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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 900/92

of 31 March 1992

amending Regulation (EEC) No 3677/90 laying down measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas Regulation (EEC) No 3677/90⁽¹⁾ laid down measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances;

Whereas diversion patterns are rapidly changing and it is considered on the international level that the procedures identified by Article 12 of the UN Convention against illicit traffic in narcotic drugs and psychotropic substances, hereinafter referred to as the 'United Nations Convention', need to be reinforced to effectively counter chemical diversion;

Whereas the Commission and seven Member States participated in the work of the Chemical Action Task Force created by the Houston Economic Summit (G-7) on 10 July 1990 to develop effective procedures to prevent diversion of precursor and essential chemicals to illicit drugs manufacture; whereas a full Community coordination was ensured throughout this work, as well as close consultation with representatives of trade and industry;

Whereas the Final Report of the Task Force was approved by the London Economic Summit (G-7) on 15 July 1991;

Whereas this Final Report, in recognizing the United Nations Convention as the basic instrument of international cooperation in chemical diversion matters, contains a number of recommendations for reinforcing national and international measures on the basis of that Convention;

Whereas some of the recommendations of the Task Force concern measures not covered by Regulation (EEC) No 3677/90, and in particular certain requirements with

regard to the exportation of chemical substances, the extension of the list of chemical substances subject to international control, and a new category-based classification scheme providing for appropriate control measures according to the nature and trade patterns of the substances in each of the three categories established; whereas the substances in Category 3 in particular are widely traded on a licit basis and should be subjected to export authorization arrangements only when they are intended for certain sensitive countries, in order not to increase unnecessarily the burden of controls; whereas furthermore, the report recommends the strengthening of international cooperation by the conclusion of bilateral agreements, in particular between regions exporting and regions importing scheduled chemicals;

Whereas it appears important that the Community, in view of its commitment to the work of the Task Force, should implement the recommendations approved, and contribute as far as possible to international cooperation in this field;

Whereas, under the United Kingdom Nations Convention, amendments to Tables I and II of the Annex are proposed to the Commission on narcotic drugs of the economic and Social Council of the United Nations Organization,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3677/90 is hereby amended as follows:

1. in Article 1 (2), point (f) shall be replaced by the following:

'(f) "ultimate consignee" means any natural or legal person to which the scheduled substances are delivered in the country of destination. This person may be different from the end-user';

The former subparagraph (f) shall become (g);

⁽¹⁾ OJ No L 357, 20. 12. 1990, p. 1.

2. in Article 2 (1), the second and third indents shall be replaced by the following :

- the quantity and weight of the scheduled substance and, where it consists of a mixture, the quantity and weight of the mixture as well as the quantity and weight or the percentage of any substance or substances listed in the Annex which are contained in the mixture,
- the name and address of the exporter, the importer, the distributor and, in accordance with Articles 4, 5 and 5a, the ultimate consignee.';

3. in Article 2, point (4) shall be replaced by the following :

- '4. the documents and records referred to in points 1 and 3 shall be kept for a period of three years from the end of the calendar year in which the operation referred to in point 1 took place, and must be readily available for inspection by the competent authorities upon request.';

4. the following Article shall be added :

'Article 2a

Licensing and registration of operators

1. Operators, other than customs agents, warehouse depositors and transporters when acting solely in that capacity, engaged in the import, export or transit of scheduled substances listed in Category 1 of the Annex shall be required to obtain a licence from the Member State in which they are established to qualify for this activity. In considering whether to grant a licence, the competent authority shall take into account the competence and integrity of the applicant.

The licence may be suspended or revoked by the competent authorities whenever there are reasonable grounds for belief that the holder is no longer a fit and proper person to hold a licence, or that the conditions under which the licence was issued are no longer fulfilled.

2. Operators, other than customs agents, warehouse depositors and transporters when acting solely in that capacity, engaged in the import, export or transit of scheduled substances listed in Category 2 or the export of scheduled substances listed in Category 3 of the Annex are required to register and update with the competent authorities the addresses of the premises from which they manufacture or trade in these substances.

However, this requirement shall not apply in respect of operators engaged in the export of small quantities of scheduled substances listed in Category 3 or the export of mixtures containing scheduled substances listed in Category 3 which have been identified to that end.

3. The Member States shall determine the procedures for issuing licences, including the attachment of specific conditions, such as the length of their validity and the charging of fees for their issue.';

5. Article 3 shall be replaced by the following :

'Article 3

Cooperation

The Member States shall take the necessary measures to establish close cooperation between the competent authorities and operators, so that operators :

- notify the competent authorities immediately of any circumstances, such as unusual orders and transactions involving scheduled substances, which suggest that such substances intended for import, export or transit may be diverted for the illicit manufacture of narcotic drugs or psychotropic substances,
- provide the competent authorities in summary form such information about their export transactions as the competent authorities may require.';

6. Article 4 shall be replaced by the following :

'Article 4

Export authorization

Scheduled substances listed in Category 1 of the Annex

1. The exportation of scheduled substances listed in Category 1 of the Annex shall be subject to authorization in form of individual export authorizations issued by the competent authorities of the Member State in which the customs export declaration is to be lodged in accordance with the provisions in force.

2. Applications for authorizations referred to in paragraph 1 shall contain the following information :

- the name and address of the exporter, the importer in the third country and any other operator involved in the export operation or shipment, and also of the ultimate consignee,
- the name of the scheduled substances as given in Category 1 in the Annex,

- the quantity and weight of the scheduled substance and, where it consists of a mixture, the quantity and weight of the mixture as well as the quantity and weight or the percentage of any substance or substances listed in the Annex which are contained in the mixture,
- details as to the transport arrangements, and in particular the expected date of dispatch, method of transport, name of the customs office where the customs export declaration is to be lodged, and, in so far as such information is available at this stage, identification of the means of transport, itinerary, expected point of exit from Community customs territory and the point of entry into the importing country.

In the case of paragraph 10, a copy of the import permit issued by the destination country must be attached to the application.

3. A decision on the application shall be taken within a period of 15 working days from the date on which the competent authority considers the file to be complete. This period shall be extended if, in the case of paragraph 10, the authorities are obliged to make further enquiries in order to satisfy themselves that the importation of the substances has been properly authorized.

4. Without prejudice to any possible implementation of technical enforcement measures, the export authorization referred to in paragraph 1 shall be refused, if:

- (a) there are reasonable grounds to suspect that the information supplied in compliance with the obligations under paragraph 2 is false or incorrect;
- (b) in the case of paragraph 10, it is established that the importation of the scheduled substances has not been properly authorized by the competent authorities of the country of destination;
- (c) there are reasonable grounds for suspecting that the substances in question are intended for the illicit manufacture of narcotic drugs or psychotropic substances.

5. If the particulars on the itinerary and means of transport were not contained in the application referred to in paragraph 2, the export authorization shall state that the operator must furnish these particulars to the customs or other competent authority at the point of exit from the Community customs territory before the physical departure of the consignment. In this case, the export authorization shall be annotated accordingly at the time of issue.

6. In all cases, the export authorization shall be produced for inspection by the customs authorities when the customs export declaration is lodged.

A copy of this authorization shall furthermore accompany the consignment until the customs office at the point of exit of the scheduled substances from the Community customs territory. This office shall insert,

where appropriate, the particulars referred to in paragraph 5 and any other necessary particulars and apply its stamp to the copy of the authorization before returning it to the issuing authority.

7. The issue of an export authorization does not preclude any possible administrative or other liability of the holder of such authorization.

8. The export authorization may be suspended or revoked by the competent authorities whenever there are reasonable grounds to suspect that the substances might be diverted to the illicit manufacture of narcotic drugs or psychotropic substances.

9. With regard to requests for pre-export notification addressed to the Community by a third country pursuant to Article 12 (10) of the United Nations Convention:

- (a) the Commission shall immediately communicate to the competent authorities of the Member States any such request received;
- (b) the competent authorities of the Member State concerned shall, prior to any export of scheduled substances to the requesting country, supply the information specified in paragraph 2 to the competent authorities of that country. A copy of this reply shall be communicated to the Commission for circulation to the other Member States;
- (c) the authority furnishing such information shall require that the authority in the third country receiving the information shall keep confidential any trade, business, commercial or professional secret or any trade process referred to therein.

10. Whenever there is agreement between the Community and a third country that exports shall not be authorized unless an import permit has been issued by the competent authorities of the latter country for the substances in question:

- (a) the Commission shall communicate to the competent authorities in the Member States the name and address of the competent authority in the third country together with any operational information obtained from this country;
- (b) the competent authorities in the Member States shall satisfy themselves that any importation has been properly authorized, if necessary, by requesting confirmation from the authority referred to under point (a).;

7. Article 5 shall be replaced by the following:

'Article 5

Specific export requirements

Scheduled substances listed in Category 2 of the Annex

1. The exportation of scheduled substances listed in Category 2 of the Annex shall be subject to an authorization issued in accordance with paragraphs 2 and 3 by the competent authorities of the Member State in which the customs export declaration is to be lodged in accordance with the provisions in force.

2. Exports referred to in paragraph 1 shall be subject *mutatis mutandis* to the provisions of Article 4, wherever they appear to be intended, directly or indirectly, for any third country which has been identified to be concerned by the illicit manufacture of those narcotic drugs or psychotropic substances by the use of the scheduled substances in question. The said identification shall be based, in particular, on a reasoned request to the Commission by the third country concerned.

The provisions of Article 4 shall also apply whenever an open individual authorization cannot be issued under paragraph 3.

3. In all other cases, the exportation of scheduled substances listed in Category 2 may be authorized at the request of the operators concerned on a global basis by the issue of an open individual authorization. The decision to issue such an authorization shall take into account the competence and integrity of the applicant together with the nature, volume and pattern of his involvement in these substances. In such cases, the holder shall enter the details of this authorization in the relevant customs export declaration.

In accordance with the provisions laid down by the competent authorities, the holder of such an authorization shall furnish information in a summary form about exports made under the authority of the authorization.

The open individual authorization may be suspended or revoked whenever there are reasonable grounds for belief that its holder is not longer a fit and proper person to hold an authorization, or that the conditions under which the authorization was issued are no longer valid.';

8. the following Article shall be added:

'Article 5a

Specific export requirements

Scheduled substances listed in Category 3 of the Annex

1. Wherever the export of scheduled substances listed in Category 3 of the Annex is intended, directly or indirectly, for any third country:

- (a) with which the Community has concluded an agreement whereby no export from the Community to that country shall be authorized unless the competent authorities of the country have issued an import permit in respect of the consignment in question; or
- (b) which has been identified as a country concerned by the illicit manufacture of heroin or cocaine on

its territory or as a sensitive country as regards the possible diversion of the said substances,

such export shall be subject to an authorization issued in accordance with paragraphs 2 and 3 by the competent authorities of the Member State in which the customs export declaration is to be lodged in accordance with the provisions in force.

2. Exports of substances referred to in paragraph 1 shall be subject *mutatis mutandis* to the provisions of Article 4, wherever, subject to specific arrangements taken between the Community and the countries referred to in paragraph 1, individual export authorization is required. The provisions of Article 4 shall also apply whenever an open individual authorization cannot be issued in accordance with paragraph 3.

3. In appropriate circumstances, the exportation of substances in Category 3 may be authorized on a global basis by the issue of an open individual authorization. The decision to issue, suspend or revoke such authorizations shall be taken by the application *mutatis mutandis* of Article 5 (3).

In addition, it shall be a condition of the issue of such authorizations that, for control purposes, the holder shall retain for inspection by the competent authorities of the Member State from which the export has taken place, where appropriate and in respect of each export, a copy of the import permit issued by the authorities of the third country. In cases of doubt, the competent authorities of the third country. In cases of doubt, the competent authorities of the Member State of exportation may contact the authorities which have issued the import permit.';

9. Article 6 shall be replaced by the following:

'Article 6

Powers of competent authorities

1. In order to ensure the correct application of Articles 2, 4, 5 and 5a, each Member State shall adopt within the framework of its domestic law the measures necessary to enable the competent authorities:

- (a) to obtain information on any orders for or operations involving scheduled substances;
- (b) to enter operators' business premises in order to obtain evidence of irregularities.

2. Without prejudice to the measures laid down in Articles 4, 5 and 5a and paragraph 1 of this Article, the competent authorities of each Member State may prohibit the introduction of scheduled substances into Community customs territory or their departure from it, if there are reasonable grounds for suspecting that the substances are intended for the illicit manufacture of narcotic drugs or psychotropic substances.

3. For the purpose of preventing specific risks of diversion in free zones as well as in other sensitive areas such as bonded warehouses, Member States shall ensure that controls applied to operations carried out in these areas are effective at every stage of these operations and not less stringent than those applied in the other parts of the customs territory.’;
10. Article 10 shall be replaced by the following :

‘Article 10

1. The Commission shall be assisted by a committee composed of the representative of the Commission.

The committee shall examine any matter concerning the implementation of this Regulation raised by its chairman either on his own initiative or at the request of a representative of a Member State.

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the Member States within the committee shall be weighted in the manner set out in that Article ; the Chairman shall not vote.

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

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

3. The procedure laid down in paragraph 2 shall be followed in particular for :

(a) the determination of the quantities of the scheduled substances listed in Category 3 and the identification of mixtures containing scheduled substances listed in Category 3 pursuant to the second subparagraph of Article 2a (2) ;

(b) the identification of countries and substances pursuant to Article 5 (2) ;

(c) the adoption of export authorization requirements pursuant to paragraph 1 (b) of Article 5a whenever there is no agreement with the third country in question ;

(d) the adoption of the model export authorization form referred to in Article 4 as well as the detailed rules concerning its use and the detailed rules for implementation of the open individual authorization system referred to in Articles 5 and 5a ;

(e) the amendment of the Annex to this Regulation, in cases where the Annexes to the United Nations Convention are amended.’;
11. The following Article shall be inserted :

‘Article 11a

The Commission is hereby authorized to adopt a position, on behalf of the Community, in favour of amendments to Tables I and II of the Annex to the United Nations Convention which conform to the Annex to this Regulation.’;
12. The Annex shall be replaced by the following :

ANNEX

Substance	CN denomination (if different)	CN code
CATEGORY 1		
— Ephedrine	Phenylacetone	2939 40 10
— Ergometrine		2939 60 10
— Ergotamine		2939 60 30
— Lysergic acid		2939 60 50
— 1-phenyl-2-propanone		2914 30 10
— Pseudoephedrine	2-Acetamidobenzoic acid	2939 40 30
— Acetylanthranilic acid		2924 29 50
— 3,4 Methylenedioxyphenylpropan-2-one		2932 90 77

The salts of the substances listed in this Category whenever the existence of such salts is possible.

Substance	CN denomination (if different)	CN code
CATEGORY 2		
— Acetic anhydride		2915 24 00
— Anthranilic acid		ex 2922 49 90
— Phenylacetic acid		2916 33 00
— Piperidine		2933 39 30
— Isosafrole (cis + trans)		2932 90 73
— Piperonal		2932 90 75
— Safrole		2932 90 71

The salts of the substances listed in this Category whenever the existence of such salts is possible.

CATEGORY 3		
— Acetone		2914 11 00
— Ethyl ether	Diethyl ether	2909 11 00
— Methyl ethyl ketone (MEK)	Butanone	2914 12 00
— Toluene		2902 30 10/90
— Potassium permanganate		2841 60 10
— Sulphuric acid		2807 00 10
— Hydrochlorid acid	Hydrogen chloride	2806 10 00'

Article 2

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

It shall apply from 1 January 1993, with the exception of Article 1 (11) which shall apply from the date of entry into force of this Regulation.

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

Done at Brussels, 31 March 1992.

For the Council
The President
Vitor MARTINS

COMMISSION REGULATION (EEC) No 901/92

of 9 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 8 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 10 April 1992.

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

Done at Brussels, 9 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 9 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 (*) (*)
0712 90 19	143,22 (*) (*)
1001 10 10	168,85 (*) (*) ⁽¹⁰⁾
1001 10 90	168,85 (*) (*) ⁽¹⁰⁾
1001 90 91	156,42
1001 90 99	156,42 ⁽¹¹⁾
1002 00 00	165,68 ⁽⁹⁾
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 (*) (*)
1005 90 00	143,22 (*) (*)
1007 00 90	148,00 ⁽⁹⁾
1008 10 00	54,09 ⁽¹¹⁾
1008 20 00	119,14 ⁽⁹⁾
1008 30 00	61,50 (*)
1008 90 10	(*)
1008 90 90	61,50
1101 00 00	231,99 ⁽⁸⁾ ⁽¹¹⁾
1102 10 00	244,96 ⁽⁸⁾
1103 11 10	274,44 ⁽⁸⁾ ⁽¹⁰⁾
1103 11 90	249,04 ⁽⁸⁾

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

(*) 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.

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

(*) 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.

(*) 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.

(*) 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.

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

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

(*) 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 902/92

of 9 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 8 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 10 April 1992.

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

Done at Brussels, 9 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 9 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 903/92

of 9 April 1992

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by Regulation (EEC) No 1720/91⁽²⁾, and in particular Article 16 (2) thereof,

Having regard to Council Regulation (EEC) No 1514/76 of 24 June 1976 on imports of olive oil originating in Algeria⁽³⁾, as last amended by Regulation (EEC) No 728/91⁽⁴⁾, and in particular Article 5 thereof,

Having regard to Council Regulation (EEC) No 1521/76 of 24 June 1976 on imports of olive oil originating in Morocco⁽⁵⁾, as last amended by Regulation (EEC) No 729/91⁽⁶⁾, and in particular Article 5 thereof,

Having regard to Council Regulation (EEC) No 1508/76 of 24 June 1976 on imports of olive oil originating in Tunisia⁽⁷⁾, as last amended by Regulation (EEC) No 413/86⁽⁸⁾, and in particular Article 5 thereof,

Having regard to Council Regulation (EEC) No 1180/77 of 17 May 1977 on imports into the Community of certain agricultural products originating in Turkey⁽⁹⁾, as last amended by Regulation (EEC) No 730/91⁽¹⁰⁾, and in particular Article 10 (2) thereof,

Having regard to Council Regulation (EEC) No 1620/77 of 18 July 1977 laying down detailed rules for the importation of olive oil from Lebanon⁽¹¹⁾,

Whereas by Regulation (EEC) No 3131/78⁽¹²⁾, as amended by the Act of Accession of Greece, the Commis-

sion decided to use the tendering procedure to fix levies on olive oil;

Whereas Article 3 of Council Regulation (EEC) No 2751/78 of 23 November 1978 laying down general rules for fixing the import levy on olive oil by tender⁽¹³⁾ specifies that the minimum levy rate shall be fixed for each of the products concerned on the basis of the situation on the world market and the Community market and of the levy rates indicated by tenderers;

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

Whereas, with regard to Turkey and the Maghreb countries, the provisions of this Regulation should be without prejudice to the additional amount to be determined in accordance with the agreements between the Community and these third countries;

Whereas, pursuant to Article 101 (1) of Council Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community⁽¹⁴⁾, no levies shall apply on imports of products originating in the overseas countries and territories; whereas, however, pursuant to Article 101 (4) of the abovementioned Decision, a special amount shall be charged on imports of certain products originating in the overseas countries and territories in order to prevent products originating from these countries and territories from receiving more favourable treatment than similar products imported from Spain or Portugal into the Community as constituted on 31 December 1985;

Whereas application of the rules recalled above to the levy rates indicated by tenderers on 6 and 7 April 1992 leads to the minimum levies being fixed as indicated in Annex I to this Regulation;

Whereas the import levy on olives falling within 29 codes 0709 90 39 and 0711 20 90 and on products falling within CN codes 1522 00 31, 1522 00 39 and 2306 90 19 must be calculated from the minimum levy applicable on the olive oil contained in these products; whereas, however, the levy charged for olive oil may not be less than an amount equal to 8 % of the value of the imported product, such amount to be fixed at a standard rate; whereas application of these provisions leads to the levies being fixed as indicated in Annex II to this Regulation,

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

⁽²⁾ OJ No L 162, 26. 6. 1991, p. 27.

⁽³⁾ OJ No L 169, 28. 6. 1976, p. 24.

⁽⁴⁾ OJ No L 80, 27. 3. 1991, p. 1.

⁽⁵⁾ OJ No L 169, 28. 6. 1976, p. 43.

⁽⁶⁾ OJ No L 80, 27. 3. 1991, p. 2.

⁽⁷⁾ OJ No L 169, 28. 6. 1976, p. 9.

⁽⁸⁾ OJ No L 48, 26. 2. 1986, p. 1.

⁽⁹⁾ OJ No L 142, 9. 6. 1977, p. 10.

⁽¹⁰⁾ OJ No L 80, 27. 3. 1991, p. 3.

⁽¹¹⁾ OJ No L 181, 21. 7. 1977, p. 4.

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

⁽¹³⁾ OJ No L 331, 28. 11. 1978, p. 6.

⁽¹⁴⁾ OJ No L 263, 19. 9. 1991, p. 1.

HAS ADOPTED THIS REGULATION :

Article 2

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

Article 1

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

Article 3

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, 9 April 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX I

Minimum import levies on olive oil ⁽¹⁾

(ECU/100 kg)

CN code	Non-member countries
1509 10 10	72,00 ⁽²⁾
1509 10 90	72,00 ⁽²⁾
1509 90 00	83,00 ⁽²⁾
1510 00 10	77,00 ⁽²⁾
1510 00 90	122,00 ⁽⁴⁾

⁽¹⁾ No 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 3148/91 is to be levied in accordance with Article 101 (4) of the abovementioned Decision.

⁽²⁾ For imports of oil falling within this CN code and produced entirely in one of the countries listed below and transported directly from any of those countries to the Community, the levy to be collected is reduced by :

(a) Lebanon : ECU 0,60 per 100 kg ;

(b) Turkey : ECU 11,48 per 100 kg ^(*) provided that the operator furnishes proof of having paid the export tax applied by that country ; however, the repayment may not exceed the amount of the tax in force ;

(c) Algeria, Tunisia and Morocco : ECU 12,69 per 100 kg ^(*) provided that the operator furnishes proof of having paid the export tax applied by that country ; however, the repayment may not exceed the amount of the tax in force.

^(*) These amounts may be increased by an additional amount to be determined by the Community and the third countries in question.

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

(a) produced entirely in Algeria, Morocco or Tunisia and transported directly from any of those countries to the Community, the levy to be collected is reduced by ECU 3,86 per 100 kg ;

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

⁽⁴⁾ For imports of oil falling within this CN code :

(a) produced entirely in Algeria, Morocco or Tunisia and transported directly from any of those countries to the Community, the levy to be collected is reduced by ECU 7,25 per 100 kg ;

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

ANNEX II

Import levies on other olive oil sector products ⁽¹⁾

(ECU/100 kg)

CN code	Non-member countries
0709 90 39	15,84
0711 20 90	15,84
1522 00 31	36,00
1522 00 39	57,60
2306 90 19	6,16

⁽¹⁾ No 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 3148/91 is to be levied in accordance with Article 101 (4) of the abovementioned Decision.

COMMISSION REGULATION (EEC) No 904/92

of 9 April 1992

fixing Community producer prices for carnations and roses for the application of the import arrangements for certain floricultural products originating in Cyprus, Israel, Jordan and Morocco

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

Having regard to Council Regulation (EEC) No 4088/87 of 21 December 1987 fixing conditions for the application of preferential customs duties on imports of certain flowers originating in Cyprus, Israel, Jordan and Morocco⁽¹⁾, as amended by Regulation (EEC) No 3551/88⁽²⁾, and in particular Article 5 (2) thereof,

Whereas, pursuant to Article 3 of the abovementioned Regulation (EEC) No 4088/87, Community producer prices applicable for fortnightly periods are fixed twice a year before 15 May and 15 October for uniflorous (bloom) carnations, multiflorous (spray) carnations, large-flowered roses and small-flowered roses; whereas, pursuant to Article 1 of Commission Regulation (EEC) No 700/88 of 17 March 1988 laying down certain detailed rules for the application of the arrangements for the import into the Community of certain flowers originating in Cyprus, Israel and Jordan⁽³⁾, as amended by Regulation (EEC) No 3556/88⁽⁴⁾, prices for roses are determined on the basis of the average daily prices recorded on the representative producer markets for the pilot varieties of quality grade 1 in the three preceding years; whereas for carnations those prices are fixed under the same conditions of the bloom and spray types; whereas, for the determina-

tion of the average, prices which differ by 40 % and more from the average price recorded on the same market during the same period during the three preceding years are excluded;

Whereas the Community producer prices for the fortnightly periods to 1 November 1992 should be determined on the basis of data provided by the Member States;

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

HAS ADOPTED THIS REGULATION:

Article 1

The Community producer for large-flowered roses, small-flowered roses, uniflorous (bloom) carnations and multiflorous (spray) carnations provided for in Article 3 of Regulation (EEC) No 4088/87 for the fortnightly periods 1 June 1992 to 1 November 1992 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 June 1992.

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

Done at Brussels, 9 April 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 382, 31. 12. 1987, p. 22.

⁽²⁾ OJ No L 311, 17. 11. 1988, p. 1.

⁽³⁾ OJ No L 72, 18. 3. 1988, p. 16.

⁽⁴⁾ OJ No L 311, 17. 11. 1988, p. 8.

ANNEX

Community producer prices

Weeks	Period	(ECU/100 prices)			
		Uniflorous carnations (bloom)	Multiflorous carnations (spray)	Large-flowered roses	Small-flowered roses
23 / 24	1. 6 — 14. 6. 1992	12,45	12,91	23,54	11,59
25 / 26	15. 6 — 28. 6. 1992	11,31	12,41	17,83	9,51
27 / 28	29. 6 — 12. 7. 1992	8,14	11,06	17,18	8,28
29 / 30	13. 7 — 26. 7. 1992	8,09	9,73	17,20	7,76
31 / 32	27. 7 — 9. 8. 1992	8,93	9,45	16,80	7,46
33 / 34	10. 8 — 23. 8. 1992	10,71	9,40	16,27	8,06
35 / 36	24. 8 — 6. 9. 1992	12,24	9,98	18,56	8,57
37 / 38	7. 9 — 20. 9. 1992	13,40	10,66	22,05	10,00
39 / 40	21. 9 — 4. 10. 1992	13,67	10,85	23,60	11,36
41 / 42	5. 10 — 18. 10. 1992	13,46	11,33	29,39	11,85
43 / 44	19. 10 — 1. 11. 1992	19,43	12,36	32,85	13,80

COMMISSION REGULATION (EEC) No 905/92

of 9 April 1992

adopting definitive measures on the issuing of STM licences for milk and milk products in regard to Spain

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, and in particular Article 85 (3) thereof,

Having regard to Council Regulation (EEC) No 569/86 of 25 February 1986 laying down general rules for the application of the supplementary mechanism applicable to trade⁽¹⁾, as last amended by Regulation (EEC) No 3296/88⁽²⁾, and in particular Article 7 (1) thereof,Whereas Commission Regulation (EEC) No 606/86 of 28 February 1986 laying down detailed rules for applying the supplementary trade mechanism to milk products imported into Spain from the Community of Ten⁽³⁾, as last amended by Regulation (EEC) No 63/92⁽⁴⁾, fixes the indicative ceiling for imports into Spain of certain products in the milk and milk products sector for 1992;

Whereas applications for STM licences lodged solely in the Community of Ten during the period 2 to 6 March 1992 for cheese categories 4 and 5a relate to quantities in excess of that fraction of the indicative ceiling set aside for the first quarter of 1992;

Whereas the Commission accordingly adopted, by an emergency procedure, suitable interim protective measures by Regulations (EEC) No 626/92⁽⁵⁾; whereas definitive measures must be adopted; whereas, in view of the market situation in Spain, an increase in indicative ceilings cannot be contemplated at present;

Whereas, as part of the definitive measures referred to in Article 85 (3) of the Act, the suspension of the issuing of STM licences provided for in the abovementioned Regulation until the end of the first quarter of 1992 should be confirmed;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. The issuing of STM licences applied for in the Community of Ten for products in the milk and milk products sector as referred to in Regulation (EEC) No 626/92 is hereby definitively suspended for the first quarter of 1992.

2. Further applications for STM licences may be lodged from 23 March 1992 for all products in respect of the fraction of the indicative ceiling applicable from 1 April 1992.

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, 9 April 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 55, 1. 3. 1986, p. 106.

⁽²⁾ OJ No L 293, 27. 10. 1988, p. 7.

⁽³⁾ OJ No L 58, 1. 3. 1986, p. 28.

⁽⁴⁾ OJ No L 6, 11. 1. 1992, p. 17.

⁽⁵⁾ OJ No L 68, 13. 3. 1992, p. 8.

COMMISSION REGULATION (EEC) No 906/92

of 30 March 1992

imposing a provisional anti-dumping duty on imports of silicon metal
originating in Brazil

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,

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

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

Whereas :

A. PROCEDURE

- (1) In June 1990 the Commission received a complaint lodged by the Liaison Committee of Ferroalloy Industries in the European Economic Community, acting on behalf of producers representing all Community production of silicon metal, concerning imports of that product originating in Brazil.

The complaint contained evidence of dumping and consequent material injury which was judged sufficient to justify the initiation of a proceeding.

In a notice published in the *Official Journal of the European Communities*⁽²⁾, the Commission accordingly announced the initiation of an anti-dumping proceeding concerning imports of the product in question, which falls within CN code 2804 69 00, originating in Brazil, and commenced an investigation.

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

- (3) All the exporters and the Community producers replied to the Commission's questionnaire and made their views known in writing.

A number of independent importers in the Community and a non-Community trader also replied to the abovementioned questionnaire.

Lastly, various trade associations representing two categories of Community consumers of the product, namely the metallurgical industry and the chemical industry, submitted comments in writing.

- (4) The Commission sought and verified all the information it deemed necessary for the purposes of making a preliminary determination of dumping and consequent injury and carried out on-the-spot inspections of records at the premises of the following :

(a) Community producers :

- Industria Ellettrica Indel (Indel), Belluno, Italy
- Pechiney Electrometallurgie (PEM), Paris, France
- Sociedad Española de Carburos Metalicos, SA, Barcelona, Spain
- Vereinigte Aluminium Werke AG (VAW), Bonn, Germany ;

(b) Brazilian producers :

- Camargo Correa Metais SA, São Paulo
- Companhia Brasileira Carboreto de Cálcio (CBCC), Rio de Janeiro
- Companhia Ferroligas Minas Gerais (Minasligas), Contagem
- Eletroila SA, Belo Horizonte
- Ligas de Alumínio SA (Liasa), Belo Horizonte
- Rima Electrometalurgia SA (RIMA), Belo Horizonte ;

(c) Importer linked to a Brazilian producer :

- Lilleby Metal Dortmund, Germany ;

(d) Independent importer :

- Rhône-Poulenc, Courbevoie, France.

- (5) The dumping investigation covered the period 1 January to 31 October 1990 (the investigation period).

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No C 296, 27. 11. 1990, p. 3.

B. THE PRODUCT

1. Definition

- (6) The product in question is silicon metal generally produced in an electric arc furnace by reducing silicon quartz with the help of various carbonaceous products.

It is marketed in the form of lumps, granules or powder.

- (7) The silicon metal covered by this proceeding is that whose silicon content is less than 99,99 % by weight. Below that upper limit, even where the chemical composition of the metal may include widely varying quantities of impurities, it constitutes a single product. By contrast, where the silicon content exceeds 99,99 % by weight, the product in question is a different one, used in the electronic semiconductor industry and not covered by this proceeding.

- (8) Thus defined, silicon is chiefly used as an alloying element in the production of primary and secondary aluminium grade castings and as a raw material in the production of an intermediate chemical synthesis in the manufacture of silicones.

Internationally accepted technical specifications make it possible to distinguish between different qualities of silicon metal depending on their end-use, i.e. the production of silicones ('chemical grade') or the production of primary aluminium grade or standard grade, or of secondary aluminium grade.

2. Like product

- (9) The physical characteristics of silicon metal originating in Brazil, as well as its principal industrial applications, whether it is sold on the Brazilian domestic market or for export to the Community, are comparable to those of silicon metal produced in the Community and the products of either origin may accordingly be regarded as having characteristics that closely resemble one another within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88.

- (10) In this regard it was claimed by a trade association representing the interests of the Community chemical industry that the differences between the physical characteristics of silicon metal used for chemical purposes and that used for metallurgical purposes, the different manufacturing processes used to produce them and the considerable difference between their respective prices meant that the different qualities of silicon metal described in point (9) could not be regarded as like products

within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88. These claims must, however, be rejected for the reasons set out below.

- (11) First, it should be pointed out that the concept of 'like product', as defined in Article 2 (12) of Regulation (EEC) No 2423/88, is used, for the purposes of determining whether dumping is taking place, to compare the product sold for export with the product sold on the exporter's domestic market. To that end the abovementioned Regulation provides that an identical product or a product which has characteristics closely resembling those of the product under consideration may be taken as the like product.

As the Commission ascertained in the course of its investigation, the three main quality standards, determined by the impurities contained in the silicon metal produced (principally iron, aluminium, calcium and phosphorus), fall, in fact, within a single generic category which is chemically identified and classified as silicon metal. It is clear that the product originating in Brazil can, like the silicon metal manufactured by the Community industry, also be of any of the said three qualities, whether sold on the domestic market or for export to the Community.

- (12) Secondly, in the course of its investigation the Commission also established that the silicon metal used for chemical purposes and that used for metallurgical purposes was produced using the same manufacturing process. The end-use of the product is then determined by analysing the chemical composition of the samples taken when the product leaves the furnace.

It must also be added that the physical characteristics of both categories of silicon metal are very alike since the only relevant difference lies in the very faint traces of impurities which are apparent in the chemical composition of the product.

- (13) Lastly, the argument based on the difference in price between the two main categories of silicon metal in no way implies that they constitute different products with disparate physical characteristics. In this regard, as the Commission was able to ascertain in the course of its investigation, the difference is neither systematic nor significant. In the case in point, the difference is accounted for by price fluctuations on the world market for the category in question, which are the result of traders' expectations. It must, moreover, be pointed out that from a technical standpoint the two categories can, to some degree, be substituted for one another in so far as the aluminium metal-working industry can make use of silicon metal that is used for chemical purposes.

C. DUMPING**(a) Normal value**

- (14) In order to establish the representative character of the sales by each Brazilian producer on the domestic market for the purposes of determining the normal value, the Commission checked that the domestic transactions were equivalent to not less than 5 % of the transactions involving exports to the Community by each Brazilian producer during the investigation period.

It was found that the domestic sales of all the exporters exceeded the 5 % threshold and that they therefore represented a volume that was sufficient to constitute an economically viable market and an adequate basis for calculating the normal value.

- (15) The Commission also examined whether the said sales had been made in the ordinary course of trade. The unit value of each domestic transaction was accordingly compared with the monthly production cost per tonne of each producer/exporter during the investigation period.

In the case of certain exporters it was apparent that during the investigation period domestic sales of significant quantities had taken place at prices that did not permit recovery of all costs reasonably allocated.

Normal value was therefore determined either on the basis of the remaining sales on the domestic market made at a price which was not less than the cost of production or on the basis of the constructed value determined by adding the cost of production and a reasonable profit margin determined by reference to the profits made by the exporting producer in question or by another exporting producer, where appropriate, on profitable sales of like products on the domestic market in accordance with Article 2 (4) of Regulation (EEC) No 2423/88.

- (16) Lastly, in view of the significant price variations which are the result of the endemic inflation in Brazil, the normal value was determined on a monthly basis either by reference to domestic sales or, where necessary, by reference to the constructed value as defined in point (15).

(b) Export prices

- (17) The export prices of the Brazilian producers were determined on the basis of the prices actually paid

or payable for the product sold for export to the Community.

- (18) The export prices of one of the Brazilian producers trading in the Community through a related company were calculated on the basis of those at which silicon metal was first resold to an independent buyer in the Community in accordance with Article 2 (8) (b) of Regulation (EEC) No 2423/88. In so doing, allowances were made to take account of all costs incurred between importation and resale, including a profit margin.

(c) Comparison

- (19) The monthly normal value figure was compared with the price of each export transaction carried out in the course of the relevant month.
- (20) All comparisons were made at the same stage in trade, ex-works, making the allowances needed to eliminate the differences affecting the comparability of prices, particularly as regards transport and handling costs, harbour dues, financing and insurance costs and commissions paid to agents.

(d) Dumping margins

- (21) The preliminary examination of the facts showed that silicon metal originating in Brazil was being dumped by all the exporters covered by the investigation. The dumping margin established for each exporter equals the amount by which the normal value, defined as indicated above, exceeds the export price to the Community.
- (22) The weighted average dumping margins established in this way vary depending upon the exporter concerned. Expressed as a percentage of the free-at-Community frontier cif price, before duty, they are as follows:

Rima Eletrometalurgia SA	67,16 %
Ligas de Alumínio SA (Liasa)	59,12 %
Eletroila SA	44,51 %
Companhia Ferroligas Minas Gerais (Minasligas)	51,20 %
Camargo Correa Metals SA	28,33 %
Companhia Brasileira Carboreto de Cálcio	18,55 %

- (23) In the case of the exporting producers who failed to reply to the Commission's questionnaire or did not make themselves known, dumping was determined on the basis of the facts available in accordance with Article 7 (7) (b) of Regulation (EEC) No 2423/88. The Commission takes the view that the results of its investigation are the most appropriate basis for determining the dumping margin and that

if the margin for these exporting producers were considered to be less than the highest dumping margin (67,16 %) established for an exporting producer who cooperated in this investigation, there would be an incentive not to cooperate. On these grounds the Commission considers it appropriate to apply that dumping margin to the said group of exporting producers.

D. INJURY⁽¹⁾

(a) The Community market in silicon metal

- (24) Recorded consumption of silicon metal on the Community market increased from 178 598 tonnes in 1986 to 213 191 tonnes in 1990, an increase of 34 593 tonnes (up 19,4 %). The annual trend in volume terms on the Community market shows a rate of increase of between 3,6 % and 9,2 %. By contrast, recorded consumption on the Community market declined by 2,7 % in 1990.

(b) Volume, market share and prices of the imports covered by this proceeding

— Volume

- (25) The information in the Commission's possession shows that imports of silicon metal originating in Brazil increased from 4 681 tonnes in 1986 to 31 202 tonnes in 1990, an increase of 26 521 tonnes (up 566 %). In other words the volume of sales by Brazilian exporters on the Community market increased more than sixfold between 1986 and 1990. It should be added that the annual rate of increase of Brazilian sales on the Community market remained constantly high throughout the period (between 36 and 81 %) and exceeded 60 % in 1989 and 1990.

— Market share

- (26) In spite of a very modest market share in 1986 (less than 3 %), the Brazilian exporters secured almost 15 % of the market in 1990. It should be emphasized in this regard that the greatest increase in Brazilian imports (from 8,7 to 14,6 %) was achieved between 1989 and 1990, a period during which recorded consumption declined by 2,7 %. Among all the Community's trading partners, Brazil secured the greatest penetration of the silicon metal

market between 1989 and 1990, against the background of a recession.

— Prices

- (27) The cif price for Brazilian silicon metal fell by 33,2 % between 1986 and 1990. The investigation shows an initial fall (almost 20 %) in 1986 and 1987 followed by a period of stability until 1989 with prices of the order of ECU 1 110 per tonne. The second fall occurred during the investigation period when the average price declined further by more than 17 %.
- (28) Price trends on the Community market defined by the weighted average net selling price of the four Community producers, show a steady decline that was particularly significant between 1986 and 1987 (down 6,9 %) and especially between 1989 and 1990 (down 7,3 %). This trend reflects a drop of 13,6 % in the Community producers' prices over the period taken as a whole.
- (29) The Commission examined the level of price undercutting calculated as the average differential between the cif value, duty paid, of the Brazilian imports and the ex-works packaged price of the Community product at the same stage of trade, on the Community market, expressed as a percentage of the total cif value, before duty, of the imports.

The statistical data gathered by the Commission departments during the first 10 months of 1990 showed that this weighted average differential varied between 25 and 42 % depending upon the exporter concerned.

(c) Situation of the Community industry concerned

- (30) The Commission took account of the following economic indicators in order to determine whether the Community producers had suffered material injury:

(i) Production, production capacity and stocks

- (31) The output volume figures for the Community for the period between 1986 and 1990 reveal a measure of stability, except in 1989 when there was a slight increase caused by the favourable outlook on the world market. From 1990 onwards, however, the outlook was less optimistic and all the Community producers scaled down their operations. Over the period taken as a whole, Community production therefore declined from 108 422 tonnes to 95 456 tonnes, a drop of 12 %. It should also be noted that two of the four Community producers are operating with one half of their production capacity.

⁽¹⁾ All figures for 1990 have been calculated by extrapolating the data relating to the investigation period.

The trend in stocks again bears witness to increasing difficulty in securing sales on the Community market. In this regard, stocks held by the Community producers more than doubled during the period 1986 to 1990, increasing from 15 170 tonnes to 37 745 tonnes.

(ii) *Sales*

- (32) Sales by the Community industry on the Community market declined from 89 166 tonnes in 1986 to 78 967 tonnes in 1990, down by 11,4 % over the period as a whole.

(iii) *Market share*

- (33) The Community industry's market share fell from 49,9 % in 1986 to 37 % in 1990, down by 12,9 % over five years. This significant decline recorded by the Community industry should be compared with the considerable increase in recorded consumption (up 19,4 %) and the growth in imports originating in Brazil whose share of the Community market increased from 2,6 % to 14,6 % during the same period.

(iv) *Financial results*

- (34) In 1990 the Community industry was obliged to sell at a loss to a significant extent since the weighted average net selling price was 8 % lower than the weighted average cost. On account of this constant pressure on prices the Community producers' results were adverse, especially in 1990 (ranging from 7,4 to 20,5 %), and an Italian producer was obliged to discontinue its production of silicon metal.

(v) *Employment*

- (35) The employment situation also deteriorated constantly between 1986 and 1990 since the total workforce of the entire Community industry was reduced by 18 %. This sector of Community production thus lost almost one employee in five between 1986 and 1990.

(d) *Conclusions*

- (36) An assessment of the economic factors taken as a whole and the convergence of their general trends, in particular the decline in the volume of sales, the drop in market share and the substantial financial losses sustained by the Community producers led the Commission to find, on completion of its preliminary examination of the facts, that the Community industry had suffered material injury within the meaning of Article 4 (1) of Regulation (EEC) No 2423/88.

E. CAUSE AND EFFECT

- (37) The concurrent but opposite trends in the shares of the Community market held by the Brazilian exporters (up 12 %) on the one hand, and by the Community producers (down 13 %) on the other, led the Commission to take the view that there was a close causal link between the dumping on the Community market by the Brazilian exporters and the damage sustained by the Community industry. This finding is also underpinned by the particularly transparent nature of the world market in silicon metal, the result of which is to augment the effect of price undercutting in the case of a product whose price constitutes the main competitive factor.

- (38) The Commission also examined whether other factors, particularly exports from other third countries, could be regarded as having had an effect on the losses sustained by the Community industry. In this regard it found that the market share held by the other third country exporters of silicon metal, with the exception of China, had also declined by almost 5 % between 1986 and 1990 despite the substantial increase in recorded consumption (up 19,4 %) on the Community market. Those exporters have accordingly also suffered as a result of the substantial quantities of silicon metal exported to the Community market at low prices by the Brazilian producers.

In these circumstances, even if the imports originating in the said third countries may have had an impact on the economic situation of the Community industry, the Commission takes the view, for the reasons set out above, that the dumped imports originating in Brazil, considered separately, caused material injury.

F. COMMUNITY INTEREST

1. General

- (39) The purpose of anti-dumping duties is to eliminate dumping that is harmful to the Community's economic activity and to restore conditions of fair competition on the Community market, which is in keeping with the general interests of the Community.
- (40) The Commission recognizes that the imposition of anti-dumping duties affects the level of prices of the exporters concerned within the Community and can, accordingly, affect the relative competitiveness of their products to some extent. The adoption of anti-dumping measures can not however, be regarded as resulting in a restriction of competition

on the Community market. On the contrary, the elimination of the unwarranted advantages secured through the dumping of products by the Brazilian exporters is intended to avert the decline of the Community industry and will result in an improvement of the competitive situation in the Community. It is clear that a reduction in the number of Community suppliers of silicon metal of itself leads to a restriction of consumer choice by increasing consumer dependence on non-Community supplies.

2. The interests of the Community industry

- (41) In view of the material injury suffered by the Community industry, the Commission takes the view that if no trade protection measures are taken against the dumped imports which have caused the Community industry to suffer serious financial losses the industry would be obliged to reduce its capacity substantially.
- (42) It is also evident that if the damage sustained by the Community industry continues this will result in the near future in the closure of a number of quartz furnaces in the factories of the Community producers which will again lead the Community industry concerned to cut back the general level of its workforce.

3. The interests of other parties

- (43) Certain importers have contended that it is necessary to safeguard supplies from Brazil without any type of constraint on the grounds that they had concluded long-term supply contracts with exclusive technical specifications. In this regard it must be emphasized that the proposed anti-dumping measures in no way entail any exclusion of Brazilian exporters of silicon metal from the Community market nor do they prevent Community consumers of the product from maintaining their trading links with Brazil on condition that the latter operate in a context of fair competition.

The said Community consumers cannot call for the continuation of advantages that have been secured improperly by reason of unfair trading practices.

4. Findings

- (44) In conclusion, having compared the various interests at stake, the Commission takes the view that the effect of imposing provisional anti-dumping measures will, in this case, restore fair competition on the Community market in the product concerned by eliminating the harmful effects of the

dumping of imports. It also considers that it is necessary to avert any further injury being inflicted during the proceeding.

- (45) The Commission accordingly considers that it is in the Community's interest that anti-dumping measures be taken by the imposition of provisional anti-dumping duties.

G. PROVISIONAL ANTI-DUMPING DUTIES

- (46) In order to eliminate the injury suffered by the Community industry and, in particular, to meet its need to become profitable again at the earliest opportunity in order that it may remain in existence, it is essential that the measures taken enable the industry in question to make adequate profits and increase the rate at which its production capacity, which has suffered seriously as a result of the dumped imports, is used.
- (47) It is accordingly essential that the provisional duties to be imposed cover the difference between the price of silicon metal originating in Brazil and the minimum reference price needed by the Community industry to cover its costs and make a reasonable profit.
- (48) In the present case and for the purposes of making a preliminary determination, the Commission considers, as in the case of the previous anti-dumping proceeding concerning imports of silicon metal originating in the People's Republic of China, that a 6,5 % profit margin is essential to guarantee Community producers a reasonable return on their investments. On that basis the Commission has calculated a reference price on the basis of the production costs of the Community industry with which the weighted average prices of each Brazilian exporting producer have been compared.
- (49) In order to calculate the level of duty, the resulting price difference was expressed as a percentage of the weighted average cif value of the imports in question. As a result of these calculations it is possible to establish the following injury margins for each of the Brazilian exporting producers:

Rima Eletrometalurgia SA	37,72 %
Ligas de Alumínio SA (Liasa)	42,13 %
Eletroila SA	33,04 %
Companhia Ferroligas Minas Gerais (Minasligas)	40,19 %
Camargo Correa Metals SA	47,06 %
Companhia Brasileira Carboreto de Cálcio	51,03 %

- (50) In the case of two of the six exporters in question, the injury margin, calculated in this manner, exceeds the dumping margin found. In accordance with Article 13 (3) of Regulation (EEC) No 2423/88, the rate of the provisional anti-dumping duties applicable to these two Brazilian exporters of silicon metal will accordingly be determined on the basis of the dumping margins established for each exporter. In the case of the four other exporters, the injury margin so calculated determines the level of the provisional anti-dumping duty applicable in each case to eliminate the injury suffered.
- (51) In the case of the companies which failed to reply to the Commission's questionnaire or which failed to make themselves known, the Commission considers that it is appropriate to impose the highest level of duty, namely 42,13 %, calculated on the basis of the data collected in the course of the investigation. If a duty lower than the highest rate of anti-dumping duty established following the investigation were to be imposed on the said exporting producers, this would act as an incentive not to cooperate.
- (52) A time limit should be set within which the parties concerned may make known their views in writing and request a hearing. It must also be made clear that all the findings made for the purposes of this Regulation are preliminary and may be reviewed when calculating any definitive duty to be proposed by the Commission,

HAS ADOPTED THIS REGULATION :

Article 1

1. A provisional anti-dumping duty of 42,1 % of the net free-at-Community frontier price before duty is hereby imposed on imports of silicon metal falling within

CN Code 2804 69 00 and originating in Brazil (Taric additional code : 8654).

2. The rate of duty applicable to silicon metal produced by the following companies shall be :

		<i>Taric additional code</i>
Rima Eletrometalurgia SA, Belo Horizonte	37,7 %	(8649)
Eletroila SA, Belo Horizonte	33,0 %	(8650)
Companhia Ferroligas Minas Gerais (Minasligas), Contagem	40,1 %	(8651)
Camargo Corrao Metais SA, São Paulo	28,3 %	(8652)
Companhia Brasileira Carboreto de Cálcio (CBCC), Rio de Janeiro	18,5 %	(8653)

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

4. The release for free circulation in the Community of the product referred to in paragraph 1 shall be conditional on provision of a security equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 7 (4) (b) and (c) of Regulation (EEC) No 2423/88, the parties concerned may make known their views in writing and apply to be heard by the Commission within one month of the entry into force of this Regulation.

Article 3

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

Subject to Articles 11, 12 and 14 of Regulation (EEC) No 2423/88, it shall apply for a period of four months unless the Council adopts definitive measures before that period has elapsed.

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

Done at Brussels, 30 March 1992.

For the Commission

Frans ANDRIESSEN

Vice-President

COMMISSION REGULATION (EEC) No 907/92**of 9 April 1992****adopting interim protective measures on applications for STM licences in the beef and veal sector submitted for trade with Portugal during the period 30 March to 2 April 1992**

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, and in particular Article 252 (1) thereof,

Whereas Commission Regulation (EEC) No 3810/91 of 18 December 1991 laying down detailed rules for the application of the supplementary trade mechanism in the beef and veal sector between the Community as constituted at 31 December 1985 and Spain and Portugal and repealing Regulations (EEC) No 4026/89 and (EEC) No 3815/90⁽¹⁾ set the indicative ceilings applicable in the beef and veal sector and the maximum quantities for which STM licences may be issued each quarter;

Whereas Article 252 (1) of the Act of Accession makes provision for the Commission to take the interim protective measures necessary if the indicative ceiling for the year in course or part of it is reached or exceeded;

Whereas the licence applications lodged between 30 March and 2 April 1992 are for a quantity in excess of that set for the months of March and April 1992 for fresh

and chilled beef and veal; whereas as an interim protective measure only a percentage of the amounts applied for in that period should be granted and no further certificates issued for the time being,

HAS ADOPTED THIS REGULATION:

Article 1

For fresh and chilled beef and veal:

1. applications for STM licences for the following products submitted by Portugal between 30 March and 2 April 1992 and notified to the Commission shall be accepted for 34,422 %;
2. the issuing of STM licences in response to applications submitted by Portugal from 6 April 1992 onwards is suspended for the time being.

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, 9 April 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 357, 28. 12. 1991, p. 53.

COMMISSION REGULATION (EEC) No 908/92**of 9 April 1992****on the issue of import licences for high-quality fresh, chilled or frozen beef and veal**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3668/91 of 11 December 1991 opening a Community tariff quota for high-quality fresh, chilled or frozen meat of bovine animals falling within CN codes 0201 and 0202 and for products falling within CN codes 0206 10 95 and 0206 29 91 (1992) (1), and in particular Article 2 thereof,

Whereas Commission Regulation (EEC) No 3743 of 18 December 1991 laying down detailed rules for the application of import arrangements provided for by Council Regulations (EEC) No 3668/91 and (EEC) No 3669/91 in the beef and veal sectors (2) provides in Article 7, that applications for and the issue of import licences for the meat referred to in Article 1 (1) (d) thereof are to be effected in accordance with the provisions of Articles 12 and 15 of 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 (3), as last amended by Regulation (EEC) No 815/91 (4);

Whereas Article 1 (1) (d) of Regulation (EEC) No 3743/91 fixes the amount of high-quality fresh, chilled or frozen

beef and veal originating in and imported from the United States of America and Canada which may be imported on special terms in 1992 at 10 000 tonnes;

Whereas it should be recalled that licences issued pursuant to this Regulation will, throughout the period of validity, be open for use only in so far as provisions on health protection in force permit,

HAS ADOPTED THIS REGULATION:

Article 1

1. All applications for import licences from 1 until 5 April 1992 for high-quality fresh, chilled or frozen beef and veal as referred to in Article 1 (1) (d) of Regulation (EEC) No 3743/91 shall be met in full.
2. Applications for licences may be submitted, in accordance with Article 12 of Regulation (EEC) No 2377/80, during the first five days of May 1992 for 4 107 tonnes.

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, 9 April 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

(1) OJ No L 349, 18. 12. 1991, p. 3.

(2) OJ No L 352, 21. 12. 1991, p. 36.

(3) OJ No L 241, 13. 9. 1980, p. 5.

(4) OJ No L 83, 3. 4. 1991, p. 6.

COMMISSION REGULATION (EEC) No 909/92
of 9 April 1992
fixing the aid for cotton

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

Having regard to the Act of Accession of Greece, and in particular paragraphs 3 and 10 of Protocol 4 thereto, as amended by the Act of Accession of Spain and Portugal, and in particular Protocol 14 annexed thereto, and Commission Regulation (EEC) No 4006/87 ⁽¹⁾,

Having regard to Council Regulation (EEC) No 2169/81 of 27 July 1981 laying down the general rules for the system of aid for cotton ⁽²⁾, as last amended by Regulation (EEC) No 791/89 ⁽³⁾, and in particular Article 5 (1) thereof,

Whereas the amount of the additional aid referred to in Article 5 (1) of Regulation (EEC) No 2169/81 was fixed by Commission Regulation (EEC) No 2880/91 ⁽⁴⁾, as last amended by Regulation (EEC) No 868/92 ⁽⁵⁾;

Whereas it follows from applying the rules and other provisions contained in Regulation (EEC) No 2880/91 to the information at present available to the Commission that the amount of the aid at present in force should be altered as shown in Article 1 to this Regulation,

HAS ADOPTED THIS REGULATION :

Article 1

The aid for unginned cotton referred to in Article 5 of Regulation (EEC) No 2169/81 shall be ECU 71,868 per 100 kilograms.

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, 9 April 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 377, 31. 12. 1987, p. 49.

⁽²⁾ OJ No L 211, 31. 7. 1981, p. 2.

⁽³⁾ OJ No L 85, 30. 3. 1989, p. 7.

⁽⁴⁾ OJ No L 274, 1. 10. 1991, p. 48.

⁽⁵⁾ OJ No L 91, 7. 4. 1992, p. 22.

COMMISSION REGULATION (EEC) No 910/92

of 8 April 1992

re-establishing the levying of customs duties on products of category 156 (order No 42.1560), originating in China, to which the preferential tariff arrangements set out in Council Regulation (EEC) No 3832/90 apply

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

Having regard to Council Regulation (EEC) No 3832/90 of 20 December 1990 applying generalized tariff preferences for 1991 in respect of textile products originating in developing countries ⁽¹⁾, extended into 1992 by Council Regulation (EEC) No 3587/91 ⁽²⁾ and in particular Article 12 thereof,

Whereas Article 10 of Regulation (EEC) No 3832/90 provides that preferential tariff treatment shall be accorded for 1992 for each category of products subjected in Annexes I and II thereto to individual ceilings, within the limits of the quantities specified in column 8 of Annex I and column 7 of Annex II, in respect of certain or each of the countries or territories of origin referred to in column 5 of the same Annexes;

Whereas Article 11 of the abovementioned Regulation provides that the levying of customs duties may be re-established at any time in respect of imports of the products in question once the relevant individual ceilings have been reached at Community level;

Whereas, in respect of products of category 156 (order No 42.1560), originating in China, the relevant ceiling amounts to 4 tonnes;

Whereas on 19 March 1992 imports of the products in question into the Community, originating in China, a country covered by preferential tariff arrangements, reached and were charged against that ceiling;

Whereas it is appropriate to re-establish the levying of customs duties for the products in question with regard to China,

HAS ADOPTED THIS REGULATION:

Article 1

As from 13 April 1992 the levying of customs duties for 1992, suspended pursuant to Regulation (EEC) No 3832/90, shall be re-established in respect of the following products, imported into the Community and originating in China:

Order No	Category (unit)	CN code	Description
42.1560	156 (tonnes)	6106 90 30 ex 6110 90 90	Blouses and pullovers of silk, noil or other waste silk for women, girls and infants, knitted or crocheted

Article 2

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

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

Done at Brussels, 8 April 1992.

For the Commission

Christiane SCRIVENER

Member of the Commission

⁽¹⁾ OJ No L 370, 31. 12. 1990, p. 39.

⁽²⁾ OJ No L 341, 12. 12. 1991, p. 1. This Regulation was last amended by Council Regulation (EEC) No 282/92 (OJ No L 31, 7. 2. 1992, p. 1).

COMMISSION REGULATION (EEC) No 911/92**of 9 April 1992****abolishing the countervailing charge and re-establishing a preferential customs duty on imports of fresh lemons originating in Turkey**

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 Commission Regulation (EEC) No 389/92⁽³⁾, as last amended by Regulation (EEC) No 676/92⁽⁴⁾, introduced a countervailing charge on fresh lemons originating in Turkey and suspended the preferential customs duty on imports of these products;

Whereas for this product originating in Turkey there were no prices for six consecutive days; whereas the conditions specified in Article 26 (1) of Regulation (EEC) No 1035/72 are therefore fulfilled and the countervailing

charge on imports of fresh lemons originating in Turkey can be abolished;

Whereas, in accordance with Article 2 of Council Regulation (EEC) No 3671/81 of 15 December 1981 on imports into the Community of certain agricultural products originating in Turkey⁽⁵⁾, as amended by Regulation (EEC) No 1555/84⁽⁶⁾ the preferential rate of customs duty should be re-established at the same time as the countervailing charge is abolished,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 389/92 is hereby repealed.

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, 9 April 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 118, 20. 5. 1972, p. 1.

⁽²⁾ OJ No L 150, 15. 6. 1991, p. 8.

⁽³⁾ OJ No L 43, 19. 2. 1992, p. 19.

⁽⁴⁾ OJ No L 73, 19. 3. 1992, p. 15.

⁽⁵⁾ OJ No L 367, 23. 12. 1981, p. 9.

⁽⁶⁾ OJ No L 150, 6. 6. 1984, p. 4.

COMMISSION REGULATION (EEC) No 912/92
of 9 April 1992
fixing the amount of the subsidy on oil seeds

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

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

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by Regulation (EEC) No 1720/91⁽²⁾, and in particular Article 27 (4) thereof,

Having regard to Council Regulation (EEC) No 1678/85 of 11 June 1985 fixing the conversion rates to be applied in agriculture⁽³⁾, as last amended by Regulation (EEC) No 668/92⁽⁴⁾,

Having regard to Council Regulation (EEC) No 1569/72 of 20 July 1972 laying down special measures for colza, rape and sunflower seed⁽⁵⁾, as last amended by Regulation (EEC) No 2206/90⁽⁶⁾, and in particular Article 2 (3) thereof,

Whereas the amount of the subsidy referred to in Article 27 of Regulation No 136/66/EEC was fixed by Commis-

sion Regulation (EEC) No 307/92⁽⁷⁾, as last amended by Regulation (EEC) No 799/92⁽⁸⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 307/92 to the information known to the Commission that the amount of the subsidy at present in force should be altered to the amount set out in the Annexes hereto,

HAS ADOPTED THIS REGULATION :

Article 1

The amounts of the subsidy and the exchange rates referred to in Article 33 (2) and (3) of Commission Regulation (EEC) No 2681/83⁽⁹⁾ shall be as set out in the Annexes 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, 9 April 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

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

⁽²⁾ OJ No L 162, 26. 6. 1991, p. 27.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 11.

⁽⁴⁾ OJ No L 71, 18. 3. 1992, p. 21.

⁽⁵⁾ OJ No L 167, 25. 7. 1972, p. 9.

⁽⁶⁾ OJ No L 201, 31. 7. 1990, p. 11.

⁽⁷⁾ OJ No L 32, 1. 2. 1992, p. 20.

⁽⁸⁾ OJ No L 86, 1. 4. 1992, p. 31.

⁽⁹⁾ OJ No L 266, 28. 9. 1983, p. 1.

ANNEX I

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

(amounts per 100 kg)

	Current 4	1st period 5	2nd period 6	3rd period	
1. Gross aids (ECU):					
— Spain	17,247	17,720	17,720		
— Portugal	26,327	26,800	26,800		
— Other Member States	17,247	17,720	17,720		
2. Final aids:					
Seed harvested and processed in:					
— Federal Republic of Germany (DM)	40,60	41,72	41,72		
— Netherlands (Fl)	45,75	47,00	47,00		
— BLEU (Bfrs/Lfrs)	837,45	860,42	860,42		
— France (FF)	136,18	139,91	139,91		
— Denmark (Dkr)	154,88	159,12	159,12		
— Ireland (£ Irl)	15,156	15,572	15,572		
— United Kingdom (£)	13,386	13,768	13,768		
— Italy (Lit)	30 380	31 213	31 213		
— Greece (Dr)	4 080,45	4 194,42	4 166,19		
— Spain (Pta)	2 649,39	2 719,98	2 719,98		
— Portugal (Esc)	5 575,73	5 673,04	5 673,04		

ANNEX II

Aids to colza and rape seed 'double zero'

(amounts per 100 kg)

	Current 4	1st period 5	2nd period 6	3rd period	
1. Gross aids (ECU):					
— Spain	18,497	18,970	18,970		
— Portugal	27,577	28,050	28,050		
— Other Member States	18,497	18,970	18,970		
2. Final aids:					
Seed harvested and processed in:					
— Federal Republic of Germany (DM)	43,55	44,66	44,66		
— Netherlands (Fl)	49,06	50,32	50,32		
— BLEU (Bfrs/Lfrs)	898,15	921,11	921,11		
— France (FF)	146,05	149,78	149,78		
— Denmark (Dkr)	166,10	170,35	170,35		
— Ireland (£ Irl)	16,255	16,670	16,670		
— United Kingdom (£)	14,381	14,762	14,762		
— Italy (Lit)	32 582	33 415	33 415		
— Greece (Dr)	4 395,61	4 509,57	4 481,34		
— Spain (Pta)	2 837,92	2 908,52	2 908,52		
— Portugal (Esc)	5 836,57	5 933,89	5 933,89		

ANNEX III

Aids to sunflower seed

(amounts per 100 kg)

	Current 4	1st period 5	2nd period 6		
1. Gross aids (ECU) :					
— Spain	30,361	30,244	30,244		
— Portugal	37,091	36,974	36,974		
— Other Member States	18,661	18,544	18,544		
2. Final aids :					
Seed harvested and processed in :					
— Federal Republic of Germany (DM)	43,93	43,66	43,66		
— Netherlands (Fl)	49,50	49,19	49,19		
— BLEU (Bfrs/Lfrs)	906,11	900,43	900,43		
— France (FF)	147,34	146,42	146,42		
— Denmark (Dkr)	167,57	166,52	166,52		
— Ireland (£ Irl)	16,399	16,296	16,296		
— United Kingdom (£)	14,463	14,361	14,361		
— Italy (Lit)	32 870	32 664	32 664		
— Greece (Dr)	4 398,38	4 350,30	4 316,71		
— Portugal (Esc)	7 827,43	7 805,45	7 805,45		
— Spain (Pta)	4 629,34	4 613,00	4 613,00		

ANNEX IV

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

(value of ECU 1)

	Current 4	1st period 5	2nd period 6		
DM	2,040620	2,039530	2,038580		
Fl	2,298210	2,296730	2,295280		
Bfrs/Lfrs	42,023500	41,995600	41,971300		
FF	6,916860	6,915490	6,912850		
Dkr	7,925960	7,924720	7,924460		
£Irl	0,767770	0,767806	0,767547		
£	0,717231	0,717389	0,717588		
Lit	1 539,81	1 542,02	1 544,13		
Dr	237,90600	239,70800	241,53400		
Esc	175,38900	175,66800	176,12600		
Pta	129,57500	129,80600	130,03600		

COMMISSION REGULATION (EEC) No 913/92

of 9 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,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 893/92 ⁽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:

⁽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 95, 9. 4. 1992, p. 35.⁽⁸⁾ OJ No L 182, 3. 7. 1987, p. 49.⁽⁹⁾ OJ No L 281, 1. 11. 1975, p. 65.

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

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

Whereas these exchange rates being those recorded on 8 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 10 April 1992.

⁽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, 9 April 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX

to the Commission Regulation of 9 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) (*)
1103 21 00	281,21	287,25
1104 19 10	281,21	287,25
1104 29 11	207,79	210,81
1104 29 31	249,97	252,99
1104 29 91	159,35	162,37
1104 30 10	117,17	123,21
1107 10 11	278,09	288,97
1107 10 19	207,79	218,67
1108 11 00	343,71	364,26
1109 00 00	624,92	806,26

(*) 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.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 26 February 1992

relating to a procedure pursuant to Articles 85 and 86 of the EEC Treaty
(IV/33.544, British Midland v. Aer Lingus)

(Only the English text is authentic)

(92/213/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Whereas :

Having regard to the Treaty establishing the European Economic Community,

I. FACTS

Having regard to Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector⁽¹⁾,

A. The parties

Having regard to the complaint lodged by British Midland Airways Limited on 26 April 1990 against Aer Lingus plc,

Having regard to Commission Decision of 4 June 1991 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission, pursuant to Article 16 (1) of Regulation (EEC) No 3975/87, read in conjunction with Commission Regulation (EEC) No 4261/88 of 16 December 1988 on the complaints, applications and hearings provided for in Council Regulation (EEC) No 3975/87⁽²⁾,

After consulting the Advisory Committee on Agreements and Dominant Positions in Air Transport,

- (1) Aer Lingus is the national airline of Ireland. It operates a fleet of 31 jet (all but three of which are used for short- and medium-haul services) and turboprop aircraft. In 1990, it carried over 4 million scheduled revenue passengers (over 3 million on European services) and performed in excess of 4 billion revenue passenger kilometers (more than 1,7 billion on European services). It employs over 7 000 workers. Total revenues from air transport over 1990 amounted to almost US\$ 700 million, out of a total turnover in excess of US\$ 1,2 billion, and net profits were over US\$ 8 million (as compared with US\$ 52 million during 1989).
- (2) British Midland is the main operating company of the Airlines of Britain Holdings plc which for 25 % belongs to SAS. It operates a fleet of 23 jet aircraft, all for services within the United Kingdom and to the neighbouring Member States. It employs about 2 000 workers. In 1990 it carried over 3 million passengers. Total revenues over 1990 exceeded US\$ 300 million but the company lost several million US\$. British Midland is among the fastest-growing European airlines.

⁽¹⁾ OJ No L 374, 31. 12. 1987, p. 1.

⁽²⁾ OJ No L 376, 31. 12. 1988, p. 10.

B. The refusal to interline

- (3) Interlining is hailed as one of IATA's major achievements. It essentially consists of an agreement (*Multilateral Interline Traffic Agreement — MITA*, defined in IATA Resolution 780), pursuant to which airlines are authorized to sell each other's services. As a result a single ticket can be issued which comprises segments to be performed by different airlines. Applicable tariffs and conditions are those of the party over whose route the passenger is to be carried. The airline which issues the ticket collects the price for all segments from the passenger. The issuing airline then pays the fare due to the carrying airline (less a 9 % interline service charge as compensation for expenses incurred in selling, handling, servicing and processing interline traffic) through the IATA clearing house.

In order to become a party to the MITA an interested airline (which must not necessarily be an IATA member) makes an application to IATA which is circulated to all participating airlines. Traditionally agreement or 'concurrence' to an application is hardly ever refused, the exception being where currency convertibility or the financial stability of the applicant are not assured. In the latter case airlines may conclude specific agreements, providing e.g. for unilateral interlining (i.e. that the applicant accepts the flag carriers' authority to issue tickets on its behalf but not vice versa).

The interlining system benefits from the participation of the vast majority of the world's airlines, accounting for approximately 95 % of all scheduled traffic.

- (4) In addition airlines accept to change tickets at passengers' request. This technically relates to 'voluntary changes' rather than 'interlining' (it is governed by IATA Resolution 736 on voluntary changes to tickets) but normally operates in conjunction with interlining. Where the carrier making the change is not the issuing carrier or the carrier designated as carrier for the segment concerned, an endorsement is required from the issuing or designated carrier. However, many airlines have agreed to waive the requirement of endorsement between each other.

- (5) The main advantages of the multilateral interline and voluntary change system (jointly referred to hereafter, for the purpose of this Decision, as 'interline system') are that passengers can buy a single ticket providing for transportation by different carriers (e.g. leaving on the issuing airline and returning on another airline serving the same route, or leaving on the issuing airline and continuing to destinations not served by that airline), and that passengers can easily change the reservations, routings or airlines mentioned on the ticket.

Airlines value that the interlining system enables them to complement their networks and frequencies. Even though they would lose some passengers to other airlines as the result of interlining, they would also expect to win some from other airlines.

The interline system is a very significant part of worldwide air transport. It is estimated that approximately 20 % of passengers on intra-Community flights in one way or another use interline facilities and that depending on the airline issuing the ticket, about half of passengers hold tickets enabling them to change onto flights operated by other airlines.

- (6) In practice airlines and their personnel do not always insist on compliance with the interline and waiver of endorsement agreements. If a travel agent issues a ticket for travel of an airline without proper authority arising out of an interline agreement, the carrying airline's personnel may accept the ticket and will bill the issuing airline. Where billing would be complicated or uneconomical, the carrying airline may renounce billing on the assumption that the issuing airline probably has similar claims on the carrying airline. Likewise an airline's employees at an airport may accept voluntary changes made to a ticket without insisting on endorsement by the issuing or designated carrier. However, any flexibility which may exist in practice is marginal and of limited usefulness; it is likely to inconvenience personnel and passengers and is no satisfactory substitute for an actual agreement to interline.

The absence of an agreement to interline may be a serious handicap for the airlines suffering from it. In particular business travellers (normally travelling

at the more expensive unrestricted C and Y fares and typically generating about 60 % of an airline's revenue from passenger services) often make trips combining several destinations and airlines, and they need to be able to change travel plans with minimal constraints. They highly value the convenience and flexibility offered by a single interlinable ticket, rather than having to purchase separate tickets for each flight and having to return some of these unused, if they have had to change their plans. In addition, travel agents cannot issue a ticket on an airline's paper if certain flights on that ticket are operated by another airline which refused to interline with the first airline; this would prevent a travel agent e.g. from issuing a ticket with an outward journey on British Midland and a return journey on Aer Lingus. Agents prefer to avoid the loss of time and the extra work involved in issuing separate tickets. In addition a passenger holding a non-interlinable ticket is more likely to return it unused (because he may have had to change his plans and to buy another ticket), in which case the travel agent would lose his commission.

- (7) Since 1964, Aer Lingus concurred with British Midland's participation in the MITA.

After having been awarded the right to operate a London (Heathrow) — Dublin service, British Midland announced on 22 February 1989 its intention to commence services on that route from 28 April 1989. On 7 April 1989 Aer Lingus gave notice that it terminated its concurrence with British Midland's participation in MITA, effective 7 May. Furthermore Aer Lingus did not accept interchangeability of its and British Midland's tickets on the London (Heathrow)-Dublin route. British Midland was able to interline with British Airways until the latter's withdrawal from the route at the end of March 1991.

Aer Lingus did not cancel its interline agreement with the other airline operating on the route, British Airways.

In statements to the press issued at that time, Aer Lingus declared:

'We have established ourselves as the dominant carrier on the routes between the two capitals, and intend to remain so ... British Midland does not have the resources to offer a similar frequency or

service, so they want us to provide product for them via an interline agreement.' (*Airline World*, 24 April 1989).

C. Tariff consultations

- (8) On 7 and 8 February 1991 Aer Lingus attended the Special Composite Meeting of Cargo and Passenger Tariff Coordinating Conferences, organized by IATA in Geneva.

At the opening of the Conference, the Aer Lingus representative stated that the company would not participate in consultations concerning the routes from Dublin to Amsterdam, London and Paris. The Conference proceeded to discuss the continuation of the exceptional fare increases (IATA Resolutions 003 w and 003 ww, 003 m and 003 mm) which had been discussed at the IATA Special Conferences on 29 August and 31 October 1990. These discussions covered all transport worldwide, including intra-Community transport. The conclusion of the conference was to file for an extension of the existing resolutions.

Notwithstanding Aer Lingus' statement, it took part in the conference discussions and the final vote.

D. The markets concerned

(i) Provision of air transport

- (9) When British Midland in March 1989 announced its intention to start a London (Heathrow) — Dublin service, only Aer Lingus and British Airways were present on the route. At that time Aer Lingus accounted for approximately 75 % of passengers carried⁽¹⁾, British Airways for 25 %.

In the year following British Midland's entry on the route, it obtained an average 15 % market share; Aer Lingus and British Airways both lost about one-seventh of their market share and averaged 64 and 21 %. In the second year following its entry British Midland's market share grew to 21 %, Aer Lingus' remained fairly stable and British Airways' decreased to 17 %.

⁽¹⁾ About 10 to 20 % of the passengers carried continue beyond London or Dublin. Excluding these connecting passengers in order to isolate true 'origin/destination' passengers would not significantly change the respective shares of the airlines.

British Airways terminated its London (Heathrow) — Dublin service in March 1991. At that time British Airways concluded a marketing agreement with Aer Lingus which Aer Lingus expected to enable it to capture 160 000 passengers annually (i.e. about 10 % of market volume). In the period from April to June 1991, Aer Lingus recovered its initial 75 % share of passengers carried.

Between 1989 and the middle of 1991, the UK and Irish authorities did not allow airlines other than Aer Lingus, British Airways and British Midland to operate scheduled services between London (Heathrow) and Dublin.

- (10) There are a number of services operated between Dublin and London airports other than Heathrow:

- at the time of the refusal to interline, both Aer Lingus and Dan Air operated Dublin-London (Gatwick) services. Aer Lingus had an 80 % share of that traffic and maintained an interline agreement with Dan Air. Dan Air withdrew in April 1990, and now Aer Lingus is the sole airline on that route,
- at the time of the refusal to interline, Aer Lingus operated a service from Dublin to London (Stansted). Since that time the service has been transferred to Ryan Air which is the sole airline on that route,
- a service between Dublin and Luton was operated for a few months by Capital and, until the middle of 1991, by Ryan Air. At the present time that service is not provided.

The total annual number of passengers travelling by air between the four London airports, on one hand, and Dublin, on the other hand, is in the 2 to 2,5 million range and in recent years often grew by over 20 % annually. In 1990 about 75 % passed through Heathrow, 13 % through Luton, 10 % through Gatwick and 2 % through Stansted. Aer Lingus' share of all London — Dublin traffic, at the time of the refusal to interline, amounted to 66 %, has decreased in 1990 and now is estimated to be back to 66 %.

- (11) In 1989, both Aer Lingus and British Airways operated on relatively high load factors on the route of around 75 % (as compared to an average for the European network of 66 % for these airlines and of 62 % for the industry). Their load factors in early 1990 decreased to a still high 70 %. British Midland was in the 45 to 50 % range. At the busiest times in 1991, Aer Lingus operated 18 daily return services between London (Heathrow) and Dublin and British Midland 8. By its own admission Aer Lingus is incurring heavy losses on the service.

(ii) *Sale of air transport*

- (12) The airlines' share of passengers carried on the London (Heathrow) — Dublin route corresponds closely to their share of ticket sales in the United Kingdom and Ireland. The airlines tend to have a stronger position in their home market than in the other market.

About 15 to 20 % of sales are made to business travellers having bought tickets at the higher unrestricted fares (mainly C or Y).

- (13) Tariffs applied by British Airways and by Aer Lingus and, with a significant number of exceptions, by British Midland on the Dublin — London (Heathrow) and (Gatwick) services are essentially identical. Ryan Air applied significantly lower tariffs on the Dublin — London (Stansted) and Luton routes.

II. LEGAL ASSESSMENT

A. Article 86

(a) *Dominant position*

(i) *Relevant markets*

- (14) Aer Lingus' conduct has effects on the markets for the provision and sale of air transport between Dublin and London (Heathrow).

The characteristics of surface transport (speed, convenience, several changes of transport means) on this route are sufficiently different to preclude substitutability of demand by most travellers. Some travellers — in particular some price-conscious leisure travellers — may consider that surface transport and air transport at the lowest, very restricted fares are interchangeable. However, the supply of air transport at those fares is limited. Furthermore, many travellers — and not only those that cannot afford to spend a day travelling between Dublin and London — are not interested in slow surface transport or in air travel at very restrictive conditions, and they do not take the view that both modes of transport are substitutable. There is considerable specific demand for fast, flexible and convenient travel between the two cities which can only be met by air transport. These travellers pay prices which are significantly higher than the price of surface transport, and there is no evidence that the availability of surface transport at lower prices acts as a constraint on the marketing of air travel at those higher fares. It is precisely for the same travellers that the possibility to interline is most important.

Even though air travel between Dublin and other London airports than Heathrow could sometimes be substituted to travel to Heathrow, that is not so for a large number of travellers. In particular business travellers traditionally prefer Heathrow, among other reasons because other London airports are not served as frequently as Heathrow, and because they do not offer a similar range of connections and therefore will be less suited to onward travel beyond London. In addition, it must be considered that at the time the sale is made, some passengers will be able to select other airports in the area than London (Heathrow). However, the refusal by Aer Lingus to accept changes from or to British Midland bookings affects passengers already holding a ticket for transport between London (Heathrow) and Dublin, and for those a change of airport may be impossible (e.g. if their car is parked at Heathrow) and will usually be very inconvenient (because they have to change arrangements or because it will take more time to reach their final destination). In any event, including other London airports than Heathrow in the relevant product market would not reduce Aer Lingus' market share to a point where dominance can be excluded.

Supply substitutability is also limited. From 1989 to the middle of 1991, no other airlines were authorized to operate scheduled services between London (Heathrow) and Dublin. In addition, Heathrow airport is notoriously congested; if slots can be obtained at all to operate a service to Dublin, their opportunity cost would be very high.

- (15) For the purpose of assessing the effect of the refusal to interline on sales of airline tickets, the UK and Ireland are two separate geographic markets. The distribution of air transport services is still very much organized on a national level: travel agents operate under essentially the same conditions at national level; airlines organize their marketing departments on a national level; fares are quoted in local currencies; promotional fares and discount conditions may be restricted to certain countries; crossborder sales are rare and where they do occur, airlines tend to resist them; tickets are processed through the IATA bank settlement plans which are organized on a national basis; and the distribution of market shares for route groups very much tends to be determined on a country-by-country basis, with flag carriers having a very high share in their

home countries but a much lower share in other countries.

In the present case, there are significant price differences between the fares ex Ireland and ex UK, varying from 90 to 130 % of the level applied in the other Member State. The distribution of market shares also varies considerably: Aer Lingus' share of sales of the London (Heathrow) — Dublin service in the UK is only three-quarters of its share of its home market. The market share achieved by the UK airlines in Ireland is less than two-thirds of their share in their home market.

- (16) Consequently, the Commission assesses the abuse on the markets for the provision of London (Heathrow) — Dublin air transport and for the sale of London (Heathrow) — Dublin air transport in both Ireland and in the UK.

(ii) Substantial part of the common market

- (17) The London (Heathrow) — Dublin service is one of the busiest in the Community. The number of passengers on the route amounts to approximately 1,7 million annually. Consequently there is a significant volume of travel affected by the refusal to interline.

Both the UK and Ireland are substantial parts of the common market. The volume of sales of the Dublin — London (Heathrow) service in each country is significant (in the ECU 50 to 100 million range annually).

(iii) Dominance

- (18) Aer Lingus enjoys market shares which are unusually high, even in an oligopolistic industry such as air transport:

- its share of passengers carried on the London (Heathrow) — Dublin service at the time of the refusal to interline amounted to 75 %, subsequently decreased to the 60 to 65 % range, and following British Airways' exit from the route in March 1991 recovered to exceed 75 %. Most of British Airways' market share at that point was captured by Aer Lingus. Including other London airports will not have a material impact on Aer Lingus' market share,
- its share of ticket sales corresponds closely to its share of passengers carried and in both geographic markets exceeded 50 %. Even though the

Commission does not possess data on market shares following British Airways' exit from the route, the fact that Aer Lingus' share of traffic between London (Heathrow) and Dublin increased significantly implies that its share of sales increased in a similar proportion.

- (19) In addition, under the UK and Irish policies in effect between 1989 and the middle of 1991 no other airlines besides Aer Lingus, British Midland and British Airways were authorized to operate third- and fourth-freedom services between London (Heathrow) and Dublin. There were no fifth-freedom services. Furthermore Heathrow is a notoriously congested airport and demand for slots considerably exceeds supply. Therefore airlines operating out of Heathrow will tend to use slots for the services which make the largest contribution to profits. Using Heathrow slots for additional services to Dublin, a route which is already relatively well served and which at present is not profitable, would in most cases imply a high opportunity cost.

While there are services to other London airports, the importance of Heathrow is such, particularly for business travellers and for connecting passengers, that competition arising from these services has only a limited impact on the service to Heathrow. In any event, including these other airports would leave Aer Lingus with a still high two-thirds of the market.

- (20) The very high share of the relevant market enjoyed by Aer Lingus, and the presence of barriers to entry on the route concerned are indicative of dominance. Furthermore Aer Lingus is the national Irish airline and would be the preferred choice of most passengers on the route, who are Irish nationals. Aer Lingus has the most extensive network out of Ireland and accounts for a very large share of air transport out of the country. This position gives it commercial power in the local market which smaller, foreign-based airlines do not possess.
- (21) The mere fact that Aer Lingus was able to disregard the complaints of travel agents and business travellers suffering from the refusal to interline suggests that Aer Lingus enjoys considerable freedom of action.

When British Midland announced its intention to commence operations on the London (Heathrow) — Dublin route, Aer Lingus took certain measures such as improving its service and aligning certain fare categories on British Midland's. However, this action has been quite limited: Aer Lingus confined its reaction essentially to matching certain British Midland leisure-type fares. More importantly, Aer Lingus' action was essentially in anticipation of British Midland's arrival; after an initial period of preparing for that event, Aer Lingus' reaction was much attenuated.

- (22) Even though British Midland has been able to obtain a significant market share in the years following entry on the route, its presence does not negate the evidence of dominance by Aer Lingus.

Aer Lingus maintained and even increased the absolute number of passengers carried on the route. Its share of passengers carried and of sales relative to that of other airlines on the route decreased following British Midland's entry, but only by a fairly small margin and recovered again after British Airways' exit. British Midland's success appears to be due to a large extent to its ability to benefit from the significant growth of the number of passengers on the route between 1989 and 1990 by providing extra capacity at a time when there was demand for it.

- (23) All of this indicates that Aer Lingus has an appreciable freedom of action. While Aer Lingus has been exposed to a certain amount of competition, it has been able to contain that competition successfully at relatively low cost to itself.

(b) *Abuse*

- (24) Abusive conduct is defined as 'practices which are likely to affect the structure of a market where, as a result of the presence of the undertaking in question, competition has already been weakened and which, through recourse to methods differing from those governing normal competition in goods or services based on traders' performance, have the effect of hindering the maintenance or development of the level of competition existing on the market' (Judgment of the Court of Justice of 13 February 1979 in Case 85/76, Hoffmann-La Roche v. Commission, [1979] ECR 541).

- (25) Refusing to interline is not normal competition on the merits. Interlining has for many years been accepted industry practice, with widely acknowledged benefits for both airlines and passengers. A refusal to interline for other reasons than problems with currency convertibility or doubts about the creditworthiness of the beneficiary airline is a highly unusual step and has up to now not been considered by the European airline industry as a normal competitive strategy. Aer Lingus itself has maintained interline agreements with the other airlines competing with it on London — Dublin services, British Airways and Dan Air.

Aer Lingus has argued that, whereas interlining in most circumstances is beneficial to all participating airlines, it would suffer from interlining with British Midland by losing several points of market share to the new entrant. Even if this could be demonstrated, the argument that interlining would result in a loss of revenue would not in itself make the refusal legitimate. Aer Lingus has not argued that interlining with British Midland would have a significant effect on its own costs, whereas there is evidence that a refusal to interline would impose a significant handicap on British Midland.

- (26) Both a refusal to grant new interline facilities and the withdrawal of existing interline facilities may, depending on the circumstances, hinder the maintenance or development of competition. Whether a duty to interline arises depends on the effects on competition of the refusal to interline; it would exist in particular when the refusal or withdrawal of interline facilities by a dominant airline is objectively likely to have a significant impact on the other airline's ability to start a new service or sustain an existing service on account of its effects on the other airline's costs and revenue in respect of the service in question, and when the dominant airline cannot give any objective commercial reason for its refusal (such as concerns about creditworthiness) other than its wish to avoid helping this particular competitor. It is unlikely that there is such justification when the dominant airline singles out an airline with which it previously interlined, after that airline starts competing on an important route, but continues to interline with other competitors.

- (27) When an airline commences a new service, it will normally expect to incur some losses during an initial period, during which it will have to organize economic operation of its service and to attract sufficient interest from the travel trade and from travellers. It cannot expect to attain the load factors and the revenue necessary to ensure profitable operations from the beginning of the service. Therefore new entry will always be difficult.

Denying interline facilities is likely to increase that difficulty. A new entrant without interlining facilities is likely to be considered in this respect as a second-rate airline by travel agents and by travellers alike, which will make it more difficult to attain the commercial standing required to operate profitably. Travel agents wish to avoid the loss of time, the extra work and the potential loss of revenue caused by issuing tickets for transport on an airline without interline facilities. Furthermore a significant number of passengers consider the possibility to change tickets and to organize complex journeys on a single ticket as necessary; a refusal to interline will have the effect of diverting many of these passengers away from the new entrant airline. In this respect, a refusal to interline affects in particular the well-informed business travellers who require fully flexible tickets and who make a disproportionately large contribution to the revenue of the new entrant; significantly reducing this revenue will have a serious effect on the economics of the new entrant's operations.

A review of British Midland's performance on the Dublin — London (Heathrow) route confirms that these effects in this case are significant. British Midland's load factors are appreciably lower than Aer Lingus' on the same route. The difference to a large extent reflects British Midland's handicap in carrying interline passengers. This implies that passengers wishing to make use of interline facilities on the London (Heathrow) — Dublin service and unable to do so because of Aer Lingus' refusal to interline with British Midland, prefer to play safe and use the service of the airline with the highest frequency, i.e. Aer Lingus. The resulting loss of revenue to British Midland may be estimated at several million ECU per year.

- (28) A refusal to interline also hinders the maintenance or development of competition when it imposes a significant cost on competitors. If an incumbent airline operates at high frequency on a route accounts for a very large share of capacity and refuses to interline with a new entrant on that route, the latter will have a choice. It can either start a low frequency service in order to minimize initial losses, but will then face a long unprofitable start-up period. Alternatively a new entrant can operate a high frequency from the beginning, even though this may not be warranted by its initial market share, so as to attract (in particular business) travellers who require high frequencies in order to be able to organize their journey with maximum flexibility. In both situations a new entrant will face higher start-up costs.

In the present case British Midland could not reasonably confront Aer Lingus by operating at low frequency: it would then relegate itself to the role of an airline of minor importance and could not hope to attract many business travellers which it needs to improve the revenue of the service. As a result British Midland would be unlikely to develop into a strong competitor and might not even be interested in continuing its service to Dublin because it could make better use of its Heathrow slots.

- (29) It is true that Aer Lingus' strategy in the event has not resulted in British Midland's departure from the route, and that British Midland has succeeded in building up a reasonable schedule and in obtaining a significant market share. It is also true that the refusal to interline does not entirely preclude British Midland from attracting business travellers: notwithstanding the refusal to interline by Aer Lingus, British Midland passengers on the Dublin — London (Heathrow) service can still change their tickets to a reasonable number of flights operated by British Midland itself (and by British Airways until that airline withdrew from the route); in addition British Midland carries some passengers who travel on tickets issued by other airlines than Aer Lingus (by British Airways, until that airline withdrew from the route, and by others — e.g. third country airlines carrying passengers to London from where they continue to Dublin on British Midland). However, if Aer Lingus had continued to accept interlining, British Midland would have incurred lower costs, it would have earned higher revenues, its services would have been more attrac-

tive to its passengers and it would have been a stronger and more successful competitor than it now is.

The fact that British Midland has been able to continue operations notwithstanding the handicap imposed on it by Aer Lingus, is due in the first place to British Midland's determination to succeed in the face of unusual difficulties; it does not mean that the refusal had no effect on competition. There is no doubt that at the time the practice was implemented, the refusal to interline was intended and was likely to hinder the development of competition. The lawfulness of the refusal at the time when it occurred cannot depend on whether the competitor was later willing and able to remain on the route in spite of the disadvantages imposed on it.

- (30) Consequently, Aer Lingus has pursued a strategy which (even if not wholly effective) is both selective and exclusionary and restricts the development of competition on the London (Heathrow) — Dublin route.

The refusal to interline in this case essentially consists in the imposition, contrary to normal industry practice, of a significant handicap on a competitor by raising its costs and depriving it of revenue. Aer Lingus has not been able to point to efficiencies created by a refusal to interline nor to advance any other persuasive and legitimate business justification for its conduct. Its desire to avoid loss of market share, the circumstance that this is a route of vital importance to the company and that its operating margin is under pressure do not make this a legitimate response to new entry.

(c) *Effect on trade between Member States*

- (31) The refusal to interline concerns airlines from two Member States and relates to an air transport service of considerable importance between those States. It affects the possibility for travellers throughout the Community to benefit from interlining, and it prevents travel agents throughout from issuing interlining tickets. Therefore the effects of the refusal to interline are not confined to a single Member State, but affect trade between Member States.

(d) *Conclusion*

- (32) The Commission considers that the withdrawal by Aer Lingus of British Midland's authority to:

- (i) issue or complete transportation documents for carriage between London (Heathrow) and Dublin in accordance with Aer Lingus' tariffs and other applicable provisions as laid down in IATA Resolution 780,

and

- (ii) effect changes to its transportations documents in accordance with generally applicable procedures as laid down in IATA Resolution 736,

constitutes an infringement of Article 86.

B. Article 85

- (33) The Special Composite Meeting of Cargo and Passengers Tariffs Coordinating Conference organized by IATA on 7 and 8 February 1991, was attended by about 50 airlines from all over the world, including Aer Lingus and the flag carriers from 10 other Member States. The agenda for the meeting was to review the latest developments in operating costs. The object of the meeting was to resubmit an agreement to governments (in respect of new passenger fares and cargo rates) based on the most recent situation.

This exchange of information on airline costs and tariff objectives with a view to preparing a common position on passengers' fares and cargo rates, constitutes an agreement, or at least a concerted practice between undertakings, by which they coordinate their pricing decisions. Tariff consultations are therefore a restriction of competition as contemplated by Article 85 (1). Since they cover air transport between Member States, they also affect trade between Member States. Therefore the tariff consultations are caught by Article 85 (1).

- (34) Air carriers have nevertheless been authorized to hold tariff consultations under the conditions set forth in Article 3 of the group exemption laid down in Commission Regulation (EEC) No 84/91⁽¹⁾ which entered into force on 1 February 1991. In that Regulation, the Commission took the view that consultations on passenger and cargo tariffs may contribute to the generalized acceptance of interlinable fares and rates to the benefit of air carriers as well as air transport users.

However, consultations must not exceed the lawful purpose of facilitating interlining. In particular, air

carriers participating in the consultation mechanism are obliged to interline with all other carriers concerned, as specified in Article 3 (1) (b) and (d) of the Regulation.

These provisions oblige participants in passenger and cargo consultations to interline in respect of their Community networks with other carriers which operate or have applied to operate direct or indirect services on the routes concerned by the consultations.

- (35) Even though Aer Lingus was present at the consultation in early February 1991, it stated at the beginning of the meeting that it would not participate in the consultations concerning the routes from Dublin to Amsterdam, London and Paris⁽²⁾. Presumably this statement was intended to protect Aer Lingus from having to interline on those routes by excluding them from the discussion. However, other carriers operating those services (in particular Air France, British Airways and British Midland) did not make this reservation and Aer Lingus did not physically withdraw from the meeting. In the event, there was no specific discussion of those routes but there was a general discussion on tariffs which concerned those routes in the same way as all other routes. Even if Aer Lingus did not express any views about these routes specifically, it learned about its competitors' intentions in general and therefore also in respect of these routes, Aer Lingus would have heard them. Aer Lingus contributed to the general discussion and participated in the vote on whether to apply a two or three per cent increase on European routes. Therefore the conclusions of the conference apply to the routes referred to by Aer Lingus; its statement has not had any impact on the identity of those attending or voting, or on the contents or on the outcome of the consultations. The routes 'excluded' by Aer Lingus were therefore covered by the consultations.

- (36) In addition, even if it were accepted that the routes from Dublin to Amsterdam, London and Paris were outside the consultations at which Aer Lingus was present, this would not have been sufficient to avoid a duty to interline with British Midland. The tariff consultation concerned routes between Dublin and certain destinations served directly by

⁽¹⁾ OJ No L 10, 15. 1. 1991, p. 14.

⁽²⁾ That statement was followed by a statement by a Commission representative explaining the conditions imposed by Regulation (EEC) No 84/91 and confirming that carriers not wishing to accept the obligation to interline should not be present at the consultations.

Aer Lingus and indirectly by British Midland, either with a change of aircraft at London (Heathrow) (e.g. Birmingham, East Midland) or with a change of aircraft and airport in London (e.g. Channel Islands, Brussels). Furthermore, British Midland has applied to operate to certain destinations in respect of which Aer Lingus has not made a reservation. e.g. London (Heathrow) to Brussels, Copenhagen, Dusseldorf, Frankfurt, Malaga, Milan, Palma and Rome. Its Dublin — London (Heathrow) service would enable the company to offer indirect service from Dublin to these destinations.

- (37) Consequently, Aer Lingus has not respected the conditions specified in Article 3 (1) (b) and (d) of Regulation (EEC) No 84/91.

The Commission considers that Aer Lingus' participation in the tariff consultation of 7 and 8 February 1991 without granting British Midland the authority to:

- (i) issue or complete transportation documents for carriage over its Community network in accordance with Aer Lingus' tariffs and other applicable provisions as laid down in IATA Resolution 780;
- and
- (ii) effect changes to its transportation documents for carriage over its Community network in accordance with generally applicable procedures as laid down in IATA Resolution 736

constitutes an infringement of Article 85 (1).

Aer Lingus did not attend the next tariff consultations on 2 to 11 September 1991 which discussed tariffs for effect from 1 April 1992.

C. Article 12 (2) of Council Regulation (EEC) No 3975/87⁽¹⁾

- (38) In the light of the considerations set out above, the Commission considers that there are grounds for finding that Aer Lingus has infringed Articles 85 (1) and 86.
- (39) Pursuant to Article 12 (2) of Regulation (EEC) No 3975/87, the Commission may impose fines of from ECU 1 000 to 1 000 000, or a sum in excess thereof but not exceeding 10 % of the turnover in

the preceding business year of the undertakings participating in the infringement, where either intentionally or negligently they infringe Article 85 (1) or Article 86 of the Treaty. In fixing the amount of the fine, regard must be had both to the gravity and to the duration of the infringement.

- (40) The Commission considers that Aer Lingus has infringed Article 85 (1) by participating in a tariff consultation without respecting the conditions set forth in Regulation (EEC) No 84/91.

This infringement has taken place on 7 and 8 February 1991 and its effects continued at least until the fares discussed at the next tariff consultations take effect, i.e. until 1 April 1992.

- (41) The Commission considers that Aer Lingus has infringed Article 86 by withdrawing British Midland's authority to:

- (i) issue or complete transportation documents for carriage between Dublin and London (Heathrow) in accordance with Aer Lingus' tariffs and other applicable provisions as laid down in IATA Resolution 780; and
- (ii) effect changes to its transportation documents in accordance with generally applicable procedures as laid down in IATA Resolution 736.

This infringement has lasted from 7 April 1989 to the present date.

- (42) The Commission considers that the imposition of a fine on Aer Lingus is justified in so far as the infringement relates to Article 86. In view of the fact that Regulation (EEC) No 84/91 had only just entered into force when the infringement relating to Article 85 was committed, the Commission does not consider it appropriate to impose a fine on account of the parallel violation of Article 85.

In fixing the amount of the fine, it takes into account the fact that Aer Lingus' conduct is intended to affect the structure of competition by penalizing a competitor entering an important market and therefore is particularly serious. The Commission also considered that Aer Lingus' conduct has not succeeded in eliminating British Midland as a competitor on the London (Heathrow) — Dublin route, although there is no doubt that British Midland enjoys a considerably less successful operation than if Aer Lingus had continued to interline.

⁽¹⁾ OJ No L 374, 31. 12. 1987, p. 1.

D. Article 4 of Regulation (EEC) No 3975/87

- (43) The refusal to interline by Aer Lingus up to the present time has deprived British Midland of the opportunity to compete with Aer Lingus on equal footing, without suffering from a significant handicap. Therefore the Commission requires Aer Lingus to bring the refusal to interline to an end and orders Aer Lingus to grant British Midland the authority to interline within two months from the date when this Decision is notified.

This order does not merely require Aer Lingus to enter into an arrangement giving British Midland the possibility to interline in respect of the London (Heathrow) — Dublin route, but also to refrain from any conduct (such as refusing reservations or confirmations which it would accept from other interline partners) which would be an obstacle to the normal implementation of that arrangement.

- (44) However, the Commission accepts that Aer Lingus is not obliged to interline permanently with British Midland on this route. If a dominant airline has been able to develop a high frequency, that is a legitimate competitive advantage which it need not necessarily share with rivals. Furthermore, new entrants should not be able to rely forever on their competitors' frequencies and networks, but they must be encouraged to build up extensive networks and high frequencies by themselves and to gain commercial standing in order to attract sufficient interest from travel agents and passengers. Therefore the Commission considers that the duty to interline may be limited in time to a duration which is necessary for British Midland to develop its service without suffering from an undue handicap imposed by its dominant competitor contrary to the industry's and that competitor's normal practice.

In the present case there are a number of obstacles which make it difficult for British Midland to establish itself on the route. Aer Lingus enjoys considerable commercial strength in its home country and it accounts for a very high share of passengers and frequencies as compared to British Midland's. Because of the scarcity of available slots at Heathrow, British Midland could not increase the frequency of its Dublin service rapidly without lowering the frequency of some of its other services. If British Midland wants to obtain a comparable position to Aer Lingus and also operate a very high-frequency service between London (Heathrow) and Dublin, it would need sufficient time to build up commercial strength and an

adequate schedule. Therefore the Commission considers that the duty to which Aer Lingus was subjected in 1989 makes it reasonable now, in the light of the circumstances which have occurred, that a duty to interline should be imposed for a two-year period.

If the circumstances on the market change substantially during this period, the Commission will reconsider its order. In the light of the market conditions which will prevail at the expiry of this period, of British Midland's efforts to establish itself and of the obstacles it will have encountered, the Commission will consider whether this duty needs to be extended,

HAS ADOPTED THIS DECISION :

Article 1

1. Aer Lingus plc has infringed Article 86 of the EEC Treaty by withdrawing, on 7 May 1989, British Midland's authority to :

- (i) issue or complete transportation documents for carriage between Dublin and London (Heathrow) in accordance with Aer Lingus' tariffs and other applicable provisions as laid down in IATA Resolution 780 ;

and

- (ii) effect changes to its transportation documents in accordance with generally applicable procedures as laid down in IATA Resolution 736 ;

2. Aer Lingus plc has infringed Article 85 of the EEC Treaty by participating in a tariff consultation on 7 and 8 February 1991 without granting British Midland Airways Limited the authority to :

- (i) issue or complete transportation documents for carriage over its Community network in accordance with Aer Lingus' tariffs and other applicable provisions as laid down in IATA Resolution 780 ;

and

- (ii) effect changes to its transportation documents for carriage over its Community network in accordance with generally applicable procedures as laid down in IATA Resolution 736.

Article 2

Aer Lingus plc shall within two months from the date when this Decision is notified, put an end to the infringement established in Article 1 (1) and shall, for two years from that date, grant British Midland Airways Limited the authority to :

- (i) issue or complete transportation documents for carriage between Dublin and London (Heathrow) in accordance with its own tariffs and other applicable provisions as laid down in IATA Resolution 780 ; and
- (ii) effect changes to its transportation documents in accordance with generally applicable procedures as laid down in IATA Resolution 736.

Aer Lingus shall notify the Commission of all measures it takes in order to comply with this order.

Article 3

For the infringements established in Article 1 (1), a fine of ECU 750 000 is hereby imposed on Aer Lingus plc.

The fine shall be paid within three months of the date of notification of this Decision to account No 310-0933000-43 with 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 %.

Should payment be made in the national currency of the Member State where the bank nominated for payment is situated, the exchange rate applicable shall be that prevailing on the day preceding payment.

Article 4

This Decision is addressed to Aer Lingus plc, Dublin Airport, Dublin, Ireland.

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

Done at Brussels, 26 February 1992.

For the Commission

Leon BRITTAN

Vice-President