying the flag of the United Kingdom or registered in the United Kingdom have reached the quota allocated for 1992;

HAS ADOPTED THIS REGULATION:

Article 1

Catches of cod in the waters of ICES divisions I, II (Norwegian waters north of 62°N) by vessels flying the flag of the United Kingdom or registered in the United Kingdom are deemed to have exhausted the quota allocated to the United Kingdom for 1992.

Fishing for cod in the waters of ICES divisions I, II (Norwegian waters north of 62°N) by vessels flying the flag of the United Kingdom 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 that 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, 7 April 1992.

For the Commission

Manuel MARÍN

Vice-President

⁽¹⁾ OJ No L 207, 29. 7. 1987, p. 1.

⁽²⁾ OJ No L 306, 11. 11. 1988, p. 2.

⁽³⁾ OJ No L 367, 31. 12. 1991, p. 46.

COMMISSION DECISION No 891/92/ECSC

of 30 March 1992

imposing a provisional anti-dumping duty on imports of certain semi-finished products of alloy steel, originating in Turkey and Brazil

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to Commission Decision No 2424/88/ECSC of 29 July 1988 on protection against dumped or subsidized imports from countries not members of the European Coal and Steel Community⁽¹⁾, and in particular Article 11 thereof,

After consultation within the Advisory Committee as provided for by the above Decision,

Whereas :

A. PROCEDURE

- (1) In February 1990 the Commission received a complaint lodged by the European Confederation of Iron and Steel Industries (Eurofer) on behalf of producers whose collective output constitutes the majority of Community production of the products in question. The complaint contained evidence of dumping and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding. The Commission accordingly announced, by a notice published in the *Official Journal of the European Communities*⁽²⁾, the initiation of an anti-dumping proceeding concerning imports into the Community of certain semi-finished products of special engineering alloy steel, of rectangular (including square) cross-section, hot-rolled or obtained by continuous casting, falling within CN codes ex 7224 90 09 and ex 7224 90 15, originating in Turkey and Brazil and commenced an investigation.
- (2) The Commission officially so advised the exporters and importers known to be concerned, the representatives of the exporting countries and the complainants and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.
- (3) All of the producers/exporters and some importers known to the Commission made their views known

in writing. Several producers/exporters requested a hearing which was granted.

- (4) No submissions were made by or on behalf of Community purchasers or processors of the products concerned.
- (5) The Commission sought and verified all information it deemed to be necessary for the purpose of a preliminary determination and carried out investigations at the premises of the following companies :

EEC producers :

- Saarstahl AG, Völklingen, Germany,
- Thyssen Edelstahlwerke AG, Krefeld, Germany,
- Edelstahlwerke Buderus AG, Wetzlar, Germany,
- Krupp Stahl AG, Bochum, Germany,
- Klöckner Stahl GmbH, Georgsmarienhütte, Germany,
- Ascometal, Paris La Défense, France,
- ILVA SpA, Sesto S. Giovanni, Italy.

Non-EEC producers/exporters :

in Brazil :

- Villares Indústrias de Base SA (Vibasa), São Paulo,
- Aços Anhanguera SA, São Paulo,
- Companhia Aços Especiais Itabira (Acesita), Belo Horizonte,
- Aços Finos Piratini SA, Porto Alegre.

in Turkey :

- Asil Çelik, Istanbul.

- (6) The Commission requested and received detailed written submissions from the complainant Community producers and some importers and verified the information therein to the extent considered necessary.
- (7) The investigation of dumping covered the period from 1 April 1989 to 31 March 1990.
- (8) Due to the complexity of the proceeding, in particular the difficulties met by the Commission in obtaining, from some of the interested parties the relevant data, the investigation exceeded the normal period of one year laid down in Article 7 (9) of Decision No 2424/88/ECSC.

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 18 and corrigendum in OJ No L 273, 5. 10. 1988, p. 19.

⁽²⁾ OJ No C 144, 14. 6. 1990, p. 5.

B. PRODUCT UNDER CONSIDERATION, LIKE PRODUCT

- (9) The products concerned by the proceeding are semi-finished products of rectangular (including square) cross-section, hot-rolled or obtained by continuous casting. Semi-finished products of alloy steel, also known as alloy engineering steel billets, are those steels used to make engineering components. A large proportion of engineering steels are ultimately destined for the automobile and heavy vehicle industries as components for engines, gear boxes, transmission and steering parts. Other and applications are mining, energy, aerospace and mechanical engineering. Alloy steel is on the market in a multitude of alloys for different applications, e.g. special engineering steels such as heat treatable steels, cast hardened steels, nitriding steels, steels for flame and induction hardening, roller bearing steels, spring steels, steels for bolts and nuts etc.
- (10) Engineering steels are produced in forms of rectangular (including square) billets, bars and coils. Only rectangular billets are considered as semi-finished products in the sense of this proceeding. Alloy steel billets are to be distinguished from bars of alloy steel which consist basically of the same product but further processed.
- (11) During the course of the investigation it became apparent that the words 'special engineering' and nothing to the term 'alloy steel' and that there are no other products falling under tariff headings 7224 90 09 and 7224 90 15. Therefore the product definition can be simplified in the interests of clarity to be: semi-finished products of alloy steel, of rectangular (including square) cross-section hot-rolled or obtained by continuous casting, falling within CN codes 7224 90 09 and 7224 90 15.
- (12) The Commission found that the semi-finished products of alloy steel produced by the Community industry are like in all essential physical and technical characteristics to those imported from Turkey and Brazil, which are also like to those sold for consumption on the Turkish and Brazilian markets.

C. DUMPING

1. Normal value

(a) Turkey

- (13) The Turkish producer was found to sell significant quantities on a profitable basis on the domestic

market. Therefore, domestic sales prices were chosen for the determination of normal value.

- (14) The inflation rate in Turkey was over 70 % per annum during the investigation period. In order to eliminate the effects of inflation, normal value was determined for the shortest possible meaningful period, i.e. on a per month basis.

(b) Brazil

- (15) In the case of all four Brazilian producers, normal values had to be constructed because substantial sales had been made at a loss or there were no representative sales of the like products exported to the Community on the domestic market.
- (16) Normal value was determined by adding a reasonable amount for selling, general and administrative expenses and profit to the cost of production. As only one of the four Brazilian companies concerned showed an operating profit during the reference period, the profit margin retained for this company was also applied for all other companies.
- (17) The constructed value was calculated on the basis of average figures for cost and profit and was established on a monthly basis in order to take account of the effects of inflation.

2. Export prices

- (18) The export prices for the Turkish and Brazilian producers for every export transaction to independent Community customers were determined on the basis of the prices actually paid or payable.
- (19) In the case of the Turkish producer six alloy steel grades accounted for approximately 70 % of the total Turkish export sales to the Community. The Commission decided, therefore, in agreement with the Turkish producer, to base the dumping calculations on these six alloy steel grades.

3. Comparison

- (20) Normal values and export prices of the Turkish and Brazilian producers were adjusted to net ex-works level in order to take account of differences in conditions and terms of sale and were compared on a transaction by transaction basis.

- (21) Where the companies concerned could show pertinent evidence, allowances for import charges and indirect taxes borne by materials physically incorporated in the like product and refunded on export were granted in accordance with Article 2 (10) (b) of Decision No 2424/88/ECSC.

- (22) A Brazilian producer claimed that, in accordance with Article 2 (10) (c) (III) of Decision No 2424/88/ECSC, its normal value should be reduced by the cost of credit granted for the sales under consideration on the domestic market because there were no comparable costs incurred on their export transactions to the Community.

- (23) The Commission rejected the claim because it considers that the payment terms agreed in the sales contracts are directly related to the sales under consideration and that the cost of the credit granted to the customers is normally accounted for in the sales price. Furthermore it was verified that the Brazilian producer had calculated the cost of the credit terms granted and increased the sales price to its clients accordingly. As the Commission, for the purpose of comparison, has not directly allocated these costs to the constructed normal value, it is of the opinion that with regard to credit cost, normal value and export price have been established on a perfectly comparable basis.

4. Dumping margins

- (24) The dumping margins were calculated as being the total amount by which the normal values exceeded the prices for export to the Community.
- (25) The weighted average margins of dumping established and expressed as a percentage of the total cif value of the imports were as follows:

— Asil Çelik, İstanbul, Turkey	33,7 %
— Villares indústrias de Base SA (Vibasa), São Paulo, Brazil	7,4 %
— Aços Anhanguera (Villares) SA, São Paulo, Brazil	15,0 %
— Aços Especiais Itabira (Acesita), Belo Horizonte, Brazil	37,9 %
— Aços Finos Piratini SA, Porto Alegre, Brazil	1,7 %.

D. INJURY

1. Volume of dumped imports and market shares

(a) Cumulation

- (26) The Commission is of the opinion that for the determination of the impact on the Community industry, the cumulative effect of all the imports has to be taken into consideration. In analyzing whether cumulation was appropriate, the Commission considered the comparability of the imported products and took further into consideration the extent to which each imported product competed in the Community with the like product of the Community industry. In addition, it was taken into account that the behaviour on the Community market of all exporters was similar and that their market position was as such not negligible.
- (27) Accordingly, the Commission concluded that regard should be paid to the effect of the dumped imports cumulated from all the countries and all exporters concerned.

(b) Volume and market shares of dumped imports

- (28) The evidence available to the Commission shows that the combined imports into the Community from Turkey and Brazil increased from 10 578 tonnes in 1985 to 69 391 tonnes in 1989 and 77 234 tonnes in the investigation period (April 1989 to March 1990). Over the same period Turkish imports went up from 3 880 tonnes to 20 959 tonnes and Brazilian imports from 6 698 tonnes to 56 275 tonnes.
- (29) The only Turkish producer known to the Commission claimed that his direct shipments dispatched to the Community during the investigation period amounted to only 14 152 tonnes as verified by the Commission and that this quantity ought to be retained for the determination of its import volume and market share, the official trade statistics (Eurostat) being unreliable.
- (30) The Commission considers that in this case the Eurostat Statistics reflect in a reliable manner the total quantities of the products in question originating in Turkey which have been imported into the Community.
- (31) Discrepancies with dispatch figures of the producer can stem from the time lag between the date of shipment in the country of origin and customs clearance in the Community as well as from redirection of exports towards the Community. The Commission therefore relied on the quantities recorded by Eurostat.

- (32) The imports concentrated on the German, Italian and United Kingdom markets, the German market being the most affected with 46 290 tonnes representing 60 % of the total dumped imports.
- (33) In terms of market shares based on total apparent Community consumption, the market penetration of the dumped imports increased from 1,2 % in 1985 to 7,8 % in 1989 and 8,7 % during the investigation period. On the German market alone, the impact of the dumped imports reached 13,7 %, an increase of 11,1 percentage points within two years only. The individual market shares developed from 0,5 % in 1985 to 2,4 % in the investigation period in the case of Turkey. The Brazilian market share rose from 0,8 % to 6,3 % over the same period.

2. Price undercutting

- (34) The Commission established price undercutting by comparing the exporter's prices of semi-finished products of alloy steel with the corresponding weighted average prices for the identical product sold by the Community producers on an ex-works basis. The comparison was carried out with prices cif Community border, customs cleared including port and handling charges and for every transaction made by the exporters during the investigation period.
- (35) The weighted average undercutting margins established, broken down by exporters, are :
- | | |
|--|------|
| — Asil Çelik, İstanbul, Turkey | 16 % |
| — Villares Indústrias de Base SA (Vibasa), São Paulo, Brazil | 22 % |
| — Aços Anhanguera (Villares) SA, São Paulo, Brazil | 26 % |
| — Aços Especiais Itabira (Acesita), Belo Horizonte, Brazil | 15 % |
| — Aços Finos Piratini SA, Porto Alegre, Brazil | 9 %. |

3. Situation of the Community industry

(a) Sales and market shares

- (36) From a cyclical downturn which bottomed out in 1987, consumption in the Community picked up rapidly in 1988 and reached its peak in 1989 with the increase of 16 % compared to the trough in 1987. While in the beginning of the recovery, the complainant Community producers were also able to expand their sales, they were rapidly lagging behind the overall evolution of demand because of

the massively increasing inflow of dumped imports. Up to the investigation period their sales even fell below the level of 1987 which led to a significant loss of market share which decreased from 84 % in 1986 to 71 % in the investigation period.

(b) Capacity utilization

- (37) Between 1987 and the investigation period capacity utilization of the complaining Community producers generally improved. This was, however, mainly achieved by streamlining production facilities, restructuring efforts of the sector and plant closures in Germany and Italy mainly induced by the continued lack of satisfactory profitability in the presence of the low-priced imports.

(c) Prices of Community producers

- (38) Between 1985 and 1987 the conjunctural downturn of demand in the Community led to a pronounced slump of prices in the Community. Although the subsequent improvement in demand allowed some Community producers to raise their prices, the possible price increase were suppressed by the competition of the dumped imports and their significant price undercutting to the extent that prices in the investigation period scarcely exceeded the price levels in 1985.

(d) Profitability

- (39) Because of the pressure on prices, Community producers had difficulties in generating satisfactory returns. In most cases, the achievable price increases were insufficient even to cover the rise in wage and raw material cost. This situation led in some cases to increasing financial losses, in others profit margins were reduced to or remained at a marginal level insufficient for a healthy development of the sector in the longer run. In particular, efforts to restructure and rationalize were in a number of cases severely hampered.
- (40) The Commission took into account that certain Community producers which, because of their electric arc technology in the steelmaking phase could rely heavily on ferrous scrap inputs, found a certain relief on the cost side from the fall in international scrap prices combined with the devaluation of the US dollar against Community currencies. The resulting cost advantages partially explain the variation in Community producer's profitability. However, the temporary cost advantages of this nature enjoyed by some Community producers cannot overshadow the overall injurious effects of the low priced imports.

4. Conclusions

- (41) The preliminary examination of the facts on injury shows that the Community industry was suffering a significant loss of market share, the prevention of price increases to cover the rise in wage and raw material costs and a deterioration of the financial results.

The Commission therefore concludes that the Community industry was suffered material injury.

5. Causation

- (42) The negative effects suffered by the Community industry coincide with the rapid increase of the dumped imports originating in Brazil and Turkey. In fact, while imports from Brazil and Turkey increased by a factor of 7, the Community industry lost market shares and suffered important price undercutting. In a highly price sensitive market, such undercutting is extremely detrimental. The loss in market share is in sharp contrast with the brisk increase of consumption in the Community between 1987 and the investigation period.
- (43) The Commission also examined whether other factors than the dumped imports might have caused injury to the Community industry. With regard to the volume and prices of imports originating in other third countries, it was found that these imports also increased. However, their market share was extended between 1985 and the investigation period by only 1,6 percentage points against an increase by 7,5 percentage points of the dumped imports. There is, furthermore, no indication that imports from other sources than Brazil and Turkey have been dumped.
- (44) The Commission also established that within the restructuring process of the sector a certain shift of market share between Community producers has apparently also occurred. On the basis of global market figures relating to the product under consideration in the Community, it can be assessed that about 2,9 percentage points of the total loss of 12 percentage points of the complainants are attributable to the expansion of other non-complaining EC producers. This expansion, however, is significantly lower than that of the dumped imports and cannot, therefore, have had a comparable impact on the complainant industry. In fact, under these conditions, it has to be concluded that the imports

in question, through the effects of dumping, have caused material injury to the Community industry.

E. COMMUNITY INTEREST

- (45) Production of semi-finished alloy steels is a highly specialized branch of the ECSC steel industry. Its total output represents about 12 % of the bulk raw steel production of the Community. The performance of the sector has a non-negligible influence through its linkages on the situation of the ECSC steel industry as a whole. Downstream, the industry is of vital importance for the Community manufacturing industry. It supplies the metal-processing industry with a wide range of special alloy steels, specifically designed for the various applications. Its products are fundamental for mechanical and electrical engineering, the automotive industry, shipbuilding, the aerospace industry and for other metallic articles. Constant research and development has to be carried out to cope with the requirements of the high-tech downstream industries for high-performance materials. In general the industry must be capable of supplying about 600 different alloy steel grades to satisfy the specific needs of its customers and to develop new products to follow the progress in production techniques and increasing quality requirements for the finished products. The industry branches vitally depending on these products represent about 45 % of the total labour force and 40 % of the total production value of Community manufacturing industry.
- (46) It is clearly in the interest of the Community that the production of alloy steels, with its widespread ramifications in other essential sectors of the manufacturing industry, continue under healthy conditions and that the efficiency of the sector not be further weakened by unfair trade practices. It is therefore considered in the Community's interest to take defensive action against the dumped imports.
- (47) The Commission is furthermore of the opinion that protection of the Community industry against unfair price competition is also in the interest of the consumers of the products concerned. The imports against which action is to be taken represent a rather limited range of basic alloy steel grades, which however provide for the ground capacity utilization of the production equipment. Besides the necessity to guarantee the longer-run

security of supplies and the maintenance of quality standards of the basic products, the industry must also be in the position to supply its wide range of specialities at reasonable prices. Phasing out the production of the lower-grade mass products would necessarily lead to a significant deterioration of the cost structure within the coupled production process and would entail significant price increases for the downstream consumers for essential materials.

(48) The Turkish producer claimed that, except for the significant increase within the investigation period, its market share in the Community has always been at a *de minimis* level and that after the reference period its market share has again been reduced to a level too insignificant to cause injury to the Community industry such that in the actual situation it could not be in the Community's interest to take protective action.

(49) The Commission considers that, given the volatile nature of the trade pattern in steel products as shown by the sudden increase of Turkish exports of the dumped products, there would be no guarantee to prevent the recurrence of injurious dumping should the investigation be concluded without protective measures. An exemption from anti-dumping measures of imports originating in Turkey because of a reduction in volume during the ongoing investigation would also be discriminatory towards the Brazilian producers/exporters in the light of recital (26).

(50) On the basis of this consideration, the Commission considers that the interests of the Community call for protective measures against dumped imports of semi-finished products of alloy steel in the form of provisional anti-dumping duties.

F. PROVISIONAL DUTY

(51) Having established that the dumped imports under consideration have caused material injury to the Community industry and that it is in the Community's interest to take action, the measures envisaged should be sufficient to eliminate the injury caused. However, the measures should not exceed the dumping margins. Since the main cause of the injury is the price undercutting of the Community industry's prices by the exporters, it is considered necessary to eliminate price undercutting where

possible. Therefore, the prices of the exporters should be increased by their price undercutting margin or their dumping margin, whichever is the lower. On this basis, the Commission considers that the following provisional duties should be imposed:

Turkey	16,0 %
Brazil	15,0 %

with the exception of

— Villares Indústrias de Base SA (Vibasa), São Paulo, Brazil	7,4 %
— Aços Finos Piratini SA, Porto Alegre, Brazil	1,7 %

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

HAS ADOPTED THIS DECISION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of certain semi-finished products of alloy steel, of rectangular (including square) cross-section, hot-rolled or obtained by continuous casting, falling within CN codes 7224 90 09 and 7224 90 15 and originating in Turkey and Brazil.

2. The rate of the duty, based on the free-at-Community-frontier price, not cleared through customs, shall be:

- 16,0 % for imports of semi-finished products of alloy steel originating in Turkey,
- 15,0 % for imports of semi-finished products of alloy steel originating in Brazil (Taric additional code: 8625).

3. Notwithstanding paragraph 2, the rate of the provisional anti-dumping duty shall be:

- 7,4 % for products manufactured by Villares Indústrias de Base SA (Vibasa), São Paulo, Brazil (Taric additional code: 8624),
- 1,7 % for products manufactured by Aços Finos Piratini SA, Porto Alegre, Brazil (Taric additional code: 8623).

4. The provisions in force concerning customs duties shall apply.

5. The release for free circulation in the Community of the products referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 7 (4) (b) and (c) of Decision No 2424/88/ECSC, the parties concerned may make known their views in writing and apply to be heard orally

by the Commission within one month of the date of entry into force of this Decision.

Article 3

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

Subject to Articles 11, 12 and 13 of Decision No 2424/88/ECSC, Article 1 of this Decision shall apply for a period of four months, unless the Commission adopts definitive measures before the expiry of that period.

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

Done at Brussels, 30 March 1992.

For the Commission

Frans ANDRIESEN

Vice-President

COMMISSION REGULATION (EEC) No 892/92

of 8 April 1992

introducing a countervailing charge on fresh lemons originating in Cyprus

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 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables⁽¹⁾, as last amended by Regulation (EEC) No 1623/91⁽²⁾, and in particular the second subparagraph of Article 27 (2) thereof,

Whereas Article 25a (1) of Regulation (EEC) No 1035/72 provides that, if the entry price of a product imported from a non-member country is alternatively above and below the reference price for five to seven consecutive market days a countervailing charge is introduced in respect of that non-member country, save in exceptional cases; whereas that charge is introduced when three entry prices fall below the reference price and one of those entry prices is at least ECU 0,6 below the reference price; whereas that charge is equal to the difference between the reference price and the last available entry price by at least ECU 0,6 below the reference price;

Whereas Commission Regulation (EEC) No 1438/91 of 30 May 1991 fixing for the 1991/92 marketing year the reference prices for fresh lemons⁽³⁾ fixed the reference price for products of class I for the period from November 1991 to April 1992 at 47,15 ECU per 100 kilograms net;

Whereas the entry price for a given exporting country is equal to the lowest representative prices recorded for at least 30 % of the quantities from the exporting country concerned which are marketed on all representative markets for which prices are available less the duties and the charges indicated in Article 24 (3) of Regulation (EEC) No 1035/72; whereas the meaning of representative price is defined in Article 24 (2) of Regulation (EEC) No 1035/72;

Whereas, in accordance with Article 3 (1) of Commission Regulation (EEC) No 2118/74⁽⁴⁾, as last amended by

Regulation (EEC) No 3811/85⁽⁵⁾, the prices to be taken into consideration must be recorded on the representative markets or, in certain circumstances, on other markets;

Whereas for fresh lemons originating in Cyprus the entry prices calculated in this way have for six consecutive market days been alternatively above and below the reference price; whereas two of these entry prices are at least ECU 0,6 below the reference prices; whereas a countervailing charge should therefore be introduced for these fresh lemons;

Whereas, if the system is to operate normally, the entry price 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⁽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,

HAS ADOPTED THIS REGULATION:

Article 1

A countervailing charge of 2,92 ECU per 100 kilograms net is applied to fresh lemons (CN code ex 0805 30 10) originating in Cyprus.

Article 2

This Regulation shall enter into force on 10 April 1992.

Subject to the provisions of the second subparagraph of Article 26 (2) of Regulation (EEC) No 1035/72, this Regulation shall be applicable until 15 April 1992.

⁽¹⁾ OJ No L 118, 20. 5. 1972, p. 1.

⁽²⁾ OJ No L 150, 15. 6. 1991, p. 8.

⁽³⁾ OJ No L 137, 31. 5. 1991, p. 25.

⁽⁴⁾ OJ No L 220, 10. 8. 1974, p. 20.

⁽⁵⁾ OJ No L 368, 31. 12. 1985, p. 1.

⁽⁶⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁷⁾ OJ No L 201, 31. 7. 1990, p. 9.

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

Done at Brussels, 8 April 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

COMMISSION REGULATION (EEC) No 893/92

of 8 April 1992

altering the import levies on products processed from cereals and rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EEC) No 674/92 ⁽²⁾, and in particular Article 14 (4) thereof,

Having regard to Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice ⁽³⁾, as last amended by Regulation (EEC) No 674/92, and in particular Article 12 (4) thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy ⁽⁴⁾, as last amended by Regulation (EEC) No 2205/90 ⁽⁵⁾, and in particular Article 3 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas the import levies on products processed from cereals and rice were fixed by Commission Regulation (EEC) No 784/92 ⁽⁶⁾, as last amended by Regulation (EEC) No 879/92 ⁽⁷⁾;

Whereas Council Regulation (EEC) No 1906/87 ⁽⁸⁾ amended Council Regulation (EEC) No 2744/75 ⁽⁹⁾ as regards products falling within CN codes 2302 10, 2302 20, 2302 30 and 2302 40;

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

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

— for 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 April 1992;

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

Whereas the levy on the basic product as last fixed differs from the average levy by more than ECU 3,02 per tonne of basic product; whereas, pursuant to Article 1 of Commission Regulation (EEC) No 1579/74 ⁽¹⁰⁾ as last amended by Regulation (EEC) No 1740/78 ⁽¹¹⁾ the levies at present in force must therefore be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies to be charged on products processed from cereals and rice covered by Regulation (EEC) No 2744/75 as fixed in the Annex to amended Regulation (EEC) No 784/92 are hereby altered to the amounts set out in the Annex.

Article 2

This Regulation shall enter into force on 9 April 1992.

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 73, 19. 3. 1992, p. 7.

⁽³⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽⁴⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁵⁾ OJ No L 201, 31. 7. 1990, p. 9.

⁽⁶⁾ OJ No L 357, 28. 12. 1991, p. 84.

⁽⁷⁾ OJ No L 93, 8. 4. 1992, p. 16.

⁽⁸⁾ OJ No L 182, 3. 7. 1987, p. 49.

⁽⁹⁾ OJ No L 281, 1. 11. 1975, p. 65.

⁽¹⁰⁾ OJ No L 168, 25. 6. 1974, p. 7.

⁽¹¹⁾ OJ No L 202, 26. 7. 1978, p. 8.

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

Done at Brussels, 8 April 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX

to the Commission Regulation of 8 April 1992 altering the import levies on products processed from cereals and rice

(ECU/tonne)

CN code	Import levies (*)	
	ACP	Third countries (other than ACP) (*)
1102 30 00	146,33	149,35
1102 90 90	151,74	154,76
1103 14 00	146,33	149,35
1103 19 90	151,74	154,76
1103 21 00	275,78	281,82
1103 29 50	146,33	149,35
1103 29 90	151,74	154,76
1104 19 10	275,78	281,82
1104 19 91	248,49	254,53
1104 19 99	267,77	273,81
1104 29 11	203,77	206,79
1104 29 19	238,02	241,04
1104 29 31	245,14	248,16
1104 29 39	238,02	241,04
1104 29 91	156,27	159,29
1104 29 99	151,74	154,76
1104 30 10	114,91	120,95
1107 10 11	272,71	283,59
1107 10 19	203,77	214,65
1108 11 00	337,06	357,61
1108 19 10	209,84	240,67
1109 00 00	612,84	794,18

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

(*) No import levy applies to OCT originating products according to Article 101 (1) of Decision 91/482/EEC.

COMMISSION REGULATION (EEC) No 894/92

of 8 April 1992

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 61/92⁽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 366/92⁽³⁾, as last amended by Regulation (EEC) No 878/92⁽⁴⁾;

Whereas it follows from applying the detailed rules contained in Commission Regulation (EEC) 366/92 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 April 1992,

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 April 1992.

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

Done at Brussels, 8 April 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 6, 11. 1. 1992, p. 19.

⁽³⁾ OJ No L 39, 15. 2. 1992, p. 28.

⁽⁴⁾ OJ No L 93, 8. 4. 1992, p. 14.

⁽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 April 1992 fixing the import levies on white sugar and raw sugar

(ECU/100 kg)

CN code	Levy ⁽¹⁾
1701 11 10	37,44 ⁽¹⁾
1701 11 90	37,44 ⁽¹⁾
1701 12 10	37,44 ⁽¹⁾
1701 12 90	37,44 ⁽¹⁾
1701 91 00	44,33
1701 99 10	44,33
1701 99 90	44,33 ⁽²⁾

⁽¹⁾ The levy applicable is calculated in accordance with the provisions of Article 2 or 3 of Commission Regulation (EEC) No 837/68.

⁽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.

⁽³⁾ No import levy applies to OCT originating products according to Article 101 (1) of Decision 91/482/EEC. However, an amount equal to the amount fixed by Regulation (EEC) No 1870/91 B to be levied in accordance with Article 101 (4) of the abovementioned Decision.

COMMISSION REGULATION (EEC) No 895/92
of 8 April 1992
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 674/92 ⁽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 rice of the long-grain aromatic
Basmati variety falling within CN codes 1006 10, 1006 20
and 1006 30 ⁽³⁾, as last amended by Regulation (EEC)
No 674/91 ⁽⁴⁾, and in particular Article 8 thereof,

Whereas the import levies on rice and broken rice were
fixed by Commission Regulation (EEC) No 586/92 ⁽⁵⁾, as
last amended by Regulation (EEC) No 789/92 ⁽⁶⁾,

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 9 April 1992.

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

Done at Brussels, 8 April 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽²⁾ OJ No L 73, 19. 3. 1992, p. 7.

⁽³⁾ OJ No L 80, 24. 3. 1987, p. 20.

⁽⁴⁾ OJ No L 75, 21. 3. 1991, p. 29.

⁽⁵⁾ OJ No L 62, 7. 3. 1992, p. 44.

⁽⁶⁾ OJ No L 86, 1. 4. 1992, p. 6.

ANNEX

to the Commission Regulation of 8 April 1992 fixing the import levies on rice and broken rice

(ECU/tonne)

CN code	Levies (°)		
	Arrangement in Regulation (EEC) No 3877/86 (°)	ACP (⁽¹⁾) (⁽²⁾) (⁽³⁾) Bangladesh	Third countries (except ACP) (⁽⁴⁾)
1006 10 21	—	154,66	316,53
1006 10 23	—	148,97	305,15
1006 10 25	—	148,97	305,15
1006 10 27	228,86	148,97	305,15
1006 10 92	—	154,66	316,53
1006 10 94	—	148,97	305,15
1006 10 96	—	148,97	305,15
1006 10 98	228,86	148,97	305,15
1006 20 11	—	194,23	395,66
1006 20 13	—	187,12	381,44
1006 20 15	—	187,12	381,44
1006 20 17	286,08	187,12	381,44
1006 20 92	—	194,23	395,66
1006 20 94	—	187,12	381,44
1006 20 96	—	187,12	381,44
1006 20 98	286,08	187,12	381,44
1006 30 21	—	240,46	504,78 (°)
1006 30 23	—	284,66	593,09 (°)
1006 30 25	—	284,66	593,09 (°)
1006 30 27	444,82 (°)	284,66	593,09 (°)
1006 30 42	—	240,46	504,78 (°)
1006 30 44	—	284,66	593,09 (°)
1006 30 46	—	284,66	593,09 (°)
1006 30 48	444,82 (°)	284,66	593,09 (°)
1006 30 61	—	256,45	537,60 (°)
1006 30 63	—	305,55	635,80 (°)
1006 30 65	—	305,55	635,80 (°)
1006 30 67	476,85 (°)	305,55	635,80 (°)
1006 30 92	—	256,45	537,60 (°)
1006 30 94	—	305,55	635,80 (°)
1006 30 96	—	305,55	635,80 (°)
1006 30 98	476,85 (°)	305,55	635,80 (°)
1006 40 00	—	65,63	137,26

(⁽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 originating in the African, Caribbean and Pacific States and imported directly into the overseas department of Réunion.

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

(⁽⁴⁾) The levy on imports of rice, not including broken rice (CN code 1006 40 00), originating in Bangladesh is applicable under the arrangements laid down in Regulation (EEC) Nos 3491/90 and 862/91.

(⁽⁵⁾) The levy on imports into Portugal is increased by the amount specified in Article 2 (2) of Regulation (EEC) No 3778/91.

(⁽⁶⁾) The levy 3778/91 imports of rice of the long-grain aromatic Basmati variety is applicable under the arrangements laid down in Regulation (EEC) No 3877/86, as amended by Regulation (EEC) No 3130/91.

(⁽⁷⁾) No import levy applies to OCT originating products according to Article 101 (1) of Decision 91/482/EEC.

COMMISSION REGULATION (EEC) No 896/92**of 8 April 1992****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 674/92 ⁽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 2591/91 ⁽³⁾, as last amended by Regulation (EEC) No 790/92 ⁽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 9 April 1992.

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

Done at Brussels, 8 April 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽²⁾ OJ No L 73, 19. 3. 1992, p. 7.

⁽³⁾ OJ No L 243, 31. 8. 1991, p. 8.

⁽⁴⁾ OJ No L 86, 1. 4. 1992, p. 8.

ANNEX

to the Commission Regulation of 8 April 1992 fixing the premiums to be added to the import levies on rice and broken rice

CN code	(ECU/tonne)			
	Current 4	1st period 5	2nd period 6	3rd period 7
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 897/92**of 8 April 1992****fixing the maximum export refund for white sugar for the 48th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EEC) No 963/91**

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

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

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector⁽¹⁾, as last amended by Regulation (EEC) No 61/92⁽²⁾, and in particular the first subparagraph of Article 19 (4) (b) thereof,

Whereas Commission Regulation (EEC) No 963/91 of 18 April 1991 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar⁽³⁾ requires partial invitations to tender to be issued for the export of this sugar;

Whereas, pursuant to Article 9 (1) of Regulation (EEC) No 963/91, a maximum export refund shall be fixed, as the case may be, account being taken in particular of the state and foreseeable development of the Community and world markets in sugar, for the partial invitation to tender in question;

Whereas, following an examination of the tenders submitted in response to the 48th partial invitation to tender, the provisions set out in Article 1 should be adopted;

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 48th partial invitation to tender for white sugar issued pursuant to Regulation (EEC) No 963/91 the maximum amount of the export refund is fixed at ECU 40,286 per 100 kilograms.

Article 2

This Regulation shall enter into force on 9 April 1992.

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

Done at Brussels, 8 April 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 6, 11. 1. 1992, p. 19.

⁽³⁾ OJ No L 100, 20. 4. 1991, p. 9.

COMMISSION REGULATION (EEC) No 898/92**of 8 April 1992****laying down detailed rules for the application of the import arrangements for fresh, chilled or frozen beef provided for in the Interim Association Agreements between the Community and the Republic of Poland, the Republic of Hungary and the Czech and Slovak Federal Republic**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 518/92 of 27 February 1992 on certain procedures for applying the Interim Agreement on trade and trade-related matters between the European Economic Community and the European Coal and Steel Community, of the one part, and the Republic of Poland of the other part⁽¹⁾ and in particular Article 1 thereof,

Having regard to Council Regulation (EEC) No 519/92 of 27 February 1992 on certain procedures for applying the Interim Agreement on trade and trade-related matters between the European Economic Community and the European Steel Community, of the one part, and the Republic of Hungary of the other part⁽²⁾ and in particular Article 1 thereof,

Having regard to Council Regulation (EEC) No 520/92 of 27 February 1992 on certain procedures for applying the Interim Agreement on trade and trade-related matters between the European Economic Community and the European Coal and Steel Community, of the one part, and the Czech and Slovak Federal Republic of the other part⁽³⁾, and in particular Article 1 thereof,

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal⁽⁴⁾, as last amended by Regulation (EEC) No 1628/91⁽⁵⁾, and in particular Article 15 (2) thereof,

Whereas the Association Agreements between the European Economic Community and the European Coal and Steel Community, of the one part, and the Republic of Hungary⁽⁶⁾, the Republic of Poland⁽⁶⁾ and the Czech and Slovak Federal Republic⁽⁶⁾, hereinafter called 'the CSFR', of the other part, were signed on 16 December 1991; whereas, pending the entry into force of these Agreements, the Community has decided to apply with effect from 1 March 1992 Interim Agreements concluded with the aforesaid countries, hereinafter referred to as 'Interim Agreements';

Whereas Protocol No 7 to the Interim Agreements provides for a proportionate reduction in the quantities available for 1992 to take account of the period which has elapsed between the beginning of 1992 and the entry into force of the Arrangements on 1 March; whereas the actual quantities which may be imported in 1992 should therefore be fixed at ten twelfths of the annual quantities;

Whereas the abovementioned Agreements provide for a reduction in the import levy for fresh, chilled or frozen beef falling within CN codes 0201 and 0202, limited to certain quantities; whereas, in order to ensure the regularity of imports, it is important to spread out the aforesaid quantities throughout the year;

Whereas provision is also made for the quantities of meat exported from one of the three beneficiary countries in the context of triangular operations receiving Community financial assistance to be deducted from the available quantities; whereas, therefore, provision should be made for calculation mechanisms to take account of these operations;

Whereas, while recalling the provision of the Interim Agreements intended to guarantee the origin of the product, the management of the system should be ensured through import licences; whereas, with that in mind, it would be appropriate to define, in particular, the detailed rules for submission of applications, as well as the information which must be included on the applications and licences, notwithstanding certain provisions of Commission Regulation (EEC) No 3719/88 of 16 November 1988 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products⁽⁷⁾, as last amended by Regulation (EEC) No 1599/90⁽⁸⁾, and Commission Regulation (EEC) No 2377/80 of 4 September 1980 on special detailed rules for the application of the system of import and export licences in the beef and veal sector⁽⁹⁾, as last amended by Regulation (EEC) No 815/91⁽¹⁰⁾; whereas provision should also be made for the licences to be issued after a delay for consideration and, where necessary, with the application of a single percentage reduction;

⁽¹⁾ OJ No L 56, 29. 2. 1992, p. 3.

⁽²⁾ OJ No L 56, 29. 2. 1992, p. 6.

⁽³⁾ OJ No L 56, 29. 2. 1992, p. 9.

⁽⁴⁾ OJ No L 148, 28. 6. 1968, p. 24.

⁽⁵⁾ OJ No L 150, 15. 6. 1991, p. 16.

⁽⁶⁾ Not yet published in the Official Journal.

⁽⁷⁾ OJ No L 331, 2. 12. 1988, p. 1.

⁽⁸⁾ OJ No L 151, 15. 6. 1990, p. 29.

⁽⁹⁾ OJ No L 241, 13. 9. 1980, p. 5.

⁽¹⁰⁾ OJ No L 83, 3. 4. 1991, p. 6.

Whereas, in order to ensure efficient management of the system, provision should be made for the security in respect of the import licences under the said system to be fixed at ECU 10 per 100 kilograms; whereas the risk of speculation inherent in the system in question in the beef and veal sector requires that access to the system should be subject to precise conditions;

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

1. The quantity of beef which may be imported during 1992 within the framework of the import arrangements established in Article 14 (2) and 4 of the Interim Agreements shall be fixed at:

- 3 334 tonnes for meat originating in Poland,
- 4 166 tonnes for meat originating in Hungary,
- 2 500 tonnes for meat originating in CSFR.

2. The abovementioned quantities shall be staggered over the year as follows:

- 50 % during the period from 1 March to 30 June,
- 25 % during the period from 1 July to 30 September,
- 25 % during the period from 1 October to 31 December.

From the quantities available during the last period shall be deducted the quantities which are the subject of the triangular operations referred to in Annexes Xb to the Agreements with Poland and Hungary and Annex XIIIb to the Agreement with the CSFR. However, the total quantities available for 1992 may not be less than the twelfths of the minimum quantities indicated therein.

3. If, during 1992, the quantity for which applications for import licences have been submitted for the first or second period specified in the previous paragraph is less than the available quantity, the quantity remaining shall be added to the quantity available for the following period.

Article 2

1. The reduced import levy applicable to beef and veal under the import arrangements referred to in Article 1 (1) shall be fixed at 80 % of the full levy applicable on the date of acceptance of the declaration of release for free circulation.

2. In order to qualify under the import arrangements provided for in Article 1:

- (a) applicants for import licences must be natural or legal persons who, at the time applications are submitted, can prove to the satisfaction of the competent authorities of the Member State concerned that they have been active in trade in beef and veal with third countries during the last 12 months and are entered in the official register of a Member State;
- (b) licence applications may be presented only in the Member State in which the applicant is registered;
- (c) licence applications must cover at least 15 tonnes of meat by product weight and at most to the quantity available for the period in question;
- (d) section 7 of licence applications and licences shall show the country of provenance and Section 8 shall show the country of origin; licences shall carry with them an obligation to import from the country indicated;
- (e) section 20 of licence applications and licences shall show one of the following:

Reglamento (CEE) n° 898/92

Forordning (EØF) nr. 898/92

Verordnung (EWG) Nr. 898/92

Κανονισμός (ΕΟΚ) αριθ. 898/92

Regulation (EEC) No 898/92

Règlement (CEE) n° 898/92

Regolamento (CEE) n. 898/92

Verordening (EEG) nr. 898/92

Regulamento (CEE) n° 898/92.

- (f) Section 24 of licences shall show one of the following:

Exacción reguladora, tal como establece el Reglamento (CEE) n° 898/92;

Importafgift i henhold til forordning (EØF) nr. 898/92;

Abschöpfung gemäß Verordnung (EWG) Nr. 898/92;

Εισφορά όπως προβλέπεται από τον κανονισμό (ΕΟΚ) αριθ. 898/92;

Levy as provided for in Regulation (EEC) No 898/92;

Prélèvement comme prévu par le règlement (CEE) n° 898/92;

Prelievo a norma del regolamento (CEE) n. 898/92;

Heffing overeenkomstig Verordening (EEG) nr. 898/92;

Direito nivelador conforme estabelecido no Regulamento (CEE) n° 898/92.

3. Notwithstanding Article 8 (2) of Regulation (EEC) No 2377/80, Section 16 of licence applications and licences may include one or more subheadings of headings 0201 and 0202 of the combined nomenclature.

Article 3

1. Licence applications may be lodged only:
 - from 7 to 14 April,
 - from 1 to 8 July,
 - from 1 to 8 October.
2. Where the same applicant lodges more than one application relating to the same country of origin, all applications from that persons shall be inadmissible.
3. The Member States shall notify the Commission of the applications lodged not later than the fifth working day following the end of the period for submission of applications. Such notification shall comprise a list of applicants and quantities applied for as well as countries of origin of the products.

All notifications, including notifications of nil applications, shall be made by telex or fax, drawn up on the model in Annex I to this Regulation in the case where applications have been made.

4. The Commission shall decide to what extent quantities may be awarded in respect of licence applications.

If the quantities in respect of which licences have been applied for exceed the quantities available, the Commission shall fix a single percentage reduction in quantities applied for.

5. Subject to a decision to accept applications by the Commission, licences shall be issued on:

- 6 May,
- 23 July,
- 23 October.

6. Licences issued shall be valid throughout the Community.

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

Done at Brussels, 8 April 1992.

Article 4

Without prejudice to the provisions of this Regulation, Regulations (EEC) No 3719/88 and No 2377/80 shall apply.

However, in the case of quantities imported under the terms of Article 8 (4) of Regulation (EEC) No 3719/88, the levy shall be collected in full in respect of quantities in excess of those stated on the import licence.

Article 5

1. Notwithstanding Article 9 (1) of Regulation (EEC) No 3719/88, import licences issued pursuant to this Regulation shall not be transferable.

2. Notwithstanding Articles 4 and 6 of Regulation (EEC) No 2377/80, the security for import licences shall be ECU 10 per 100 kilograms by weight of product and the term of validity of licences issued in respect of the latest period specified in Article 1 (2) shall expire on 31 December 1992.

Article 6

The products shall be released for free circulation on presentation of an EUR 1 movement certificate issued by the exporting country in accordance with Protocol 4 annexed to the Interim Agreements.

Article 7

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

It shall apply from 1 March 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX

(Application of Regulation (EEC) No 898/92)

COMMISSION OF THE EUROPEAN COMMUNITIES DG VI/D/2 — BEEF AND VEAL SECTOR

Date _____ period _____

APPLICATION FOR LICENCES TO IMPORT AT REDUCED LEVIES

Member State :

Country of origin	Serial number	Applicant (name and address)	Quantity (tonnes)
Poland			
		Total quantity applied for :	
Hungary			
		Total quantity applied for :	
Czech and Slovak Federal Republic			
		Total quantity applied for :	
Total for the three countries			

Member State : Fax No :

Tel. :

COMMISSION REGULATION (EEC) No 899/92
of 8 April 1992
amending Regulation (EEC) No 847/92 on an export sale to Russia under Council
Regulation (EEC) No 599/91

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 1628/91 ⁽²⁾, and in particular Article 7 (3) thereof,

Whereas Commission Regulation (EEC) No 847/92 of 2 April 1992 on the sale by the procedure laid down in Regulation (EEC) No 2539/84 of beef held by certain intervention agencies and intended for export to Russia under council Regulation (EEC) No 599/91 and amending Regulation (EEC) No 569/88 ⁽³⁾ provides in particular for the sale of boneless beef in lots made up of cuts in given percentages; whereas for technical reasons that breakdown should be altered;

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

Annex II to Regulation (EEC) No 847/92 is hereby replaced by the Annex hereto.

Article 2

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

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

Done at Brussels, 8 April 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 24.

⁽²⁾ OJ No L 150, 15. 6. 1991, p. 16.

⁽³⁾ OJ No L 88, 3. 4. 1992, p. 49.

ANNEX

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

Distribución del lote contemplado en el cuarto guión del apartado 5 del artículo 1

Fordeling af det i artikel 1, stk. 5, fjerde led, omhandlede parti

Zusammensetzung der in Artikel 1 Absatz 5 vierter Gedankenstrich genannten Partie

Κατανομή της παρτίδας που αναφέρεται στο άρθρο 1 παράγραφος 5 τετάρτη περίπτωση

Breakdown of the lot referred to in the fourth indent of Article 1 (5)

Répartition du lot visé à l'article 1^{er} paragraphe 5 quatrième tiret

Composizione della partita di cui all'articolo 1, paragrafo 5, quarto trattino

Verdeling van de in artikel 1, lid 5, vierde streepje, bedoelde partij

Repartição do lote referido no n.º 5, quarto travessão, do artigo 1.º

<i>Cortes</i> <i>Udskæringer</i> <i>Teilstücke</i> <i>Τεμάχια</i> <i>Cuts</i> <i>Découpes</i> <i>Tagli</i> <i>Deelstukken</i> <i>Cortes</i>	<i>Porcentaje en peso</i> <i>Vægtprocent</i> <i>Gewichtsanteile</i> <i>Ποσοστό του βάρους</i> <i>Weight percentage</i> <i>Pourcentage du poids</i> <i>Percentuale del peso</i> <i>% van het totaalgewicht</i> <i>Percentagem do peso</i>
Striploins	5,5 %
Insides	9,1 %
Outsides	8,6 %
Knuckles	5,4 %
Rumps	5,8 %
Forequarters	30,2 %
Shins/shanks	9,7 %
Plates/Flanks	25,7 %
	100,0 %

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 25 March 1992

relating to a proceeding pursuant to Article 85 of the EEC Treaty
(IV/30.717-A — Eurocheque : Helsinki Agreement)

(Only the French text is authentic)

(92/212/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Whereas :

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty ⁽¹⁾, as last amended by the Act of Accession of Spain and Portugal, and in particular Articles 4 (1) and 15 (2) thereof,

Having regard to the notification submitted on 16 July 1990 pursuant to Article 4 of Regulation No 17 by the Groupement des cartes bancaires 'CB' concerning an agreement concluded in Helsinki on 19 and 20 May 1983 between the Eurocheque Assembly and the French financial institutions on the conditions governing the acceptance of foreign Eurocheques in the trading sector in France,

Having regard to the Commission's decision on 19 July 1990 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity of being heard on the matters to which the Commission has taken objection, in accordance with Article 19 (1) of Regulation No 17 and with 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,

I. THE FACTS

- (1) This Decision concerns an agreement entitled 'accord entre les institutions financières françaises et l'assemblée Eurocheque sur l'acceptation par les commerçants en France des eurochèques tirés sur des institutions financières étrangères selon les principes arrêtés lors de la réunion de l'assemblée Eurocheque tenue à Helsinki les 19 et 20 mai 1983' (Agreement between the French financial institutions and the Eurocheque Assembly on the acceptance by traders in France of Eurocheque drawn on foreign financial institutions in accordance with the principles adopted at the meeting of the Eurocheque Assembly held in Helsinki on 19 and 20 May 1983). The agreement, which was included in Chapter E of the Eurocheque manual, was in force for nearly seven-and-a-half years, from 1 December 1983, the date of its entry into force, until 27 May 1991, the date on which the Groupement des cartes bancaires 'CB', which represents the French financial institutions within the Eurocheque system, sent all its members a circular informing them that the Eurocheque General Assembly had, at its meeting on 9 and 10 May 1991, terminated the Agreement.

A. The parties

- (1) *The Groupement des cartes bancaires 'CB'*
- (2) A protocol was signed on 31 July 1984 between the 11 largest French financial institutions laying down the principle of interoperability between the three

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

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

card networks in France, namely the Carte bleue, Crédit agricole and Crédit mutuel networks. This principle of interoperability was given practical shape through the setting up, on 1 December 1984, of a 'groupement d'intérêt économique (economic interest grouping), the groupement des cartes bancaires 'CB' (hereinafter referred to as 'the Groupement'). Currently ⁽¹⁾, some 500 000 French traders are members of the card payment system of the Groupement and accept the CB card; on 31 December 1990, there were 19,5 million CB cardholders, with 7,9 million of the cards being for national use only and 11,6 million being also for international use (8 million Visa cards and 3,6 million Eurocards). In 1983, the year in which the Helsinki agreement was signed, the number of traders accepting the Carte bleue was 217 000 ⁽²⁾.

- (3) The Groupement includes all the major French banks and financial institutions, namely, at the end of 1988 ⁽³⁾:

- the registered banks: more than 260 establishments included within the Association française des banques,
- the Crédit agricole: 91 regional banks,
- the Banques populaires: 31 regional banks,
- the Caisses d'épargne écoreuil: some 300 local establishments,
- the Post Office (postal cheques),
- the Crédit mutuel: 20 regional federations,
- financial institutions.

- (4) Since it was set up, the Groupement has acted as the French national Eurocheque community in place of the Association française des banques (AFB), as the Groupement pointed out in its notification of 16 July 1990: 'When it was set up in 1984, the Groupement took over the agreements concluded within Eurocheque. It has since then seen to the proper implementation of such agreements by its members and the traders affiliated to the CB network'.

(2) *Eurocheque International sc*

- (5) The Eurocheque organization was set up in 1968 on the private initiative of European financial institutions, with the aim of meeting the need for inter-

national payment systems resulting from the growth of tourism and business travel within Europe, by making available a means of payment which consumers may use both in their country of origin and in other countries.

- (6) The Eurocheque system is open to all European credit institutions. It is based on two instruments: the Eurocheque and the Eurocheque card ⁽⁴⁾. The drawee bank guarantees any payee bank reimbursement of a Eurocheque presented with the corresponding card, up to a predetermined maximum amount.

- (7) Eurocheque International was originally a *de facto* association, without legal personality. On 3 February 1988, Eurocheque International adopted the form of a cooperative society of unlimited duration under Belgian law, with its registered office in Brussels and capital of Bfr 1 800 000 consisting of 18 shares of Bfr 100 000 subscribed by:

- Association of Swedish Banks,
- Associazione Bancaria Italiana,
- Groupement des cartes bancaires 'CB' (France),
- Comunidade Portuguesa eurocheque,
- Bank of Cyprus,
- Caisse d'épargne de l'État du grand-duché de Luxembourg,
- Agrupació Andorrana Eurocheque,
- PBS-Pengeinstitutternes BetalingsSystemer (Denmark),
- Apacs (United Kingdom),
- Telekurs (Switzerland),
- Suomen Pankkiyhdistys (Finland),
- Association of Norwegian Banks,
- Stichting Bevoordring Chequeverkeer (Netherlands),
- Irish Clearing House,
- Jugobanka United Bank (Yugoslavia),
- Association of Austrian Banks and Bankers,
- Eurocheque Belgique sc,
- GZS-Gesellschaft für Zahlungssysteme GmbH (Germany).

⁽¹⁾ Source: *CB Actualité* No 14 — June 1991, p. 16.

⁽²⁾ Source: Report by the Association française des banques for 1985, Annex V, p. 60.

⁽³⁾ Source: Brochure entitled *Un système commun au service de chacun*, Groupement des cartes bancaires 'CB', December 1988.

⁽⁴⁾ For the purposes of this Decision, the Eurocheque card is a 'guarantee card' and not an electronic payment card, as defined by the Commission in its recommendation 87/598/EEC on a European Code of Conduct (OJ No L 365, 24. 12. 1987, p. 72) and in its recommendation 88/590/EEC concerning payment systems, and in particular the relationship between cardholder and card issuer (OJ No L 317, 24. 11. 1988, p. 55).

B. The relevant markets

- (8) The relevant market is that for Eurocheques drawn abroad, and more specifically that for Eurocheques made out in French francs to the 500 000 French traders belonging to the card payment system of Groupement by holders of Eurocheque cards not issued by banks established in France and, secondarily, that for all international means of payment to French traders.

(1) *Potential drawers of foreign Eurocheques in France*

- (9) In 1988 ⁽¹⁾, 8 000 banks in 21 countries (including all the Member States except Greece and Italy) issued uniform Eurocheques, and almost all the banks, with 220 000 agencies in 40 countries (in Europe and most of the countries on the Mediterranean rim) accepted them. In all 44,4 million cards were issued in 1988 (34,5 million uniform cards and 9,9 million non-uniform cards). More than 5 million traders in 30 countries accept Eurocheques. In 1988, 50 million Eurocheques were made out abroad in local currency, involving a total amount of ECU 6,7 billion, i.e. an average of ECU 134 per Eurocheque drawn.

- (10) Of the more than 37,1 million uniform Eurocheque cards issued in 1989 ⁽²⁾, more than 33 million were issued in Member States of the European Community:

— Belgium :	3 210 000,
— Denmark :	217 185,
— Germany :	23 300 000,
— Greece :	—,
— Spain :	10 000,
— France :	98 657,
— Ireland :	99 289,
— Italy :	600 000,
— Luxembourg :	147 400,
— Netherlands :	3 405 939,
— Portugal :	130 038,
— United Kingdom :	1 820 563.

Outside the European Community, the main issuing countries are Austria (2 320 000 cards) and Switzerland (1 676 059 cards).

- (11) All Eurocheque cardholders having an account in a bank not situated in France are potential drawers of Eurocheques in France in the banking or trading sector, the trading sector being the only one taken into account in this Decision. Thus, there were 37 million foreign holders of Eurocheque cards who were in 1989 potential drawers of Eurocheques in France, 33 million of these being nationals of other Member States.

- (12) For the purposes of comparison, the number of French holders of Eurocheque cards and the number of holders of CB cards were as follows in the period from 1984 to 1990 ⁽³⁾:

Year	Eurocheque cards	'CB' bank cards
1984	80 000	13 300 000 ⁽¹⁾
1985	271 800	14 000 000
1986	147 296	14 800 000
1987	137 000	16 300 000
1988	150 000	17 300 000
1989	98 657	18 700 000
1990	86 426	19 500 000

⁽¹⁾ Total number of cards issued by the Groupement Carte bleue, the Crédit mutuel and the Crédit agricole.

- (13) Apart from Eurocheque cards, the number of holders of the main international payment cards (credit or debit cards) ⁽⁴⁾ in the European Community was as follows at the end of 1988 ⁽⁵⁾:

⁽³⁾ *Source :*

- for 1984 to 1989 (except for the number of Eurocheque cards for 1989): the Groupement, hearing held on 28 November 1990,
- for 1990: Eurocheque cards: reply made by the Groupement on 12 July 1991 to the supplementary Statement of Objections of 19 June 1991.

⁽⁴⁾ For the concept of payment card, see recommendations 87/598/EEC and 88/590/EEC.

⁽⁵⁾ *Source :* Study on credit cards carried out at the Commission's request by the European Bureau of Consumers' Unions (BEUC), August 1989. There are no data available for Greece, Italy, Luxembourg and Portugal.

⁽¹⁾ *Source :* Eurocheque News No 14, March 1989.

⁽²⁾ *Source :* Brochure Eurocheque 1989-1990.

Cards	Belgium	Denmark	Germany	Spain	France	Ireland	Netherlands	United Kingdom
Eurocard/Access	192 400	130 000	850 000		1 500 000	190 000	180 000	12 200 000
Visa	160 000		220 000	6 000 000	6 000 000	280 000	65 000	15 400 000
American Express	130 000		600 000	230 000	360 000	30 000	155 000	1 000 000
Diners Club	115 000	85 000	320 000	110 000	142 000	14 000	80 000	300 000
Total	597 400	215 000	1 990 000	6 340 000	8 002 000	514 000	480 000	28 900 000

These figures show that competition between payments by Eurocheque and payments by credit or debit card is limited for practical reasons: the situation differs from one Member State to another, since many users of Eurocheques do not have credit or debit cards available to them and *vice versa*. In particular, as regards persons from other Member States spending some time in France, it is quite evident that the great majority of Germans have only Eurocheques available to them (23 million holders of Eurocheques as against 2 million holders of credit or debit cards). To a lesser degree, but still in large measure, the same applies to the Dutch (3,4 million holders of Eurocheques as against 0,5 million holders of credit or debit cards) and to the Belgians (3,2 million as against 0,6 million). By contrast, the British hold credit or debit cards in much greater numbers (29 million) than Eurocheques (1,8 million), as do the Spanish

(6,3 million as against 10 000) and, to a lesser extent, the Irish (0,5 million as against 0,1).

(2) Foreign Eurocheques drawn in France

- (14) As may be seen from the two tables set out below ⁽¹⁾, France is the leading country accepting Eurocheques, with a total of 6 430 832 foreign Eurocheques drawn in France in 1989, equivalent to 15 % of all Eurocheques drawn abroad that year. More than 85 % of the Eurocheques drawn in France are made out by nationals of other Member States, mainly Germans (36 % of the total number of Eurocheques drawn in France), Belgians (17 %), Dutch (15 %) and British (15 %).

⁽¹⁾ Source: Letter sent by Eurocheque International to the Commission on 18 May 1990.

Number of international uniform Eurocheques drawn within the European Community in 1989

Drawn in	Drawn by											Total	
	Belgium	Denmark	Germany	Greece	Spain	France	Ireland	Italy	Luxembourg	Netherlands	Portugal		United Kingdom
Belgium Denmark Germany Greece Spain France Ireland Italy Luxembourg Netherlands Portugal United Kingdom	—	6 844	342 542	—	—	66 041	5 844	118	242 072	963 084	3 167	101 202	1 730 914
	11 821	—	472 424	—	—	422	1 164	112	2 660	45 052	543	23 565	557 763
	406 529	131 609	—	—	—	176 259	16 112	1 829	162 600	2 697 668	4 600	415 710	4 012 916
	86 854	65 349	1 088 046	—	—	2 601	6 597	772	6 379	229 335	792	191 736	1 678 461
	456 092	94 915	3 127 468	—	—	20 832	39 439	1 357	24 735	531 149	30 092	855 136	5 181 215
	1 093 671	92 532	2 307 098	—	—	—	42 841	1 738	98 776	986 643	12 533	981 453	5 617 285
	9 978	1 701	94 392	—	—	568	—	125	1 625	18 337	192	131 905	258 823
	227 898	70 646	2 799 560	—	—	32 532	13 716	—	33 005	231 013	5 773	257 898	3 672 041
	262 345	3 020	91 677	—	—	61 900	549	18	—	109 346	316	8 501	537 672
	418 172	14 071	1 244 498	—	—	1 715	7 131	357	13 076	—	2 527	151 166	1 852 713
Portugal United Kingdom	55 315	19 249	267 377	—	—	5 738	12 438	167	9 986	103 457	—	166 099	639 826
	139 679	37 672	897 604	—	—	5 641	168 789	736	11 086	291 946	12 070	—	1 565 223
Total	3 168 354	537 608	12 732 686	—	—	374 249	314 620	7 329	606 000	6 207 030	72 605	3 284 371	27 304 852

Classification of the ten leading countries, EEC and non-EEC, in terms of numbers of foreign Eurocheques accepted and drawn in 1989

(Total number of foreign Eurocheques drawn in 1989 : 42 140 887)

Rank	Accepting countries				Drawing countries			
	Country	Number of Eurocheques	%	Cumulative %	Country	Number of Eurocheques	%	Cumulative %
1	France	6 430 832	15,2	28,5	Germany	20 106 545	47,7	65,7
2	Spain	5 606 401	13,3	41,7	Netherlands	7 601 007	18	74,7
3	Austria	5 553 712	13,2	54,4	United Kingdom	3 818 227	9	83,1
4	Germany	5 356 978	12,7	65	Belgium	3 535 793	8,4	89,1
5	Italy	4 492 630	10,6	69,8	Switzerland	2 511 476	6	94,1
6	Switzerland	2 038 019	4,8	74,5	Austria	2 091 429	5	95,7
7	Netherlands	1 986 442	4,7	79,1	Denmark	677 763	1,6	97,2
8	Greece	1 940 022	4,6	83,5	Luxembourg	640 464	1,5	98,2
9	United Kingdom	1 875 376	4,4	87,7	France	420 664	1	99
10	Belgium	1 779 024	4,2		Ireland	337 178	0,8	

- (15) The Groupement has, moreover, stated ⁽¹⁾ that, of the 6,5 million foreign Eurocheques drawn in France, some one million were made out to traders and that this percentage of some 15 % of Eurocheques drawn in the trading sector in relation to the total number of Eurocheques is broadly similar from one country to another.

C. The Helsinki Agreement

- (16) The Helsinki Agreement runs totally counter to the Package Deal Agreement, which governs the use of Eurocheques abroad.

(1) *The Eurocheque system: the package deal Agreement*

- (17) The package deal Agreement was concluded on 31 October 1980 within the Eurocheque community and was put into effect from 1 May 1981. It was notified to the Commission on 7 July 1982 by the national banking groups making up the Eurocheque community. It was granted exemption by Commission Decision 85/77/EEC ⁽²⁾. The exemption ended on 30 April 1986, the date on which the initial Agreement expired. Pending a complete recasting of the Agreement, as was envisaged at that time within Eurocheque, a provisional comfort letter was sent to Eurocheque International on 10 July 1986, valid until 30 December 1987.

- (18) The new package deal Agreement was concluded at the Eurocheque Assembly held on 4 and 5 June 1987 and was notified to the Commission on 16 December 1987. Its full title is 'Agreement on the commissions, value dates and central clearing of uniform Eurocheques made out in local currency and the opening-up of the non-banking sector'. It has applied since 1 January 1988 for an indefinite period until the conclusion of a new agreement, which was to take place within two years. However, no new agreement was concluded during that period, and the 1987 Agreement continues to apply. The 1987 Agreement does not differ essentially from that which was covered by Commission Decision 85/77/EEC. Contrary to what may have been envisaged at one time, the system has not been substantially recast. However, two significant changes were made compared with the agreement exempted in 1984:

- the maximum amount of the interbank commission was raised,
- and a minimum was introduced for the interbank commission.

- (19) The main provisions of the package deal Agreement have already been outlined in Commission Decision 85/77/EEC. The Eurocheque system is based — or at least was based up to now — on the basic principle that the payee of a uniform Eurocheque drawn abroad in local currency — whether a trader or the drawer himself wishing to withdraw cash from a bank — must receive the full amount of the Eurocheque. In their relationships with the drawers of Eurocheques, the banks are free to pass on or not to pass on all or part of the commissions paid to the foreign banks and to the clearing houses, and possibly to charge a commission for their own account.

- (20) In the new 1987 Agreement, the maximum guaranteed amount remains the approximate equivalent value in local currency of Sfr 300, equivalent to some ECU 170. In France, it is currently FF 1 400. In addition, if they are to be dealt with in the Eurocheque international clearing system, Eurocheques must not exceed a certain amount, being the approximate equivalent in local currency of Sfr 600 (some ECU 340). In France, this amount is currently FF 2 500.

- (21) The maximum amount of the interbank commission paid to the foreign bank of the payee of the Eurocheque by the drawee bank was set at 1,25 % in the agreement exempted in 1984. At its extraordinary meeting held on 24 April 1986, the Eurocheque Assembly decided to increase this maximum to 1,60 % from 1 June 1986 to 31 December 1987. This increase, which was then temporary, was extended in the new agreement concluded on 5 June 1987 with effect from 1 January 1988.

- (22) The new 1987 agreement also introduced a minimum amount for the interbank commission, having the approximate equivalent value of Sfr 2 (around ECU 1,10) per Eurocheque, which thus applies to Eurocheques drawn in France for an amount of less than some FF 500.

(2) *The Helsinki agreement*

- (23) During the proceedings leading up to Decision 85/77/EEC, the Commission, on 19 September 1984, sent the AFB, which was then acting as the national Eurocheque community for France, a request for information following a complaint rela-

⁽¹⁾ In its reply of 29 October 1990 to the Statement of Objections and at the hearing held on 28 November 1990.

⁽²⁾ OJ No L 35, 7. 2. 1985, p. 43.

ting to the conditions governing the collection in France of a Eurocheque drawn on a foreign bank. The AFB replied, by letter dated 17 October 1984, that, although the French banks had acceded to the package deal Agreement as regards cash withdrawals by foreigners at bank counters in France, they had not agreed to the provisions regarding:

- the acceptance of foreign Eurocheques in the trading sector in France,
- the paying-in of foreign Eurocheques by (French) individuals for collection by French banks.

However, this reply by the AFB is at variance with the notification on 7 July 1982 by Eurocheque International, on behalf of all the members of the Eurocheque Assembly (to which the AFB belonged), of the package deal Agreement, which covered the 'opening-up of the non-banking sector'. Nowhere in the notification was it stated that a national Eurocheque community had only partially acceded to the package deal Agreement.

The AFB also stated that 'the French banks which are members of the Groupement Carte bleue have agreed, on an experimental basis, to open up their trader network to foreign Eurocheques on the same terms as to customers who are Carte bleue or Visa card holders. This agreement, which covers almost 300 000 traders in France, falls outside the package deal'.

In recital 22 of Decision 85/77/EEC, the Commission made reference to this situation, which had been presented to it as being 'on an experimental basis'.

- (24) In 1988, in response to various complaints received following Decision 85/77/EEC, the Commission sent requests for information to various French credit institutions. One of these replied, in greater detail than the AFB had done in 1984, that: 'The treatment of payment by Eurocheque in the same way as payment guaranteed by a card derives from a decision taken in Helsinki on 19 and 20 May 1983 at the Eurocheque Assembly'.
- (25) In a request for information which it sent on 11 April 1989, the Commission requested Eurocheque International to send it the text of the agreement. Eurocheque replied initially, on 7 June 1989, that

'in accordance with the by-laws in force in the Eurocheque system, the Assembly is the highest-level body of the community. Decisions are taken by it and recorded in minutes. The principles of the internal agreement between the French financial institutions and the Eurocheque Assembly were adopted at the Assembly's meeting held in Helsinki on 19 and 20 May 1983 and were not, therefore, set out in a formal document signed by the parties concerned'.

Subsequently, in a supplementary reply sent on 17 August 1989, Eurocheque International finally sent the text of the agreement, when pressed to do so by the Commission.

- (26) The Agreement is entitled 'Agreement between the French financial institutions and the Eurocheque Assembly on the acceptance by traders in France of Eurocheques drawn on foreign financial institutions in accordance with the principles adopted at the meeting of the Eurocheque Assembly held in Helsinki on 19 and 20 May 1983'. Under the Agreement, which was included in Chapter E of the Eurocheque manual, the French banks and financial institutions agreed with the Eurocheque International Community that traders affiliated to the Groupement Carte bleue and/or to Eurocard France SA would, as from 1 December 1983, accept foreign Eurocheques made out in French francs for the payment of goods and services, on the terms as those of the abovementioned organizations.

The Agreement includes in particular the following provisions:

- in respect of purchases paid for by Eurocheques, the members of the Groupement Carte bleue and of Eurocard will charge their affiliated traders a commission which may not be greater than that applicable to payments by Carte bleue and Eurocard payments⁽¹⁾.
- The banks which are members of the Groupement Carte bleue and of Eurocard will ensure that their affiliated traders do not increase the price of purchases paid for by Eurocheque, even in the case of special offers or sales.

⁽¹⁾ The present standard contract used by the Groupement with retailers applies to payments made by CB cards, Visa Cards, and Eurocard/Mastercard.

— If the affiliated trader contravenes the principles set out above, the French banks and financial institutions will take action as soon as possible so as to ensure that they are complied with in future. Where the commission charged has been passed on to the holder of the foreign Eurocheque, the French banks and financial institutions will retrocede the amount to the issuing bank. Where there is recurrence of breaches of the principles, the French banks and financial institutions will adopt identical sanctions to those imposed in respect of Carte bleue or Eurocard in the same circumstances.

— During the clearing of foreign Eurocheques drawn in France and in accordance with the provisions of the package deal Agreement, a commission of 1,25 % of the amount of all the abovementioned cheques will be added and charged via the national clearing houses'.

It was also provided, in point 8 of the Agreement, that, before the end of 1984, the position regarding charges would be reviewed. In practice, it does not appear that any such review was carried out at the end of a year, and the Agreement continued to apply unchanged until May 1991, the only difference being that it was longer a 1,25 % commission that was charged in accordance with the package deal Agreement, but a 1,60 % commission with a minimum amount of Sfr 2.

(27) Since 1985, it has in practice been the traders affiliated to the Groupement who have been affected by the Agreement, since, following the signature of the Helsinki Agreement, the card networks were made interoperable, resulting in the setting-up of the Groupement, which has since then acted as the national Eurocheque community for France and represents the French financial community within Eurocheque international sc.

(28) Since the conclusion of the Agreement in 1983, another change of relative importance, at least in theory, with regard to its scope took place when the 'conseil de direction' of the Groupement adopted, on 25 October 1985, a directive under which the uniform rate of the commission hitherto charged to traders by the members of the Groupement in respect of all payments by the CB card was abandoned.

(29) Parallel to the Helsinki Agreement, the protocol of 31 July 1984 (referred to in recital 2 above) included a clause under which 'as from 1 July 1986, the uniform Eurocheque will no longer be issued with a free-of-charge guarantee of payment in France; it may continue to be issued only for

use abroad'. The French Conseil de la concurrence, in its decision No 88-D-37 of 11 October 1988⁽¹⁾, called on the Groupement to abolish this clause before 31 December 1989.

D. The proceedings

(1) *The initial Statement of Objections*

(30) Both the use which was made of the initial package deal Agreement following Decision 85/77/EEC and the changes which were made to the text of the agreement following the exemption prompted the Commission, on 31 July 1990, to send Eurocheque International a Statement of Objections, which also included the Helsinki Agreement. A Statement of Objections which covered only the Helsinki Agreement was simultaneously sent, on the same day, to the Groupement.

(31) The Statment of Objections sent to Eurocheque International with regard to the package deal Agreement and the way in which it had been applied related to:

— the lack of information:

in particular, Eurocheque was charged with not having complied with the obligation imposed under Decision 85/77/EEC regarding the detailed ex-post information to be provided to drawers of Eurocheques,

— charges:

with regard to the interbank commission, Eurocheque was charged, firstly, with the systematic application by all the system's members of the maximum amount of 1,60 % and, secondly, with the introduction of a minimum amount of Sfr 2 for the interbank commission; in addition, Eurocheque was charged with the fact that this, in practice, uniform interbank commission was consistently and systematically passed on in full to customers, i.e. to the drawers of the Eurocheques,

— the limits imposed on the use of Eurocheques:

although exempted in 1984, the uniform setting of the maximum guaranteed amounts and maximum clearing amounts was, after detailed re-examination, criticized by the Commission.

⁽¹⁾ Bulletin Officiel de la Concurrence de la Consommation et de la Répression des Fraudes, 15 October 1988, p. 271.

- (32) The objections stated to Eurocheque International and the Groupement in respect of the Helsinki Agreement related to the fact that this was clearly a price-fixing agreement, applicable moreover in relations between banks and customers and not only in interbank relations, since, through the Agreement, the French banks decided, with the approval of the Eurocheque International community as a whole, to charge their trader customers a commission equal in amount to that which they charge them for payments made by bank card (French or foreign). In addition, the objection was made that the Agreement had the object and immediate effect in the trading sector of making any competition whatsoever impossible between Eurocheques (in principle free of charge to payees) and payments by card, which the French banks have on the whole opted for in preference to the Eurocheque system.
- (33) Eurocheque International replied to the Statement of Objections on 6 November 1990, disputing the correctness of its arguments. Following the hearing organized at Eurocheque International's request on 28 November 1990, discussions continued to take place with the Commission; during these, it became apparent that the focus was shifting to a major point which, hitherto, had not posed any problem, namely the fact that Eurocheques were free of charge to payees, an aspect which had been breached by the Helsinki Agreement. Eurocheque International, while not disputing that the system was originally founded on this basis, now felt that this principle should no longer be applied, whereas the Commission pointed out that it was on this essential aspect that Decision 85/77/EEC hinged and that this therefore called into question the renewal of the exemption, assuming that all the other points raised in the Statement of Objections were resolved.
- (34) With regard to the Helsinki Agreement, the arguments put forward by Eurocheque International and, in particular, by the Groupement in its reply of 29 October 1990 to the Statement of Objections of 31 July 1990, and at the hearing on 28 November 1990, consisted mainly in denying that the Agreement contained any obligation whatsoever to charge a commission and in asserting that, far from having been restrictive, the Agreement had, on the contrary, the object and effect of promoting the development of Eurocheques in France.
- (35) The Statements of Objections of 31 July 1990 concerning the Helsinki Agreement concentrated on the applicability of Article 85 (1), since, at the time when they were drawn up, the Helsinki Agreement had not been notified and therefore the question of the applicability of Article 85 (3) did not arise. However, this question was none the less discussed in the Statements of Objections, and the conclusion reached was that, even if the Helsinki Agreement had been notified, it could not have been exempted.
- (36) However, on 16 July 1990, the Groupement formally notified the Commission of the Helsinki Agreement. This notification took place five days after a meeting with Commission officials, during which the Commission officials had confirmed to the lawyers representing the Groupement that a Statement of Objections concerning the Helsinki Agreement had been drawn up and that its dispatch was probably imminent. The Statements of Objections of 31 July 1990 make reference to this precipitate notification of an agreement concluded seven years previously. The Groupement objected that the Statement of Objections that had been sent to it had not taken account of the notification and the arguments put forward therein.
- (37) The Commission therefore deemed it appropriate, so as to ensure absolute respect of the rights of the parties, to follow up the Statement of Objections sent to the Groupement on 31 July 1990 with a supplementary Statement of Objections relating to Article 85 (3).
- (2) *The supplementary Statement of Objections*
- (38) This second Statement of Objections, dated 19 June 1991, did not in substance alter the legal assessment made in the original Statement of Objections, but answered the arguments relating to Article 85 (3) put forward by the Groupement both in its notification and in its reply to the initial Statement of Objections and at the meeting, as well as in letters subsequently sent to the Commission on 7 February, 22 March and 22 May 1991.
- (39) The supplementary Statement of Objections relating to the notification of the Helsinki Agreement was sent only to the Groupement, since Eurocheque International sc had not been involved in the notification. However, a copy of the supplementary Statement of Objections was sent to Eurocheque International on 20 June 1991.

(40) In its abovementioned letter of 22 May 1991, the Groupement informed the Commission that 'as regards the abolition of the Helsinki Agreements, as you have probably been informed, the Eurocheque Assembly, taking note of the opposition of your staff, has decided to terminate them'. However, no mention was made of the date on which such abolition was to take effect. In a letter dated 5 June 1991, Eurocheque International informed the Commission that 'the Eurocheque Board meeting held in Shannon, Ireland on 9 and 10 May, [...] expressed its willingness to abolish this agreement in view of your repeated demands, notwithstanding its non anti-competitive nature'. Since the term 'willingness' is not exactly equivalent to the term 'decided' used by the Groupement, there was accordingly some ambiguity as to the abolition of the Helsinki Agreement.

(41) In its reply of 12 July 1991 to the supplementary Statement of Objections, the Groupement removed any ambiguity on this subject by attaching a circular sent on 27 May 1991 by the Chairman of the Groupement to all members, informing them that:

'The provisions challenged by the Commission are generally known as the "Helsinki Agreements" were the result of a decision taken by the Eurocheque General Assembly. The Assembly has just terminated them, at its meeting on 9 and 10 May 1991. The acceptance of Eurocheques is thus now totally independent of the financial terms which your institution applies in respect of the remittance of payments by "CB" bank cards'.

II. LEGAL ASSESSMENT

A. Article 85 (1)

(1) *Undertakings and associations of undertakings*

(42) The banks and other credit institutions members of the Groupement and of the other national banking groups participating in the Eurocheque system are undertakings within the meaning of Article 85 (1). Eurocheque International sc, the Groupement and the national banking groups of the other Member States holding shares in Eurocheque International sc are associations of undertakings within the meaning of Article 85 (1).

(2) *Agreements between undertakings*

(43) In its reply of 12 July 1991 to the supplementary Statement of Objections of 19 June 1991 the Groupement asserts that 'the Helsinki agreement [...] is not an agreement between French banks and the Eurocheque community. Its provisions stem from a resolution of the Eurocheque General Assembly. At all events, it is a decision binding on the whole Eurocheque community'.

(44) It should be pointed out, however, in this connection that the text which the Groupement notified to the Commission on 16 July 1990 is in fact entitled 'Agreement between the French financial institutions and the Eurocheque Assembly'. Although in its Annex to Form A/B of the notification the Groupement chooses to use the word 'modalities', not once does it say that the text is not an agreement; on the contrary, it uses the word 'agreement' several times. Concerning the grounds for the negative clearance requested, it is thus stated in point 5.1 (page 5 of the Annex) that 'the Groupement does not think that the notified agreement contains any restrictions of competition' and in point 5.2 (page 6) that 'the agreement appreciably increases competition', and again in point 6.1 (page 6) that 'thanks to this agreement, France has risen from a particularly modest position to a position of leader'.

(45) This being so, the Helsinki Agreement is without doubt an agreement within the meaning of Article 85 (1), the parties to which were, until it was abolished in May 1991, the Groupement and Eurocheque International sc, the Groupement itself having indicated as such on Form A/B of the notification of the said Agreement.

(3) *Restrictions of competition*

(46) The Helsinki Agreement constitutes a particularly serious restriction of competition. Not only is it clearly a price-fixing agreement, but it is also applicable to relations with customers.

(47) In the first place, it is an agreement on the charging of a commission to customers, or more precisely an agreement whereby all French banks agree among themselves to bill their French trader customers affiliated to the payment system of the Groupement a commission equivalent to that which they charge them on payments effected by holders of 'CB' cards.

(48) In this connection, the Groupement has claimed throughout⁽¹⁾ that the agreement did not prescribe the charging of a commission. Eurocheque international, which commented on the Helsinki Agreement — both from the point of view of Article 85 (1) and from that of Article 85 (3) — only in its reply of 6 November 1990 to the Statement of Objections of 31 July 1990, subsequently leaving it to the Groupement to defend the Agreement, in particular at the hearing of 28 November 1990, likewise maintained⁽²⁾ that the agreement in no way prescribed the charging of a commission. The wording of the Helsinki Agreement is, however, unequivocal in this respect, stipulating that 'members of the Groupement Carte bleue and of Eurocard shall charge their affiliated traders a commission'. It is therefore perfectly clear from the wording of the Helsinki agreement itself that it lays down the obligation to charge a commission. The Groupement also argued at the hearing that some French banks do not charge such a commission. Apart from the fact that only two examples were given, from which it can be deduced that almost all French banks charge a commission, an agreement on the charging of a commission does not cease to be restrictive of competition by virtue of the fact that not all the parties thereto, but only the vast majority of them, apply it. Moreover, Article 85 (1) is applicable not only to agreements which have as their effect the restriction of competition but also to those which have such a restriction as their object. The use of the words 'will charge' shows clearly that the object of the agreement was in fact to charge a commission on Eurocheques.

(49) The Helsinki agreement is also an agreement on the amount of commission charged. Point 3 of the agreement states that members will charge 'a commission which may not be greater than that applicable to payments by Carte bleue and Eurocard'. On the strength of this wording, the Groupement has repeatedly asserted that the Helsinki Agreement in no way constitutes such an agreement. This is contradicted, however, by at least two factors. Firstly, the opening lines of the agreement state that affiliated traders will accept foreign Eurocheques 'on the same terms' as those of the Groupement Carte bleue and Eurocard. At the time of signature of the agreement, and up until October 1985, those terms were uniform. The second factor, which bears out the first, is the abovementioned

letter from the AFB dated 17 October 1984, in which it is once more stated that the network of French traders affiliated to the Groupement Carte bleue was open to foreign Eurocheques 'on the same terms' as those of Carte Bleue.

(50) Although the anti-competitive nature of the agreement was particularly serious at the time of its conclusion and up until 25 October 1985, the fact that as from that date the Groupement abolished the uniform rating hitherto applied to traders does not make the restriction of competition that the Helsinki agreement represents any less marked. That agreement has continued ever since to be an agreement on the principle of charging a commission: such an agreement is, by its very nature, restrictive of competition, as the Commission found in Decision 87/13/EEC, Association Belge des Banques⁽³⁾. Moreover, the Helsinki agreement continues to establish, if not for all traders as it did up until October 1985, then at least for each trader affiliated to the Groupement, an indissociable and altogether unjustified link between payment by card and payment by Eurocheque — two profoundly different means of payment. In the last analysis, the aim of the Helsinki agreement is to align the price of payment by Eurocheque for French traders on the price of payment by card. This had the effect of rendering the use of Eurocheques less attractive for French traders. Combined with the prohibition (referred to at recital 29) imposed by French banks on issuing Eurocheques for domestic use, this agreement has impeded the development of Eurocheques within France as a domestic means of payment.

(51) Compared with the Eurocheque system as exempted by the Commission in 1984, the Helsinki Agreement appears to be truly at variance with that system, which was based, *inter alia*, on the principle — which, as Eurocheque acknowledges, has contributed to its success — that the payee of a Eurocheque receives the amount thereof in full.

(52) The Groupement and Eurocheque International contend that the Commission was aware of the situation arising from the Helsinki agreement when it adopted Decision 85/77/EEC. It should be pointed out in this connection that the Helsinki Agreement, which was concluded in 1983, was not formally notified to the Commission until 1990 and that, despite repeated requests, the Commis-

⁽¹⁾ Both in the notification and in its reply to the original Statement of Objections, at the hearing and in its reply to the supplementary Statement of Objections.

⁽²⁾ Points 61 and 99 of the reply to the Statement of Objections.

⁽³⁾ OJ No L 7, 9. 1. 1987, p. 27 (see recital 45).

sion was not sent a copy of the Agreement until August 1989. The Commission was therefore unable to assess the agreement for want of an exhaustive knowledge of it. Admittedly, the Commission did get to hear about the agreement from the AFB in October 1984, but the AFB described it as being 'experimental', and this had the effect of limiting the Commission's interest in gaining more detailed knowledge at that time of its precise terms. There is, incidentally, nothing in the Helsinki Agreement itself about its being experimental; all the Agreement says is that the position with regard to rating will be reviewed in a year's time.

- (53) Of both more far-reaching and more fundamental importance is the fact that the reply from the AFB painted quite a different picture of the situation from that which the Commission had obtained from the notification of the package deal Agreement in July 1982 by Eurocheque International on behalf of all the national member groupings of the Eurocheque Assembly, of which the AFB was one. As its title indicates, the package deal agreement related specifically to the opening-up of the non-banking sector. There is therefore a contradiction, which may have partly escaped the Commission at the time, in claiming, as the AFB did in 1984, and as the Groupement continues to do in its reply to the supplementary Statement of Objections⁽¹⁾, that French banks have not subscribed to the provisions concerning the acceptance of Eurocheques in trade in France.

- (54) Eurocheque International and the Groupement have argued that the package deal Agreement rested in no way — or, at all events, no longer — on the basic principle according to which the payee of a Eurocheque must always receive the full amount thereof, and that therefore the Helsinki Agreement was in no way at variance with the Eurocheque system governed by the package deal Agreement.

- (55) In spite of this, there can be no denying that, at the time of its conclusion, the Helsinki Agreement was at variance with the package deal Agreement, which was based, *inter alia*, on the principle that the Eurocheque is free of charge to its payee, the costs being borne by the drawer. Eurocheque International acknowledges this fact⁽²⁾. It was, moreover, one of the grounds for Decision 85/77/EEC⁽³⁾. It is not at all clear why a multilateral interbank agree-

ment would have been necessary if it was possible for the paying bank to collect a commission on foreign Eurocheques remitted to it for payment. The package deal Agreement was justified precisely because the paying bank received no remuneration from the remittance of the Eurocheque but rather received a commission from the issuing bank.

(4) *Effect on trade between Member States*

- (56) An agreement like the Helsinki Agreement clearly has an effect on intra-Community trade as it concerns cheques drawn in a Member State by nationals of another Member State. The effect is particularly appreciable in the present case as France is the principal accepting country with nearly 6,5 million Eurocheques, of which 15 % in trade as a whole. Taking as a basis the abovementioned average of ECU 134 per Eurocheque, the annual amounts involved are, for all Eurocheques drawn in France, ECU 871 million, and, for Eurocheques drawn in the trading sector in France, ECU 134 million.

B. Article 85 (3)

- (57) The examination as to the applicability of Article 85 (3) does not, by definition, concern the application of the Helsinki agreement between 1 December 1983 and 16 July 1990 as, throughout that period, the agreement had not been notified. The question of the applicability of Article 85 (3) therefore arises only in respect of the period from 16 July 1990, the date of notification of the agreement, to 27 May 1991, the date of its abolition.

(1) *Improvement of the services on offer*

- (58) In its notification, and in its subsequent submissions, the Groupement based the justification of the applicability of an exemption on the central argument that the Helsinki Agreement had as its object and as its effect the furthering of the development of Eurocheques in France. Thus, in the Groupement's view, the first of the four conditions set out in Article 85 (3), namely the improvement of distribution and the promotion of technical and economic progress, was fulfilled because 'thanks to this agreement, France has risen from a particularly modest position to a position of leader'.

⁽¹⁾ See the first paragraph on page 9: 'French banks have never approved of the extension of the package deal to the non-banking sector'.

⁽²⁾ Record of the hearing of 28 November 1992, page 82, and letter to the Commission of 31 July 1991.

⁽³⁾ See recitals 21 and 38.

- (59) Far from having as its object or effect the furthering of the development of Eurocheques in France, as claimed by the Groupement, the Helsinki agreement seems to have had as its object and as its effect the stunting of such development. It can be described as the second aspect of a mechanism set up by French banks to impede potential competition from Eurocheques, the other aspect being the provision in the protocol of 31 July 1984 setting up the Groupement which prohibited members of the Groupement from issuing Eurocheques for domestic use.
- (60) At the hearing of 28 November 1990 the Groupement argued, firstly, that the limited number of Eurocheques issued by French banks was an issue of fact and not the result of concerted practices, and, secondly, that, despite the abolition in 1988 of the restrictive provision in the 1984 protocol setting up the Groupement whereby French banks could issue Eurocheques only for use abroad (see recital 29 above), the number of Eurocheques issued by French banks fell in 1989 (see recital 12 above).
- (61) The figures which the Groupement furnished at the hearing show that this clause of the protocol had a lasting impact, contrary to what the Groupement stated at the hearing, where it claimed that it had been abolished in 1988 and that, despite that abolition, the number of French holders of Eurocheque cards had fallen in 1989. In fact, it was not until 31 December 1989 that the clause was deleted in response to an order by the French Conseil de la concurrence in its Decision No 88-D-37 of 11 October 1988, in which it is stated (Article 3 of the operative part) that: 'The Groupement is called upon to abolish before 31 December 1989 the stipulation in the protocol of 31 July 1984 to the effect that uniform Eurocheques will no longer be issued with a guarantee of payment in France and can continue to be issued only for use abroad'.
- (62) The claim made by the Groupement at the hearing that the provision in question had been abolished in 1988 and that that abolition had not prevented the number of French drawers of Eurocheques from decreasing in France in 1989 was therefore false. In the contrary, there is a direct link between the entry into force of the clause on 1 July 1986 and the fall in the number of French drawers of Eurocheques, which had increased appreciably in 1985.
- (63) In its reply to the supplementary Statement of Objections the Groupement did not offer any explanation for this surprising presentation of the facts at the hearing, pointing out instead that its argument was conformed by the facts as far as the 1990 figures were concerned.
- (64) This argument is not convincing; the figures show that Eurocheque cards issued by French banks enjoyed a period of success in 1985 and that that success was nipped in the bud by the entry into force of the provision in question the following year. It is not surprising that 1990 did not see the number of Eurocheque cards issued in France take off again, given the 50 % increase in the meantime in the number of bank cards issued: the objective of preventing the development of Eurocheques has been attained, and this situation now seems to be irreversible.
- (65) Like this clause in the 1984 protocol, abolished by the Groupement as from 31 December 1989 as a result of the intervention of the French Conseil de la concurrence, the Helsinki Agreement may be considered as having not only as its object but also as its effect the hampering of the development of Eurocheques in France by making French traders pay for a means of payment, the Eurocheque, which was in principle free of charge to them pursuant to the 1980 package deal Agreement. The anti-competitive object of the two provisions combined has been attained, judging by the annual rate of increase in the number of bank cards in France throughout the period during which the Helsinki Agreement was coupled with the provision in the Groupement's by-laws censured by the Conseil de la concurrence. The upshot is that at present nearly every French household has a bank card, 19,5 million CB cards having been issued in 1990, with the result that the risk to the Groupement of potential competition from Eurocheque in France has been virtually eliminated.
- (66) It is likewise wrong to claim, as the Groupement did in its notification, that the Helsinki Agreement has contributed to improving distribution and to promoting technical and economic progress because France is the leading acceptor of Eurocheques. Whilst it is true that it is in France that the largest number of foreign Eurocheques were drawn in 1989, the explanation cannot lie in the Helsinki Agreement as, according to the figures furnished by the Groupement, of the 6,5 million

Eurocheques drawn in France in 1989, the number of Eurocheques made out to traders was approximately 1 million. The Helsinki agreement, being concerned with only 15 % of the Eurocheques drawn — or even a slightly lower percentage as not all the French traders to whom foreign Eurocheques are made out are members of the Groupement's system of payment by card — cannot therefore in any way be the reason why France is the leading acceptor of Eurocheques. The reason is, rather, to be found in the number of tourists in France coming from the largest Eurocheque-drawing countries, whose ranking is given in the second table of recital 14, from which it can also be seen that France, which ranks first among accepting countries with 15 % of Eurocheques being drawn in France, ranks only ninth among Eurocheque-drawing countries, accounting for only 1 % of Eurocheques drawn abroad, which shows clearly that France is not, on the whole, a country which favours the Eurocheque system as do Germany and the Benelux countries.

(2) *Benefits to users*

(67) In the opinion of the Groupement, the second condition for the application of Article 85 (3), namely that of allowing users a fair share of the resulting benefit, is fulfilled as far as the two categories of user, i.e. holders and traders, are concerned, because the agreement 'has enabled foreign holders of Eurocheques to benefit from a reduction in the costs incurred through using their cheques' and that 'such foreign holders have been afforded considerable opportunities for using their Eurocheques as they have acquired instantaneously the possibility of withdrawing cash from more than 250 000 branches of the member banks of the Groupement and of effecting payments on the premises of more than 450 000 CB-affiliated traders'. As to traders, they have 'amply benefited from the acceptance of Eurocheques by the system of payment by card', and 'from the advertising targeted at foreign holders' by the Groupement.

(68) As far as the drawers of Eurocheques are concerned, to claim that the Agreement has enabled them to benefit from a reduction in the costs they incur is to forget that, under the terms of the 1980 package deal signed by the French banking community, holders were not to be billed for Eurocheques used abroad: if French banks charged holders a commission, either before or after the Helsinki Agreement, it was in violation of

the package deal Agreement. It is just as wrong to claim that the Helsinki Agreement afforded drawers the opportunity of withdrawing cash from 250 000 branches of the member banks of the Groupement: such an opportunity, if it did not previously exist, resulted from the 1980 package deal and not from the 1983 Helsinki Agreement, which concerned only the trading sector.

(69) With regard to traders, it is clear that the Helsinki Agreement works entirely to their disadvantage as it means they have to pay a commission on each foreign Eurocheque they receive in payment, whereas, for traders in the other Member States, the Eurocheque is free of charge by virtue of the 1980 package deal. French traders are therefore the only traders in the Community who have to pay a specific commission on foreign Eurocheques. If it had not been for the Helsinki Agreement, French traders would, under the package deal Agreement, to which French banks were party, have had no commission to pay and might thus have tended to apply pressure on the French banking community to curb the development of payment by card — which, for its part, generates a commission payable by the trader — to the advantage of Eurocheques.

(70) The only category of users — if they could be described as such, but they are, rather, intermediaries in the case in point — to benefit from the Helsinki Agreement is made up of French banks, who are thus paid twice for the same service and are the only banks in the Community to be so remunerated: firstly by French traders, as a result of the Helsinki Agreement, and secondly by foreign banks (the banks of the drawers of Eurocheques), as a result of the package deal Agreement. The true users do not, for their part, derive any benefit from the Helsinki Agreement, which, on the contrary, works to their detriment, whether they be traders, who have to pay a commission when the Eurocheque should be free of charge to them, or whether they be drawers, who have difficulty in using their Eurocheques in France, either because traders refuse them precisely because of the commission they have to pay, or because they pass on the drawer the costs which they, as traders, have to pay to their bank.

(3) *Indispensable nature of the restrictions*

(71) According to the Groupement, the third condition of Article 85 (3), viz. the indispensable nature of the restrictions, is fulfilled because 'the system enables holders of Eurocheques to use them in France under the same conditions as in other member

countries of Eurocheque, and their banks to accept Eurocheques under the same conditions as bank cards', and also because the geographical situation of France requires that the use in France by tourists from northern Europe of their usual means of payment be facilitated.

- (72) But it is not the Helsinki agreement that has enabled holders to use Eurocheques in France under the same conditions as in the other Member States: such was the purpose of the package deal Agreement. Were the indispensable nature claimed by the Groupement to consist in the fact that the Helsinki Agreement is the necessary precondition for applying the package deal Agreement in the trading sector in France, this reasoning is unacceptable as the package deal agreement was exempted in 1984 on the ground that Eurocheques were free of charge to their payees. It is therefore quite contradictory to describe the Helsinki Agreement, which constitutes a major derogation from the package deal Agreement, as a restriction which is indispensable to the attainment of the objectives of the package deal Agreement.

- (73) The argument based on the geographical situation of France is equally untenable. Admittedly, there is a structural imbalance in the Eurocheque system in that the Eurocheque-drawing countries are countries of northern Europe (primarily Germany, which accounts for almost half the number of Eurocheques drawn abroad, then the Benelux and, to a lesser extent, the United Kingdom) whereas the accepting countries are above all countries of southern Europe owing to the flow of tourists from the north to the south. It should be pointed out in this connection, however, that France's geographical situation is no more special than that of Italy or Spain, whose banking sector has not considered it necessary to demand a Helsinki-type Agreement and makes do with the remuneration arrangements laid down in the package deal Agreement.

(4) *Scope for competition*

- (74) The fourth condition of Article 85 (3), that of the non-elimination of all competition, is, according to the Groupement, fulfilled because the agreement 'has permitted the introduction in France of a new means of payment usable also by foreign holders' and that 'considerable competition continues to exist between the various international means of payment'.

- (75) First of all, it should be pointed out once more that it is not the Helsinki Agreement that has enabled Eurocheques to be used in the trading sector in France, but the package deal Agreement, which expressly concerns, as its very title indicates, 'the opening-up of the non-banking sector': there was no mention in the agreement notified to the Commission of France being excluded from this opening-up of the non-banking sector.

- (76) As to the non-elimination of all competition, it can be assessed at several levels. The first is that of the directly relevant market, that is to say that of foreign Eurocheques drawn in the trading sector in France. At this level, it is clear that the Helsinki Agreement does result in the elimination of all competition as French banks agree not only to bill a commission to traders, contrary to the package deal Agreement itself, but also that that commission should be the same as that applied to payments by card.

- (77) A secondary, alternative level at which to assess competition could be that of all international means of payment used by French traders. It has already been stated, however, in this connection (see recital 13) that competition between these various means of payment is generally limited for factual reasons. Admittedly, there is always the possibility of carrying cash on one's person. However, apart from the risks of loss or theft that this involves, the exchange costs, as has been shown by several studies by BEUC⁽¹⁾, are particularly dissuasive. As for international credit or debit cards, the figures show that most holders of Eurocheques do not have such cards. Even when a Eurocheque holder has an international payment card, competition is totally eliminated at the level of the commission paid by the trader since those commissions, precisely because of the Helsinki Agreement, are the same whether payment is effected by a Eurocheque or by an international credit/debit card. As to cheques, the Eurocheque is virtually the only cheque in international use, apart from travellers' cheques or postal cheques, which are used above all for cash withdrawals and do not, therefore, compete with Eurocheques as a means of paying traders.

⁽¹⁾ See the study entitled 'Holiday money' of April 1991 carried out at the Commission's request by BEUC in conjunction with the Union fédérale des consommateurs and the magazine *Que choisir*.

C. Article 15 (2) of Regulation No 17

- (78) In view of the gravity (see recital 46 *et seq.*) and duration of the infringement, fines should be imposed both on the Groupement and on Eurocheque International in respect of the whole period prior to the notification. In calculating the amount of the fine the following factors have been taken into account.

(1) *The division of responsibility*

- (79) The initiators of the infringement are the French banks, who therefore bear the main responsibility; the infringement was international on their part or due at least to their negligence. Eurocheque International nevertheless agreed, more or less willingly, to participate in the infringement, for which it therefore also bears an, albeit appreciably lesser, share of the responsibility and which it committed negligently, perhaps even intentionally.

(2) *The profit derived from the Agreement*

- (80) The French banks derived a direct profit from the Helsinki Agreement while Eurocheque International did not. The annual gain for French banks in terms of commissions generated by the Helsinki Agreement can be estimated approximately on the basis of three elements. First the average amount of a Eurocheque is ECU 134 (see recital 9) but one can assume that, as occurs with payment cards, the average amount of the Eurocheques issued in retail outlets is less than the average amount of cheques issued at banks for cash, in which case the average amount to be taken into consideration would be a little less than ECU 134, say around ECU 100. Secondly the annual number of Eurocheques is approximately one million (see recital 15). Thirdly the average commission applied to Eurocheques is approximately 1 %. In total therefore the annual gain can be valued at approximately ECU 1 million.
- (81) As the Agreement took effect on 1 December 1983 and was notified on 16 July 1990, the duration of the infringement is six-and-a-half years. In view of the fact that the number of Eurocheques made out each year to French traders must have been slightly smaller, before 1988, than the figure of 1 million for that year, it can be estimated that the Helsinki Agreement must have earned the French banking sector approximately ECU 5 million in commissions from traders. This is income deriving from an Agreement which is illegal by virtue of Article 85. The commissions paid by the retailers were added to the maximum interbank commissions of 1,6 %

paid by the banks of the Eurocheque drawers, as provided for in the package deal Agreement, exempted by the Commission in 1984 on the basis that the full amount of the Eurocheque should be paid to the payee.

(3) *Aggravating factors*

(a) Indirect unquantifiable profit derived from the Agreement

- (82) This financial profit was not however the ultimate objective of the Helsinki Agreement: the French banks have never claimed that the Helsinki Agreement appeared necessary to them because the maximum remuneration provided for by the package deal Agreement would have been insufficient to cover their costs. The Helsinki Agreement had first and foremost, as its object — and has had as its effect — the prevention in France of the development of the competition that might otherwise have taken place between Eurocheques and bank cards. Moreover (as has been explained in recital 50) this Agreement, taken together with the provision in the protocol establishing the Groupement which prohibit French banks from issuing Eurocheques for national use, has impeded the development of Eurocheques in France.
- (83) Although Eurocheque international did not derive any direct benefit from the Agreement it did nevertheless derive an indirect gain in the sense that this Agreement was the price which it had to pay — a particularly high price in terms of restrictions of competition and major derogation from the package deal Agreement — to continue to have access to the French retail market.

(b) Lack of cooperation from the parties

- (84) Rather than reproaching the Commission for not having sought to gain a better insight into the situation in France, which was described in a few lines by the AFB, if a reproach has to be made in this respect, it should be directed more at Eurocheque International and at the French banking community for not having fully informed the Commission on their own initiative of the subtleties of the allegedly partial accessions to the package deal Agreement and of the situation arising from the Helsinki Agreement. If, at that time, the Commission's attention had been drawn (whereas it was the Commission itself that, following a complaint, sent a formal request for information to the French banks in an attempt to gain a better understanding of the situation) to the real significance of the

Helsinki Agreement, this full knowledge would without doubt have influenced the Commission's decision regarding the package deal Agreement itself. While it is true that, unlike under Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings⁽¹⁾, which provides for the compulsory notification of concentrations with a Community dimension, notification under Regulation 17/62 is optional, if an undertaking chooses to have recourse to it, it must collaborate fairly with the Commission, that is to say no important information must be withheld. This principle of fair and full notification stems from Articles 8 (3) (c) and 15 (1) (a) of Regulation No 17 and was confirmed by the Court of Justice in its preliminary ruling in Case 106/79 VBBB v. Eldi Records BV⁽²⁾. Moreover, in so far as the Helsinki Agreement made a considerable breach in the package deal Agreement, the question could arise whether, when the Commission announced in October 1983, through a notice in the Official Journal pursuant to Article 19 (3) of Regulation No 17, its intention of taking a favourable decision with respect to Eurocheque, the notification of the package deal Agreement could still, for want of having been supplemented by a notification of the Helsinki Agreement, be considered a 'fair and accurate' notification, as the Commission also stated in Decision 85/206/EEC, on aluminium imports from Eastern Europe⁽³⁾, especially if certain members of the Eurocheque system had acceded only partially to the package deal Agreement.

- (85) Not only was the Helsinki Agreement not notified to the Commission at the time when the package deal Agreement, the very foundation of which the Helsinki Agreement put into question, was under investigation by the Commission, but the Commission had great difficulty in obtaining the text of the Helsinki Agreement. Eurocheque even deliberately omitted to annex a copy of the Agreement to a reply to a request for information made by the Commission and it was only after making repeated and insistent requests by the Commission that the Agreement was finally forwarded.

- (86) In addition the Groupement and Eurocheque have repeatedly given an incorrect interpretation of the Agreement by claiming that it did not contain an obligation to charge a commission.

- (87) Finally it was only in May 1991, i.e. one year after sending the Statement of Objections that the Agreement was finally abolished.

(4) *Mitigating factors*

- (88) Although the abolition of the Agreement was belated it was nevertheless spontaneous in the sense that it was done before the adoption by the Commission of a prohibition decision.
- (89) Besides the Commission could be criticized, as the parties have in fact done, for not having, at the end of 1984, sought to investigate more vigorously the scope and import of the Helsinki Agreement, the existence of which was mentioned by the French banks in a reply to a request for information, albeit in vague and inaccurate terms — the Agreement was presented as having been concluded on an 'experimental basis'.
- (90) Finally since this is the first decision imposing fines in the banking sector a certain degree of clemency may be appropriate, at least in comparison with the seriousness of the infringement.
- (91) In this case, the mitigating factors offset the aggravating factors,

HAS ADOPTED THIS DECISION :

Article 1

The Agreement which was concluded at the Eurocheque Assembly held in Helsinki on 19 and 20 May 1983 between the French financial institutions and the Eurocheque Assembly on the acceptance by traders in France of Eurocheques drawn on foreign financial institutions, and which was in force from 1 December 1983 to 27 May 1991, constituted an infringement of Article 85 (1) of the EEC Treaty.

Article 2

The request that the Agreement referred to in Article 1 be exempted pursuant to under Article 85 (3) of the EEC Treaty for the period from 16 July 1990, the date of its notification, to 27 May 1991, the date of its abolition, is hereby rejected.

Article 3

1. A fine of ECU 5 000 000 is hereby imposed on the Groupement des cartes bancaires 'CB' and a fine of ECU 1 000 000 on Eurocheque International sc by reason of the infringement referred to in Article 1.

⁽¹⁾ OJ No L 257, 21. 9. 1990, p. 13 (amended version).

⁽²⁾ [1980] ECR 1137, paragraph 10.

⁽³⁾ OJ No L 92, 3. 3. 1985, p. 1 (see recital 16.1.2).

2. This amount shall be paid to the Commission of the European Communities within three months of the date of notification of this Decision into the following bank account : No 310-0933000-43, Banque Bruxelles Lambert, agence Européenne, rond-point Schuman 5, B-1040 Bruxelles.

On expiry of that period, interest shall automatically be payable at the rate charged by the European Monetary Cooperation Fund on its ecu operations on the first working day of the month in which this Decision was adopted, plus 3,5 percentage points, i.e. 13,75 %.

3. Should payment be made in French francs by the Groupement des cartes bancaires 'CB' or in Belgian francs by Eurocheque International sc, the exchange rate applicable shall be that prevailing on the day preceding payment.

Article 4

This Decision is addressed to :

1. Groupement des Cartes Bancaires 'CB',
29, rue de Lisbonne,
F-75008 Paris,
2. Eurocheque International sc,
avenue Louise 327, bte 1,
B-1050 Brussels.

This Decision is enforceable pursuant to Article 192 of the EEC Treaty.

Done at Brussels, 25 March 1992.

For the Commission

Leon BRITTAN

Vice-President